Office for Environmental Protection

Environmental Inspections in England – Case studies on selected laws and their implementation

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Environmental laws in England are crucial to protecting our environment, but their effectiveness largely depends on proper implementation, including inspection for compliance. Enforcement (or the lack of it) often gets attention, but the importance of regulatory inspections has generally been misunderstood and understated.

Inspection is key. If non-compliant and errant behaviour is not detected, because of fewer, or no inspections, it cannot be dealt with. What is more, regulators, government and Parliament will not know if the law is working as intended to deliver the environmental outcomes expected by Parliament.

The striking rates of non-compliance found as farm inspections have increased of late, and the notable increase in the number of criminal investigations launched against water companies in the last twelve months (as a result of increased funding for inspections) both suggest that large scale non-compliance has been going undetected. But inspections do more than help detect non-compliance. They incentivise compliance, and they afford opportunities for the regulator to provide advice and guidance, and to keep up with changes in what is happening in the field.

Regulators currently have considerable discretion in their approach to inspection, in a busy field: the Environment Agency's remit alone stretches across more than 40 regimes. Regulatory discretion is important, of course. But it must be exercised appropriately and transparently. This report found considerable variation.

For some regimes, very little inspecting appeared to be happening, and it was generally unclear whether regulators were always inspecting for a purpose (such as compliance outcomes). There was little transparent information to explain and justify the various approaches. Inspection practices might be more easily understood and scrutinised if regulators published better data on their operational activities, and justified their inspection approaches and how they spend their resources in this area. But this is rarely the case.

There has been an understandable growth in the tendency to see regulatory issues in terms of risks and to see control issues as questions of risk management. However, the wide discretion afforded to regulators operating in a resource-constrained environment has meant that today's approach to inspection looks increasingly resource-based, rather than risk-based.

All in all, we cannot be certain that there is effective regulation of environmentally harmful activities in England. If regulators are focused on meeting key performance indicators, but are only checking small numbers of those with environmental permits, can we be sure that those sectors are generally compliant, and that government is on course for meeting statutory targets and its goals for environmental improvement?

Oversight of inspections has traditionally received little scrutiny. But there is growing interest. The House of Lords Industry and Regulators Committee found in its 'Who Watches the Watchdogs' report in 2024 that "it is difficult to assess whether a regulator has been sufficiently monitoring and enforcing compliance, and if this is having a positive impact." In 2025 the Corry and Cunliffe reviews also raised concerns about monitoring environmental compliance, and the impact of budget cuts on the environmental regulators' monitoring and inspection functions. In this context, we hope this report is helpful to government and to Parliament, in shining a light on inspection practice today.

Dame Glenys Stacey
Chair, Office for Environmental Protection

Executive Summary

Executive Summary

The context

An essential element of many forms of environmental regulation is to assess an operator's compliance with the conditions set in a permit (or equivalent) generally through some form of inspection. Inspections provide a process whereby non-compliance can be identified, enabling a regulator to bring an operator back into compliance. In more serious cases of non-compliance, regulators have the option of taking enforcement action. The threat of detection from an inspection also encourages compliant behaviour. This makes inspections a key tool for the effective implementation of environmental regulations so that these regulations achieve their desired objectives. Effective regulation of environmentally harmful activities is, in turn, important for meeting government's legal targets and goals for environmental improvement.

Enforcement often receives attention, but inspections are not a part of environmental law much examined by Parliament or government. We are not aware of other reviews examining inspections carried out across the spectrum of English environmental regulation, that have looked at how inspections are being undertaken in practice, and at what frequency.

We reviewed 198 environmental laws to see how the issue of inspections is dealt with. We selected 10 regulatory regimes as case studies, examining current practice of inspections by a number of different regulators: the Animal and Plant Health Agency, Environment Agency, Fish Health Inspectorate, Health and Safety Executive, local authorities and Marine Management Organisation. We obtained information relating to inspections undertaken under each regime over a recent one year period. Our research covers one year's data, post COVID-19. Caution is therefore required in using this snapshot of a sample of regimes, to extrapolate over longer timeframes or inspection practice in other regimes. Nevertheless, several patterns do emerge, and there can be some confidence that these reveal issues of wider relevance and which deserve attention.

Our findings

Most of the laws we looked at did not contain inspection duties. Within those which did, we found only 12 duties which prescribed specific, measurable inspection rates. We also identified 23 inspection duties which used non-specific language to describe the frequency of inspection required, affording regulators a high degree of discretion about how they undertake inspections.

It is common in England for legislation to set out objectives and high-level rules, and then enable regulators to draft more detailed guidance, allowing them to use approaches which are more principles-based, or outcomes-focused. Regulation and laws can change over time, requiring adjustments to guidance. However, we found that where guidance had been issued it was often outdated. The Corry Review also reported there to be a lack of uniformity in environmental regulation guidance, with issues including duplication, ambiguity and inconsistency.

The wide discretionary powers of regulatory authorities as to when and whom they should inspect provides them with flexibility. This is reasonable, as they should know best how to discharge their responsibilities whilst being most effective with their budgets. But where there is such a high degree of discretion, it becomes essential that it is exercised appropriately and that there is transparency as to how that considerable discretion is exercised in practice. This provides predictability for those being regulated. It also allows for third-party scrutiny. This in turn can ensure appropriate accountability, and the sharing of best practices so that regulatory laws and approaches may develop and improve over time.

Under the Regulators' Code, regulators have to publish information on their approach to inspections. In practice these publications contain few details as to how inspections will be implemented in practice. Additionally, guidance on the amount of regulatory effort applied to assess compliance at similar permitted sites does not appear to be published, so it is difficult to compare what a regulator thought was the appropriate inspection frequency, with what takes place in practice.

Up-to-date information on what inspections have taken place is often not clear or accessible on public registers. In some cases, it has become less accessible in recent years, which hinders effective scrutiny and risks reducing public confidence and trust that the systems are working as they should.

Where regulators rely on discretion, oversight is especially important so that there can be a continuous improvement approach that drives effectiveness and improves delivery of environmental law. But our findings raise questions about how frequently (and to what extent) scrutiny is taking place. Defra does not have a dedicated system overseeing environmental inspections. Where Post-Implementation Reviews of laws take place, we have seen little evidence of them considering in any detail to what extent inspection provisions are working as intended.

It is important that Defra and other government departments have the proper information to effectively see what is happening in environmental regulation and if laws are robust enough to protect and improve the environment, but this does not appear to be the case. The public also does not often have the information needed to play a meaningful part in supporting the effective monitoring and enforcement of environmental laws.

Environmental regulation typically does not define what level of inspection is required to secure its intended outcomes, such as maintaining non-compliance below levels that are socially acceptable, and/or keeping the risk of pollution or other environmentally harmful activities within defined limits. The burden is placed on the regulators themselves both to determine what level of inspection activity delivers the legislation's purpose, and to undertake inspections in line with such levels.

What level of inspections is 'sufficient' may vary between regimes and over time, including as the state of the environment and social norms change. We therefore do not form a view as to what a sufficient level of environmental inspections should be. Nevertheless, there are several notable findings in relation to the amount of inspection taking place.

Over the past two decades, the greater use of risk-based approaches has generally reduced the number of environmental inspections. For example, the number of checks of waste permits was five times higher in 2005 than it is now.

We requested data as to how many permits (or equivalent) received inspections over the most recent one-year period (which for most was 2023).

The report found considerable variation in regulatory approaches to inspection. On average, across the eight regimes with comparable data, no more than 34% of permits (or equivalent) received inspections. At least 66% therefore did not. Rates between the regimes varied significantly: in five regimes very little inspecting appeared to be happening, with between 0% and 20% of permits (or equivalent) receiving an inspection. On the other hand, in two of the regimes over 80% of permits received an inspection.

Where there is a low number of inspections this may raise questions as to whether the checks and outcomes expected by Parliament are being delivered. We accept that there may well be justifiable reasons for inspection variability between different regimes. Nevertheless, it is hard to determine whether regulators are always inspecting for a purpose, such as compliance outcomes.

A key issue is that it is very difficult in practice to understand inspection practices because there is very little information provided by regulators that explains and justifies the approaches they are taking. At the moment there is a lack of transparent data, making it hard to scrutinise what inspections are taking place and why.

A dedicated system (or team) working within the Defra Group that can consider in any detail inspection practice, and the rationale for variation in practice, is also absent.

As originally conceived, risk-based regulation can be highly effective and there is logic in targeting those regulated entities posing the greatest risks. But a challenge for regulators is identifying the level of resource to spend on low risks, which cumulatively could have a high impact over time. Entities may also start as low risk, but because a regulator is not regularly checking them, they might cut corners and pose higher risks over time. An element of random inspection is still important.

It is difficult to assess if risk is being applied correctly as details of actual practice for risk-based inspections are not consistently made publicly available. Such understanding is important, because resource pressures on regulators have meant that some current approaches look increasingly like ‘resource-constrained’ inspections, rather than ‘risk-based’ inspections.

In some cases, we found regulators to be taking different approaches to the same legal duty. For example, we found a marked divergence in local authorities’ responses to their statutory duty to inspect their area from time to time for statutory nuisances. The reported figure for local authorities not applying the duty at all was 23%.

We found varying reliance by regulators on remote inspections. Where it is feasible to use them, these can have benefits, particularly in respect of cost and efficiency. But there is a variation in the use and quality of remote checks, and there is sometimes insufficient information as to how many inspections are conducted remotely.

The issue of resources is of critical importance to the overall effectiveness of regulators’ inspection regimes. But we found it difficult to obtain clear information about how much money was raised to support inspections, and how it was being spent. Regulators did not often distinguish which part of an overall regime’s income was spent on inspections.

Expenditure is, in some cases, tracked at the level of teams undertaking various functions, rather than being identified specifically for the inspection activity those teams undertake.

If regulators cannot provide data on what they spend on inspections, this is liable to make them harder to plan and implement properly. If regulators are to make improvements and efficiencies, they should understand very clearly where money is being spent, but this does not appear to be the case. Not having clear data reduces transparency and oversight. This is also important because it increases the risk of regulators breaking government spending rules, whereby money that is specifically raised for one regime, cannot be used to cross-subsidise another activity.

Inspection by its nature can be an expensive activity, but it must also be effective. Recent reports from the House of Lords Industry and Regulators Committee and the Corry and Cunliffe reviews have questioned whether there is effective monitoring of environmental compliance. This report highlights that in some regimes levels of inspections of those with environmental permits is low. This raises questions about whether those sectors are generally compliant, and whether government is on track towards meeting statutory targets and goals for environmental improvement. Overall, we cannot be certain that there is effective environmental regulation being undertaken in England.

Recommendations

Recommendations

We make eight recommendations for how environmental inspection regimes might be better implemented.

Recommendation 1: Defra (and other government departments which have environmental regulatory responsibilities), should review existing guidance and ensure that it is fully up to date. Where appropriate, updated and new guidance might be enhanced by including more detailed information on expected inspection levels and their expected contribution to compliance with relevant laws.

Guidance is a good thing, it helps those regulated and the public understand what should be expected, and it assists regulators in better planning their environmental inspection tasks. But the importance of guidance in environmental regulation risks being eroded as it is not being kept up to date, and the Corry Review also found duplication, inconsistency, and ambiguity. To ensure that inspections are being performed as expected by government there should be a review as to where guidance should be updated and enhanced. There might be an opportunity for government to consider adding in greater detail on expectations for inspections in different regimes' guidance.

Recommendation 2. Environmental regulators should ensure that details about inspections they have undertaken are regularly published on improved and accessible public registers.

The Regulators' Code requires regulators to publish on a regular basis, details of their performance against their service standards. In this context, 'service standards' includes para 6(2)(c), regarding information relating to compliance checks. In our research, public registers were generally found to be insufficient to identify basic matters regarding inspections. The Corry Review also concluded that such registers require improvements. Up-to-date information on what inspections have taken place is often not clear or accessible on public registers. In some cases, it has become less accessible in recent years. The finding that there is not much readily publicly available data on inspections reinforces the broader view that it is hard to understand how the wide regulatory discretion afforded to regulators is implemented in practice and what environmental inspections actually take place. We consider that regulators should be accountable for the efficiency and effectiveness of their activities. Greater transparency would allow for the possibility of review of organisational activities and can make plainer to all any need to change policy or practice. If good regulation is to be pursued, it is essential that government understands what regulatory checks are taking place. Clear and accessible information on inspections can also empower communities and industry to apply pressure on non-compliant or poorly performing businesses.

Recommendation 3. Environmental regulators should publish the information outlined at paragraph 6.2(c) of the Regulators' Code (i.e. information relating to their approach to compliance checks) in a more detailed, consolidated, easily identifiable, and accessible standalone document, such as a 'compliance monitoring policy'.

Regulators are already required to publish an enforcement policy in accordance with paragraph 6.2(d) of the Regulators' Code. These can contain relevant information about what enforcement activities regulators will undertake. Conversely, clear and accessible information on a regulator's inspection approaches, and how they meet the Regulators' Code in this respect, is lacking. It would be beneficial if relevant information as to policies and practices for inspections, and any proposed monitoring frequency aims or inspection baseline policies, were made public in a 'compliance monitoring policy'. This should be periodically updated.

Recommendation 4. Defra, working with environmental regulators, should review whether risk-based regulation is still being implemented appropriately, and delivering sufficient inspections to achieve effective compliance with environmental laws, and to secure necessary environmental protections.

It is important that there is objective evidence to support the risk-based approach to environmental regulation. In 2005, the Environment Agency carried out research to consider if its approach to compliance assessment supported the principles of modern risk-based regulation. Such research might be revisited, because some regimes are receiving fewer inspections over time. In the case studies we examined, inspection frequencies were varied. Regulatory activity in 2025 might have evolved and may not always be driven by risk-based regulation, but by 'resource-constrained' regulation. In light of this, and recent developments such as the Corry Review, it would be timely for new research to be undertaken to consider how risk-based regulation is being interpreted and applied and the effectiveness of current approaches.

Recommendation 5. Environmental regulators should record and periodically publish data about how inspections for each regulatory regime are financed, and containing details about how much was spent in relation to inspections under each regime.

When asked to provide us with information about how money was being spent to support inspections for specific environmental laws, regulators found this difficult. The lack of readily available financial data covering an important regulatory function of an environmental regime is concerning. Clearly, regulators were doing their best in sometimes difficult circumstances, but the lack of clarity about where and how regime funding is being spent exposes vulnerabilities in regulatory systems. We had concerns that for operational reasons, some regulators could be interpreting existing funding rules more generously than is appropriate. More detailed information on inspection costs will allow Defra to consider whether more flexibility should be introduced into how income streams are spent on inspections, and where this would improve efficiency and effectiveness.

Recommendation 6. Defra should examine whether future Post-Implementation Reviews (PIRs) of environmental laws could include an improved evaluation of the inspections carried out under those laws.

Successful policy and legal implementation depends upon the assessment of feedback. The quality of environmental PIRs is improving, but there can be little information in them about the way inspections are being undertaken. For example, the last PIR report for the Environmental Permitting (England and Wales) Regulations 2016 is noticeably lacking in detail about the effectiveness of the inspection system(s) in place. Future PIRs would benefit from having an improved evaluation framework whereby inspection practices can be appraised more closely to inform the effects of inspection on compliance. This could allow for the adjustment of those environmental laws under review, and also potentially help improve the design of other regulatory frameworks and future legislation.

Recommendation 7. Defra should introduce a system for periodically reviewing the practice and adequacy of inspection regimes in relation to those environmental regulations for which it is responsible, with the results of such reviews made public.

Defra would benefit from having a better understanding as to whether its environmental regulation is working. The Corry Review also suggested that Defra needed to significantly sharpen its approach as to how it monitors and enforces environmental compliance. At the current time, policy responsibility for inspections is dispersed amongst many different policy leads and teams, covering many regimes. This lack of a dedicated system (or team) working within the Defra Group is despite regulators spending about one-third of their budgets on inspection and enforcement activities. A system providing oversight to the overall inspections landscape could enable a closer evaluation of whether environmental regulation is effective and achieving results. There is also a case for coordination allowing more responsiveness to best practice. For example, it may assist in keeping track of the ways in which technology could help deliver better regulatory performance. It should also help towards greater consistency and efficiency savings where appropriate.

Recommendation 8. Defra should consider research to examine more closely the influence of inspections on environmental performance and environmental risk. Such research should be made available publicly and be used to strengthen the evidential basis for the regulatory approaches adopted across the Defra Group.

Government understanding of the links between compliance assessment, environmental outcomes and environmental risks is in our view not well developed. The Environment Agency reached the same conclusion in 2005, finding that this represented a gap in scientific understanding of modern regulation and that further research was required. We agree with the Environment Agency's view that it would be beneficial for there to be research which provides objective and, preferably, quantitative evidence of the influence of modern regulation on environmental performance. Such research should enable government to consider whether it has scientifically sound and practical indicators that link inspection activities with environmental performance and environmental risk.

If Defra were able to look across all of the regulatory regimes in the Defra Group, it might well be able to identify areas where more effective practices in inspections and improvements in the skills and capacity of individual regulators would result in real improvements in performance and monitoring outcomes.

Chapter 1. Introduction

Chapter 1. Introduction

1.1 Background

Inspections are an important part of implementation, monitoring and enforcement of environmental law. But they are not a part of environmental law which has received much public examination by Parliament or government. Even in-depth academic exploration of inspections in English environmental law is relatively sparse.

Environmental inspections might be rising up the agenda. A recent independent review in England by Dan Corry concluded that the Department for Environment, Food and Rural Affairs (**"Defra"**) needed to "significantly sharpen" its approach to how it monitors environmental compliance.[1] There was not much detail in this review about why this should be the case, as it had a broad focus on examining environmental regulation rather than focusing on inspections.

Risk-based regulation as originally conceived can make inspection prioritisation decisions more coherent, more aligned with regulatory objectives, and more explicit.[2] But, coupled with pressures to reduce regulatory burdens on businesses and with strains on resources available to regulators, there is a risk that the number of inspections is reduced below levels at which they continue to be effective in securing those regulatory objectives. A lack of transparency can also make it difficult for outside observers to understand whether environmental inspections in England are currently working as anyone would want, as Parliament intended, or as well as they could.

Our latest annual assessment found that progress towards improving the environment in England has slowed, with government still largely off track in achieving its legal environmental commitments.[3] Informed by our assessment of past trends and progress in the reporting period, we reported in 2025 on the prospects of meeting 43 individual national targets and commitments in England; finding that the government is largely on track towards meeting nine, partially on track towards meeting 12 and largely off track towards meeting 20.

In this context, we have recently recommended[4] that government focuses on regulating more effectively; to help ensure it knows in sufficient detail "how things stand" so that it can best implement and enforce existing regulations, and accelerate progress towards the goals and objectives of the Environmental Improvement Plan (**"EIP"**).[5] On any view, we would expect inspections to be of central importance to achieving this.

But evidence is needed to determine whether the regulatory inspections that are taking place in England are protecting the environment, delivering the outcomes expected by government and contributing towards economic growth. This report examines the issue of regulatory monitoring and inspections in greater depth to allow a better understanding of its current form and application in English environmental regulation.

1 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

2 Melissa Bredbenner, 'Risk-based Regulatory Regimes', *The Regulatory Review* (June 2, 2024) – interview with Professor Julia Black

3 OEP, 'Progress in improvement the natural environment in England 2023/2024' (OEP, 2025)

4 *Ibid*, 16

5 Defra, 'Environmental Improvement Plan 2023' (gov.uk, updated 7 February 2023) <www.gov.uk/government/publications/environmental-improvement-plan> accessed 14 January 2025

1.2 The importance of inspections

Inspections are an essential tool for regulators to assess implementation and compliance with environmental regulations.[6] They are crucial in enabling a regulatory body to identify non-compliance,[7] as well as to bring a regulatory entity that is not following the rules back into compliance.[8] In more serious cases of non-compliance that are identified, regulators have the option of taking enforcement action.

Inspections are also important in securing a high level of environmental protection and compliance.[9] Whilst not every activity that receives a permit, or is under some other legal obligation, will be inspected by regulators, it is the inspection activity itself which establishes a process whereby non-compliance can be detected. It is this threat of detection that also encourages compliant behaviour.[10] The regulatory system would probably struggle if those regulated thought that no one would be selected for inspections, or no one below a certain threshold. The possibility of receiving an inspection in environmental regimes similarly keeps each regulatory sector much more honest, which is important in delivering better compliance and environmental outcomes.

The value of inspections is also wider than detection and deterrence. One of the functions of inspections is to inform those regulated of their obligations and to advise them on how to comply. Information communicated via inspections can play an important role in facilitating compliance.[11]

Inspections can also enable the monitoring of conditions in order to provide information on performance or standards (e.g. food hygiene ratings) or that certain environmental standards are being met (e.g. bathing water quality).

Inspections have historically been subject to relatively little attention when compared with efforts to optimise the design of environmental policies and laws.[12] Often there appears to have been an institutional separation between policy and law 'developers', and 'implementers'. Where inspections have received government attention, this has often focused on reducing administrative burdens for businesses, for example through greater use of 'risk-based regulation'.[13]

This lack of attention is unexpected, as often the first response of government where environmental rules are not resulting in the necessary action in the real world, and entrenched poor performance is identified, is to set out new measures to improve inspection checks.

For example, in response to widespread media attention to the deteriorating quality of watercourses, Defra announced in 2024 that water company inspections would more than quadruple by March 2025 (from 930 to 4,000) and then increase by over tenfold by April

6 United States Environmental Protection Agency, 'Monitoring Compliance', (epa.gov, 19 December 2024 <www.epa.gov/compliance/monitoring-compliance> accessed 14 January 2025

7 Baldwin, Cave and Lodge state that "uncovering undesirable behaviour through detection is a first step in regulatory enforcement." Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory Strategy and Practice* 2nd edn, (OUP, 2012) 228

8 Organisation for Economic Co-operation and Development, 'Best Practice Principles for Regulatory Policy – Regulatory Enforcement and Inspections', (oecd.org, 16 May 2014) <www.oecd.org/en/publications/regulatory-enforcement-and-inspections_9789264208117-en.html> accessed 14 January 2025

9 European Union Network for the Implementation and Enforcement of Environmental Law, 'Planning and Reporting of Inspections', 16-18 Jun 1999 <www.impel.eu> accessed 14 January 2025

10 Andrew Farmer, *Handbook of Environmental Protection and Enforcement. Principles and Practice* (Routledge, 2007) 115-133

11 Julia Black and Robert Baldwin, 'When risk-based regulation aims low: approaches and challenges' *Regulation & Governance* (2012) 6(1), 2

12 OECD, 'Ensuring Environmental Compliance. Trends and Good Practices' (OECD, 2009)

13 E.g. Philip Hampton, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' (HM Treasury, London 2005). B.21

2026 (to 10,000).[14] The Environment Agency (**"EA"**) Chair said, "extra boots on the ground to increase inspection visits will help further strengthen our regulation of the industry."[15]

Additional funding from the Agricultural Regulatory Taskforce also enabled the EA to increase the number of full-time agricultural inspection officers from 27 in 2020 to nearly 90 in 2025.[16]

The Interim Report from the Water Commission (Cunliffe Review), in 2025, noted that "the UK government recently reported that the number of criminal investigations launched against water companies by the EA increased by 145% in May 2025 compared to July 2024 as a result of increased funding for inspections."[17] When regulatory inspections increased in the farming sector, the EA found non-compliances in around 50% of farm inspections.[18] This suggests that previously non-compliance was going undetected under the lower rates of inspection; and the laws were not being implemented in practice as Parliament had intended.

1.3 Previous research

Inspections appear to be a low priority area of consideration, unless something is obviously going wrong, or attracting significant media attention, as was deemed to be the case in the examples above.

The House of Lords Industry and Regulators Committee concluded in its 'Who Watches the Watchdogs' report in 2024 that "it is difficult to assess whether a regulator has been sufficiently monitoring and enforcing compliance, and if this is having a positive impact."[19]

The National Audit Office (**"NAO"**) also concluded, in 2023, that Defra had limited data on the effectiveness of environmental regulation to inform decisions about future activities and where to prioritise resources.[20] The NAO recommended that Defra should work with environmental regulators to ensure that they had what they needed for oversight of their performance, and to have a clearer understanding of how existing regulation contributes to environmental goals, so that they could identify gaps and plan regulatory changes.

We build on the important findings of the NAO and House of Lords Committee by examining what selected environmental inspection regimes look like, the data available about regulatory compliance checks, the frequency of inspections, and what kind of oversight of their efficacy is taking place in practice.

14 Press release, from Defra and the EA, 'Inspection surge to crack down on water sector pollution' (gov.uk, updated 7 June 2024) <www.gov.uk/government/news/inspection-surge-to-crack-down-on-water-sector-pollution> accessed 29 May 2025

15 *Ibid*

16 EA, 'Chief Regulator's Report 2023-24' (EA, 2024), theme 3

17 Independent Water Commission, 'Interim Report' para 157 (gov.uk, 3 June 2025) <www.gov.uk/government/publications/independent-water-commission-review-of-the-water-sector> accessed 11 June 2025

18 EA, Blog – Creating a better place. 'Working with farmers to protect our future land', 28 December 2023 <https://environmentagency.blog.gov.uk/2023/12/28/working-with-farmers-to-protect-our-future-land/> accessed 29 May 2025

19 House of Lords, Industry and Regulators Committee, 'Who watches the watchdogs? – Improving the performance, independence and accountability of UK regulators', 1st Report of Session 2023–24 HL Paper 56

20 NAO, 'Regulating to Achieve Environmental Outcomes' (NAO, 21 April 2023)

1.4 Aims, scope, and structure of this report

In this report we consider inspection approaches that are expected under a sample of English environmental laws, and consider what level of inspections are actually taking place in practice in selected regulatory regimes.

We do not consider environmental enforcement in this report. The actual quality of the regulatory inspections which are taking place is also not addressed in this report. We will publish a further report in 2025 which will examine this issue.

Annex 3 contains 10 case studies on which the evidence for this report's findings is based. These 10 case studies, drawn from contrasting regulatory regimes and different environmental regulators, are shown in Table 1 below.

Table 1. The 10 case studies

	Regime/subject matter of regulation	Responsible regulatory body
1	**Statutory Nuisance** This regime, governed primarily by the Environmental Protection Act 1990, provides a framework for public authorities to regulate and address issues like excessive noise, smoke, or waste that interfere with the personal comfort of, or are injurious to the health of, the public.	Local Authorities (**"LAs"**)
2	**Small Waste Incineration Plants ("SWIPs")** Through this permitting regime, local authorities regulate the operation of SWIPS incinerating waste outlined at section 5.1, part B(a) of schedule 1, part 2 of the Environmental Permitting Regulations 2016.	
3	**Genetically Modified Organisations ("GMOs") (Contained Use)** This notification regime helps to manage the biosecurity risks associated with activities involving GMOs, which in some cases can cause harm to the environment or human health if not properly contained. It is governed primarily by the GMOs (Contained Use) Regulations 2014.	Health and Safety Executive ("**HSE**")

	Regime/subject matter of regulation	Responsible regulatory body
4	**Water Abstraction Licensing** This licensing regime aims to regulate levels of water abstraction (extracting water from natural sources) to protect both water supplies and the environment. It is regulated by the Water Resources Act 1991 and associated legislation.	Environment Agency (**"EA"**)
5	**Paper and Textiles** Under this permitting regime, the activities of a range of industrial facilities (primarily associated with paper and pulp manufacturing, and textiles activities) are regulated to ensure they comply with environmental regulations and conditions. It is primarily governed by the Environmental Permitting Regulations (**"EPR"**) 2016.	
6	**T11 Waste Exemptions** This regime seeks to provide environmental regulation of certain activities relating to the repair, refurbishment or dismantling of electronic waste. It is primarily governed by the EPR 2016.	
7	**Bathing Water** This regime aims to preserve, protect and improve the quality of the environment and to protect human health by monitoring and reporting on the condition of bathing waters (such as at beaches). The Bathing Water Regulations 2013 is the principal law governing the regime.	
8	**Aquaculture Production Businesses** Under this authorisation regime, governed primarily through the Aquatic Animal Health (England and Wales) Regulations 2009, the FHI regulate businesses such as fish farms to help prevent the outbreak and spread of aquatic diseases (which can, in some cases, cause harm if they spread into the wild environment).	Fish Health Inspectorate (**"FHI"**)
9	**Marine Licences** This licensing regime is an important mechanism through which public authorities regulate marine activities (such as dredging) to manage their environmental impacts. It is governed by the Marine and Coastal Access Act 2009 (**"MCAA"**) and associated legislation.	Marine Management Organisation (**"MMO"**)
10	**Invasive Non-Native Species ("INNS")** Through this permitting regime, public authorities regulate the use of certain non-native species for purposes such as research. Without appropriate regulation, such species have the ability to spread causing damage to the environment, the economy, and health. The Invasive Alien Species (**"IAS"**) (Enforcement and Permitting) Order 2019 is the key law governing the regime. This regime does not relate to border control inspections.	Animal and Plant Health Agency (**"APHA"**)

Chapter 2 summarises our approach to assessing these case studies, alongside other sources of evidence, with more detail provided in Annex 2. In Chapter 3 we examine almost two hundred environmental laws in England, focusing on whether these laws mandate compliance inspections, and if so, how. In Chapter 4, we consider what codes of practice and guidance are relevant to environmental inspections in England.

Having developed a picture of the legislation and guidance governing environmental inspections, we sought to establish how these frameworks were being implemented in practice.

In Chapter 5, we examine the publicly available information on environmental inspections. In Chapter 6, we present evidence of the number of environmental inspections that are occurring in practice. In Chapter 7, we identify a number of factors that are influencing the application of inspections. This includes risk assessment, different interpretations of inspection duties, and the use of remote inspections. In Chapter 8, we look more closely at how inspections are funded and how money is being spent. We then look at the level of scrutiny applied to environmental inspections in Chapter 9.

Whilst we look across 10 different environmental regimes and their regulators to achieve a better overall understanding of inspections themselves (and some of the key elements to their success or failure), our main aim is not to opine on individual regulators or how they implement specific regulatory inspection regimes. We also do not comment on whether the frequency or type of inspection used is appropriate (although we might observe where the baselines for inspections that the regulator has themselves set have been achieved). Instead, we use the findings from our examination of the 10 inspection regimes to illustrate the broader themes that we identify.

A number of recommendations as to appropriate ways forward are made within the report.

Chapter 2. Evidence and assessment – our approach

Chapter 2. Evidence and assessment – our approach

2.1 What are inspections?

There is no singular legal definition of the term 'inspection'. An inspection is likely to be understood by most as entailing some form of physical visit by a representative of the regulator. The Cambridge Dictionary, for example, defines it as "the act of looking at something carefully, or an official visit to a building or organisation to check that everything is correct and legal."[21]

Inspection powers are typically drafted in the context of permitting entry and inspection of land and premises.[22] The EA said in 2005 that "in the United Kingdom (**"UK"**), we use the term inspections more normally to mean a site visit or audit rather than the entire mix of compliance assessment activities".[23]

Physical inspections can mean proactive and routine visits to a regulated entity or place to check compliance with an environmental law, or environmental licence conditions. Regulators can also visit sites in response to, for example, a complaint from a member of the public, or following a major incident (e.g. a cyanide spill into a watercourse, or a major fire at a permitted waste site).[24]

The broadness of the scope of inspections in environmental regulation can be seen by the definitions in the European Union's (**"EU"**) Recommendation on the minimum criteria for environmental inspections.[25] This defined such inspections as activities entailing "as appropriate":

- "checking and promoting the compliance of controlled installations with relevant environmental requirements...;
- monitoring the impact of controlled installations on the environment to determine whether further inspection or enforcement action ... is required to secure compliance with EC legal requirements;
- the carrying out of activities for the above purposes including: site visits, monitoring achievement of environmental standards, consideration of environmental audit reports and statements, consideration and verification of any self-monitoring ..., assessing the activities and operations carried out at the controlled installation, checking the

21 'Inspection' (*Cambridge Dictionary,* Cambridge University Press) <www.dictionary.cambridge.org/dictionary/english/inspection> accessed 15 January 2025

22 E.g. The Aquatic Animal Health (England and Wales) Regulations 2009, reg. 32; The Conservation of Habitats and Species Regulations 2017, reg. 116; Control of Pollution Act 1974, s 91

23 EA, 'Investigating the effectiveness of compliance assurance activities, Science report: SC04OO42/SR' (EA, 2005). It appears that the EA still uses this interpretation of the term – for example, guidance notes published by the EA with its NCAD datasets continue to refer to only site visits and site audits as inspections (EA, 'National Compliance Assessment' (gov.uk, updated 16 January 2025) <www.data.gov.uk/dataset/d49096ed-e89c-488f-9bae-d79ef4891394/national-compliance-assessment> accessed 6 May 2025

24 E.g. EA, 'Chemical spill in Walsall' – (gov.uk, updated 16 August 2024) <www.gov.uk/government/news/chemical-spill-in-walsall>; 'Smethwick fire: Saving wildlife after a huge blaze' – *BBC News*. <www.bbc.co.uk/news/uk-england-birmingham-23129776> accessed 15 January 2025

25 Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States [2001] OJ L,118/41

> premises and the relevant equipment … and the adequacy of the environmental management at the site, checking the relevant records kept by the operators…".[26]

Whilst the EU Recommendation noted that "site visits form an important part of environmental inspection activities",[27] they are realistically just one of many ways to discharge an inspection duty. The EA's definition of 'compliance assessment' has historically been considered by it to be equivalent to 'environmental inspection', as defined in the EU Recommendation.[28]

In a similar way to the EU Recommendation, the Waste Shipment Regulation 2006 and the Industrial Emissions Directive 2010 (**"IED"**) (both of which stem from European legislation and continue to be implemented in full or in part in English law) suggest that inspections are widely defined, with the former defining an inspection as "actions undertaken by the authorities" to establish whether relevant parties and activities are compliant with the regulation,[29] and the latter defining environmental inspections as "all actions" a competent authority may take to check and promote compliance with permit conditions and monitor environmental impact.[30]

There are many ways for a regulator to check compliance. For example, some regulatory regimes collect samples,[31] and equipment can monitor environmental conditions over a certain time period.[32] There is also the possibility of conducting 'remote checks' (off-site), such as the use of a drone,[33] or satellite surveillance.[34]

Some regulators are of the view that teleconference calls, or any interaction between regulator and regulated entity (e.g. examining data required to be forwarded periodically from the regulated entity to the regulator), might be a form of remote inspection check.

A judge we consulted noted the difficulties of defining what is an off-site inspection. In their view anything where a regulated entity could easily lie would not be an 'inspection', which would probably include teleconference calls or administrative returns.

Because regulators define the term 'environmental inspections' broadly, we have not sought for the purposes of gathering data for this report to impose a narrow definition of inspections onto the regulators we have engaged with, encouraging them instead to outline the full range of activities they conducted as part of their inspection programmes. We did however encourage them to particularise these activities where possible, including distinguishing between in-person and remote/desktop activities.

Although defining inspections definitively is difficult, for the sake of consistency in this report we apply the following terminology wherever possible when discussing the types of compliance checks regulators conduct.

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26 *Ibid*

27 *Ibid*, recitals

28 EA, 'Investigating the effectiveness of compliance assurance activities, Science report: SC04OO42/SR' (EA, 2005), 17

29 Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, art 2. The enforcement provisions provide some more detail on activities which shall be included in inspections of shipment (Art. 50(4))

30 Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast) [2010] OJ No L 334, art 3. The definition also includes non-exhaustive list of examples, ranging from site visits to checks of internal reports

31 E.g. OEP, 'A Review of the implementation of the Bathing Waters Regulations in England' (OEP, November 2024)

32 E.g. EA, 'Monitoring ambient air: monitoring strategy' (EA, 10 September 2024)

33 E.g. EA, 'Environment Agency Chief Regulator's Report 2023-24' (EA, 17 January 2025)

34 *Ibid*

We refer to physical visits by a regulator to a regulated entity to check/audit compliance levels or environmental conditions as “in-person inspections”.

Where remote activities are carried out by the regulator which might serve as a substitute for or alternative to such in-person inspections, we refer to these as “remote inspections”.

Where further checking activities, such as high-level administrative checks, data reviews, or ongoing monitoring (e.g. through installation of equipment) are carried out in their own right, we refer to these as “other compliance checks”.

Eight of the 10 case studies in this report focus on activities where a regulator would check the compliance of a regulated entity. They can do this by undertaking in-person inspections, remote checks or other compliance checks. This report predominantly focuses on in-person and remote inspection of regulated entities.

The remaining two of the 10 case studies differ from the other eight, because there is no regulated entity that requires checking. One case study concerns inspections of bathing water (which involves collecting samples as well as limited visual inspections), the other statutory nuisances, which can occur in a variety of places, including private premises and public areas (and which is achieved by a mixture of compliance activities). Some analysis in the report will reflect the regulatory differences and inspection differences between the case studies.

2.2 Our use of evidence

In identifying what environmental inspections are prescribed in legislation and what their implementation looks like in practice, we drew on a range of publicly available material.

Our assessment methodology is summarised below and detailed in Annex 2.

Approximately two hundred pieces of environmental legislation were examined to establish how they approached inspections, monitoring, general duties (where relevant to inspections), and regulators’ statutory purposes (where relevant to inspections).

10 case studies were selected to cover a diversity of sectors, regulators and underpinning statutory approaches to environmental inspections. All of the regimes selected, even where they might not be considered exclusively ‘environmental law’, or to be implemented by exclusively ‘environmental regulators’, contribute to the protection of the environment.

Information requests about inspection practices were sent to the relevant regulators. Questions in the requests explored various aspects of the inspection regimes. For example, information was requested regarding the number and type of inspection (or other compliance activity), the activities regulators conducted, and the costs and funding of the inspection programmes. In all cases, data was requested in respect of the most recently available one-year period. We issued follow-up information requests where necessary to clarify aspects of the data received. The regulators also had the opportunity to fact check their individual case studies.

2.3 Data limitations and gaps

We accepted data from regulators covering the most recently available one-year period whether from a full financial year (e.g. 2023/24) or a full calendar year (e.g. 2023). This limits comparisons across regimes.

We focused on each regulatory regime for a period of only one year because regulators can take extended periods of time to collate data, and statistics for the years preceding 2023 were likely to be influenced by COVID-19 movement restrictions. We recognise this places some limitations on what our report can cover. Regulation can be dynamic, and we cannot be sure that there will not be variability in regimes over a longer timeframe. Other research might usefully examine inspection and funding patterns over different timeframes.

Chapter 3. How inspections are provided for in environmental legislation

Chapter 3. How inspections are provided for in environmental legislation

We reviewed 198 environmental laws, focusing particularly on any duties or provisions within those laws which mandated compliance inspections, and if so how. The majority of the laws reviewed did not address inspections.

Within those laws which did address inspections, we found a diverse range of statutory approaches. In some cases, the language surrounding the duties was precise, while in others it was open to interpretation.

Some inspection duties were highly prescriptive (for instance mandating specific inspection frequencies). For example, we identified 12 provisions which we broadly classified as 'specific inspection duties'.[35] The following is an example of such a provision:

> *The authority must carry out an inspection (a "routine inspection") of a storage complex – (a) during the initial period – (i) no later than 1 year from the date that period commences; and (ii) subsequently, no later than 1 year from the date of the immediately previous inspection … A routine inspection must include an examination of – (a) the injection and monitoring facilities; and (b) the effects on the environment and human health of the activities carried out under the relevant licence.*[36]

Others allowed the regulator wide discretion as to the manner of implementation. We found 23 provisions which we classified as 'non-specific' inspection duties.[37] To illustrate the range of non-specific duties encountered, some examples are provided here (emphasis added):

> *"The regulator must make appropriate periodic inspections of regulated facilities"*[38]
>
> *"… it shall be the duty of every local authority to cause its area to be inspected from time to time…"*[39]
>
> "*A permitting authority must undertake such inspections as it considers appropriate*"[40]
>
> *"The appropriate agency must undertake visual inspections … at the frequency necessary to allow adequate management measures to be put in place…"*[41]

In addition to these duties, we encountered 67 inspection powers (albeit often in the context of enforcement). In a small number of cases, we also identified duties to establish inspection programmes, and general duties/objectives applying to regulators which could plausibly be discharged at least in part through conducting inspections.

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35 Meaning that they required inspections to occur at set frequencies over precisely specified periods (or within a defined range of frequencies). In some cases, it is the cumulative effect of multiple provisions, spread across more than one piece of legislation, which provide the specificity

36 The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010, reg 16(1)-(2)

37 Meaning that they required inspections, but either don't specify a frequency, or do so only through non-specific language (for example: "At the frequency necessary", "From time to time", "Appropriate periodic", "Routine", "Regular", "On a risk-basis")

38 Environmental Permitting (England and Wales) Regulations 2016, reg 34(2)

39 Environmental Protection Act 1990, s 79(1)

40 Invasive Alien Species (Enforcement and Permitting) Order 2019, art 28(11)

41 Bathing Water Regulations 2013, sch 4, para 10

While falling beyond our scope, we also encountered a range of duties to conduct monitoring and sampling, and to establish monitoring and sampling programmes.

Table 2 below sets out for each of our 10 case studies an overall assessment of how clear the governing law was as to the expectations on inspections.

Table 2. How inspection duties are expressed in the case studies' statutory regimes

Regime	Regulator	Phrases used in the case studies legislation to describe the required approach to inspections
Statutory Nuisance	Local Authorities	To "inspect its area from time to time'... and to 'take such steps as are reasonably practicable". [42]
5.1B(a) Small Waste Incineration Plant Permits	Local Authorities	"appropriate periodic inspections."[43]
GMO (Contained Use) Notifications	Health & Safety Executive	No specific duty to carry out inspections. Regulation merely states that the HSE is the relevant enforcing authority.[44]
Water Abstraction Licences	Environment Agency	Various general enforcement duties and powers, but no specific duty to conduct inspections.[45]
Paper and Textiles Permits	Environment Agency	"appropriate periodic inspections"[46] Supplemented by reference to more specific inspection requirements derived from EU Industrial Emissions Directive 2010/75.
T11 Waste Exemptions	Environment Agency	"appropriate periodic inspections."[47]
Bathing Water	Environment Agency	"at the frequency necessary to allow adequate management measures to be put in place..."[48]
Aquaculture Production Business Authorisations	Fish Health Inspectorate	"shall perform official controls ... regularly, on a risk basis and with appropriate frequency"[49] Supplemented by various more detailed provisions.
Marine Licences	Marine Management Organisation	General duties and powers "to manage, regulate and control" activities in its jurisdiction.[50]
Invasive Non-Native Species Permits	Animal & Plant Health Authority	"as it considers appropriate."[51]

42 Environmental Protection Act 1990, part III, s 79(1)
43 Environmental Permitting (England and Wales) Regulations 2016, reg 34(2)
44 Genetically Modified Organisms (Contained Use) Regulations 2014, reg 30(5)
45 Environment Act 1995, s 4, s 108, s 6(2) and Water Resources Act 1991, s 19, s 216
46 Environmental Permitting (England and Wales) Regulations 2016, reg 34(2)
47 *Ibid* sch 2, para 18
48 Bathing Water Regulations 2013, sch 4, para 10
49 Regulation (EU) 2017/625 of 15 March 2017 on official controls ... [2017] Official Journal of the European Union L 95/1 (the Official Controls Regulation), art 9(1)
50 Marine and Coastal Access Act 2009, s.236(1)(a), s.247
51 Invasive Alien Species (Enforcement and Permitting) Order 2019, Art.35(11)

The overall message that we drew from these findings is that, in England, the majority of environmental laws do not address inspection. Where they do, the majority are highly discretionary about the inspection approaches and outcomes that they expect and require.[52]

The context in which many of these environmental laws were drafted was that they were of EU origin and there would have been a reluctance on the part of the UK government to go further than their actual wording or to 'gold plate' them.[53]

The wide discretionary powers of regulatory authorities as to when and who they should inspect provide them with a lot of flexibility and freedom of choice. This is understandable, as regulators should know best how to discharge their responsibilities whilst being most effective with their budgets. It can also enable them to make expert judgements based on the best available science and evidence.

But having wide, legislatively backed discretion can make it harder for third parties to understand and anticipate regulators' approaches. It also makes it harder for regulators to be held to account should they not be adequately monitoring and enforcing compliance with environmental regulations.

The case of *R (on the application of Wild Justice) v The Water Services Regulation Authority*[54] reinforced the point that regulatory agencies are granted significant discretion in how they monitor compliance, provided they act within their statutory powers and duties. While the Water Services Regulation Authority (**"Ofwat"**) has specific enforcement duties in certain circumstances where non-compliance is detected or likely to occur, the judgment suggests that generalised accusations of insufficient monitoring may be inadequate for judicial intervention; specificity may be required to challenge regulatory operations effectively.

Further guidance was provided in the case of *R (on the application of River Action UK) v Environment Agency*,[55] which concerned a challenge to the EA's enforcement of agricultural diffuse pollution. The court concluded that a regulator has a discretion to exercise in respect of ensuring compliance in each case, meaning that there may be a range of different acceptable or reasonable ways in which compliance can ultimately be secured. In considering the regulator's approach to this exercise of discretion the court will afford a broad margin of judgement given the responsibility for enforcement provided by Parliament and the expertise of the regulatory authority in the area which it has been entrusted to supervise. In this case, the EA had set out a clear and proportionate approach to undertaking its enforcement activities and had not unlawfully fettered its discretion, and it had established that in practice it uses a proportionate approach to enforcement to bring land managers into compliance with regulation.

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52 By way of comparison, later EU environmental laws have tended to make inspection provisions relatively specific (Martin Hedemann-Robinson, 'Environmental Inspection by Public Authorities' in Marjan Peeters and Mariolino Eliantonio (eds) *Research Handbook on EU Environmental Law* (Edward Elgar Publishing, 2020) 197). See for example:
- the Industrial Emissions Directive (Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast))
- the Seveso III Directive (Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major accidents involving dangerous substances); and
- recent amendments to the Waste Shipments Directive (Regulation EU 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste)

53 Helle Tegner Anker, Kars de Graaf, Ray Purdy and Lorenzo Squintani, 'Coping with EU Environmental Legislation – Transposition Principles and Practices' 27(1) *Journal of Environmental Law*, 2015

54 *R (on the application of Wild Justice) v The Water Services Regulation Authority* [2023] EWCA Civ 28

55 *R (on the application of River Action UK) v Environment Agency* [2024] EWHC 1279 (Admin)

If there is complete inaction by a regulator (e.g. no inspections or monitoring whatsoever), then a regulator might be considered to be in breach of duty, but it is difficult to know how proactive they have to be in practice because expected regulatory inspections in environmental laws are often drafted so imprecisely.

But having such wide discretion might not always be advantageous to regulators. A further consequence of the absence of any clear expectation in the relevant environmental legislation as to the scope of inspections is that this can make it harder for regulators to justify increases in funding as necessary to deliver the inspections needed to achieve the outcomes required by the law.

The Corry Review pointed to the need for longer term reform of underpinning environmental regulations.[56] If Parliament wants regulatory discretion to be more controlled in the future, then it has the option to be more prescriptive over inspections.

We recognise that legislation should not constrain the operations of a regulator unduly, for all sorts of good reasons. Parliament might not be best placed to mandate operational detail of a regulator's activities. But this then places the emphasis on Parliament being provided with good information about what regulatory practice is actually happening to achieve the outcomes that it has prescribed. Administrative discretion needs to be confined, structured and checked.[57]

56 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

57 Kenneth Culp Davies, 'Discretionary Justice' (1970) Vol 23(1) *Journal of Legal Education* 56

Chapter 4. How inspections are provided for outside of legislation

Chapter 4. How inspections are provided for outside of legislation

4.1 Overview

With respect to inspection practices, the Corry Review considered that regulators should operate with a "large degree of predictability and consistency; but also need to make sure that they closely link to the elected government's policy agenda and with enough discretion to do the right and often common-sense thing in the right place without being trapped by legal or cultural factors."[58]

The statement above highlights the difficult balancing act for regulators when designing and implementing inspection regimes in meeting the expectations of government and their own statutory responsibilities, as set out by Parliament.

Those being regulated want predictability and consistency, which might sometimes come from clear legislation, setting out how inspections should occur. But Chapter 3 illustrated the wide discretion regulators can be given as to how they undertake inspections under environmental legislation. Legislative discretion increases the importance of guidance, which can suggest how regulators might operate in practice whilst maintaining their independence. We consider below what other rules and guidance influence how inspections might be conducted by regulators in practice.

4.2 Regulators' Code

The Regulators' Code (**"the Code"**) came into statutory effect in 2014[59] and aims to provide a clear, flexible and principles-based framework for how regulators should engage with those they regulate.

The Code is applied by all regulatory bodies examined in our case studies.[60] Under the Code, regulators should ensure that their approach to their regulatory activities is transparent. They should publish service standards containing clear information on their approach to checks on compliance, specifically including inspections, audits, monitoring and sampling visits, and test purchases, and they should also publish, on a regular basis, details of their performance against those standards.[61]

The requirement to publish information about inspections is clear-cut, but it is unclear what this might encompass in practice. For example, whether this might cover what percentage of the regulatory population receive compliance checks, or the frequency of checks; or if the expectation is for this information be more generalised and only to set out details about the standards expected to be upheld by the inspectors when undertaking such checks.

58 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

59 Legislative and Regulatory Reform Act 2006 s 23

60 The Code covers bodies when exercising 'regulatory functions' as set out in The Legislative and Regulatory Reform (Regulatory Functions) Order 2007. This specifically applies to the Environment Agency and Health and Safety Executive (sch part 1), as well as Local Authorities (sch part 3). The Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2010 also inserted the Marine Management Organisation into Part 1 of the Schedule. Other regulators have published guidance on how they carry out their regulatory functions as set out in the Regulators' Code including: (i) Centre for Environment Fisheries and Aquaculture, 'Regulators code and the Fish Health Inspectorate' (CEFAS, updated 28 June 2019); (ii) Animal and Plant Health Agency, 'Regulatory and Compliance Policy' (APHA, 2017)

61 Department for Business Innovation & Skills, 'Regulators' Code' (Department for Business Innovation & Skills (BIS, April 2014) para 6

Regulators produce guidance notes setting out how they meet the Regulators' Code. At present there is great variation in how regulators provide this information and in some cases it is difficult to locate, and information is only provided at a high-level.

For example, the EA has a specific section covering inspections in its guidance (on how it meets the Code), but this contains broad language;[62] to assess how well permit holders are complying with their permits the EA can undertake "targeted site inspections and audits, reviewing data from operator self-monitoring against permit limits, assessment of the effectiveness of an operator's environmental management system, and third party assurance schemes".[63]

This guidance provides an indication of what the EA aims to do. But it does not provide much detail about how this inspection approach will be implemented in practice and what the inspection regime might actually look like in terms of frequency of inspections, or the methods used in practice (and under what circumstances).

There is a separate provision in the Code that requires regulators to publish clear information on their enforcement policy, explaining how they respond to non-compliance.[64] This would appear to be clearer in respect to expectations when compared to the provisions covering inspections.

4.3 Subsistence charging

Under certain regimes, regulators can recover the costs of regulating an activity through annual subsistence charges paid by the regulated entity. Subsistence is charged for the time a permit or other authorisation is in force.

The EA, for example, imposes subsistence charges[65] for environmental permits,[66] and for abstraction and impoundment licences.[67]

The EA's Environmental Permitting and Abstraction Licensing (England) Charging Scheme 2022[68] does not with explicitly state that the subsistence payment means that each regulated entity will be inspected. However, generally because subsistence charges are stated to apply such that the EA "recovers the costs of regulating an activity"[69] there is an expectation that the activity in question might receive some form of inspection, paid for by those charges.

Additionally, the subsistence payments can in part be calculated by assessing and scoring the 'compliance rating activities'. This suggests that inspections, as an important means to monitor levels of compliance so as to assign that rating, play a key role in how the whole

62 EA, Guidance, 'How the Environment Agency meets the Regulators' Code' (gov.uk, updated 19 April 2021) <www.gov.uk/government/publications/regulators-code-and-the-environment-agency/how-the-environment-agency-meets-the-regulators-code> accessed 11 June 2025

63 *Ibid*

64 Department for Business Innovation & Skills, 'Regulators' Code' (BIS, 2014) para 6.2(d)

65 EA, 'Environmental permits and abstraction licences: tables of charges' (gov.uk, updated 1 October 2024) <www.gov.uk/government/publications/environmental-permits-and-abstraction-licences-tables-of-charges> accessed 7 May 2025

66 Under the Environmental Permitting (England and Wales) Regulations 2016

67 Under the Water Resources Act 1991 and Water Act 2003

68 EA, 'The Environment Agency (Environmental Permitting and Abstraction Licensing) (England) Charging Scheme 2022' (EA, Amendments up to 1 October 2024)

69 EA, 'Environmental permits: when and how you are charged' (gov.uk, 26 February 2025) <www.gov.uk/government/publications/environmental-permitting-charges-guidance/environmental-permitting-charges-guidance#subsistence-charges> accessed 12 May 2025

system operates. If a permit holder is not checked, this can impact on their compliance scoring in some regimes, which then affects the subsistence charges and likelihood of inspection for the following year. It might therefore be implied that every permit holder paying a subsistence charge might be expected to be inspected in some form on a regular basis.

4.4 Regulatory baselines

Regulators sometimes create a regulatory baseline which they use to standardise the typical amount of effort they put into similar types of regulated sites/activities. This is intended to ensure that they have a framework for compliance assessment that is fair for all sites.[70]

The regulatory baseline sets out the typical type and frequency of compliance activities that they are likely to carry out during each calendar year. For example, the EA considers that a typical landfill in England would usually be the subject of "one audit, four site inspections, four monitoring reviews and one engineering inspection each year".[71]

Regulatory baselines do not appear to be consistently published, making it difficult to be able to compare what a regulator thought was appropriate, with the frequency of compliance assessment which took place in practice.

4.5 Regime guidance

An examination of guidance covering the 10 selected case studies showed that providing updated regime guidance was not always regularly considered. We discovered examples of guidance provided to regulators being outdated.

For instance, LAs responsible for regulating SWIPs were subject to government guidance last revised in 2012.[72] This guidance was not updated when the revised Environmental Permitting (England and Wales) Regulations were introduced in 2016.

Similarly, Defra's guidance on exempt waste operations, designed to support those 'regulating and carrying on waste disposal or recovery operations',[73] continues to refer to the redundant Environmental Permitting (England and Wales) Regulations 2010, and states (now incorrectly) that EU law requires initial inspections and annual audits of certain exempt waste operations.[74]

Guidance supplied to those being regulated is also, at times, out of date. The 'SACGM Compendium of Guidance'[75] was published in 2007 by HSE to support persons undertaking contained use activities with GMOs. The guidance predates the current legislative regime

70 EA, 'Waste operations and installations: assessing and scoring environmental permit compliance' (gov.uk, updated 13 March 2025) <www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance/assessing-and-scoring-environmental-permit-compliance> accessed 11 June 2025

71 Pippa Neill, 'Walleys Quarry has been subject to more regulatory activity than any other site, says EA', *ENDS Reports*, 7 March 2024

72 Defra, 'Environmental permitting general guidance manual on policy and procedures for A2 and B installations, – local authority Integrated Pollution Prevention and Control (LA-IPPC) and Local Authority Pollution Prevention and Control' (gov.uk, 12 May 2011, revised April 2012) <www.gov.uk/government/publications/environmental-permitting-general-guidance-manual-on-policy-and-procedures-for-a2-and-b-installations> accessed 2 July 2025

73 Defra, 'Environmental Permitting Guidance: Exempt Waste Operations' (March 2010) Version 1.0 (gov.uk, 2010) 6 <www.gov.uk/government/publications/environmental-permitting-guidance-exempt-waste-operations> accessed 11 June 2025

74 *Ibid*, 28

75 HSE, 'SACGM Compendium of Guidance' (gov.uk, 2007), 3 <www.hse.gov.uk/biosafety/gmo/acgm/acgmcomp/> accessed 14 January 2025

governing contained use activities, and consistently refers to long-revoked legislation.[76] Whilst it makes little reference to compliance inspections, it is notable that where it does, it appears now to be incorrect: '[Class 1 activities] will be … subject to regulatory oversight through inspection programmes'.[77] Class 1 activities are not targeted as part of HSE's routine inspection programmes.

The government already knows that there is an issue with guidance. The Corry Review reported that environmental regulators had indicated that the current lack of uniformity in guidance was counterproductive.[78] The review recommended that Defra should "rapidly review and rewrite its existing catalogue of compliance guidance to ensure it is fit for purpose, removing any duplication, ambiguity and inconsistency".[79] Further, the aim of the review should be a streamlined, clear and up to date catalogue, signposted for each sector so that it is easy to navigate.[80]

4.6 EU Recommendation 2001/331/EC on minimum criteria for environmental inspection in the Member States and its implementation in England

In 2001, the EU published a Recommendation as to the expected minimum frequency of inspections of certain industrial installations, their planning and content.[81] This set out recommendations for minimum inspection requirements for EU environmental regulators, without being as rigid or inflexible as setting this out in primary legislation.

EU recommendations are not legally binding, meaning they do not create obligations that can be enforced in court. Instead they serve to express an EU institution's views on a particular matter and to suggest a course of action without imposing strict legal requirements.

The 2005 Hampton Review on inspections and enforcement published by HM Treasury[82] referred to the EU Recommendation and the positive influence it has had on environmental inspections in the UK.

According to Defra's Core Guidance,[83] regulators implementing environmental permitting should have regard to the EU Recommendation. This Core Guidance applies directly to three of the 10 case studies covered by this report: (i) LAs' regulation of SWIPs, (ii) EA regulation of Paper and Textiles, and (iii) EA regulation of T11 Waste Exemptions.[84] Regulators applying the Environmental Permitting regime are, therefore, still referring,

76 *Ibid*. 'Since 1 October 2014, parts 1 and 3 of the guidance do not reflect the current Genetically Modified Organisms (Contained Use) Regulations 2014. Specific references to the legislation, operation of the safety committee and containment requirements in these parts need to be updated. Although legally correct, the opportunity will also be taken to amend the other parts of the guidance (parts 2, 4, 5 and 6) to take account of current working practices and technological advances.'

77 *Ibid*, part 6, 22

78 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

79 *Ibid*

80 *Ibid*

81 Recommendation 2001/331/EC providing for the minimum criteria for environmental inspections in the Member States (2001) OJ *L*,118/41

82 Philip Hampton, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' (HM Treasury, London 2005), B.21

83 Defra, 'Environmental Permitting: Core Guidance for the Environmental Permitting (England and Wales) Regulations 2016' (SI 2016/1154)' (gov.uk, revised 2020) <www.assets.publishing.service.gov.uk/media/5fb3a39dd3bf7f37d7e7270e/environmental-permitting-core-guidance.pdf> accessed 11 June 2025

84 *Ibid*

in government guidance, to this EU Recommendation as representing best practice for setting out recommended minimum inspection frequencies.

The EU Recommendation is an example of the impact that non-statutory guidance can have on an inspection regime, and the expectations of what it should contain. But it is seen as having its shortcomings. In a review of its application the European Commission identified that its material scope was too narrow, as it included activities subject to permitting regimes, but it excluded other activities and sectors with significant impacts on the environment, such as habitat conservation and chemical use.[85]

More broadly, different environmental sectors require different levels of inspections because of the physical characteristics of the environment under scrutiny. For example, monitoring may be more costly in offshore environments than in terrestrial ones, as is suggested in our case study on MMO marine licences. We also recognise that designing inspection regimes might not be an easy task as the type, level, and frequency of inspections is bound to vary even within 'low risk' scenarios.

But guidance, like the EU Recommendation, can help regulators better understand the minimum that should be expected and assist them in better planning their environmental inspection tasks.

Recommendation 1. Defra (and other government departments which have environmental regulatory responsibilities), should review existing guidance and ensure that it is fully up to date. Where appropriate, updated and new guidance might be enhanced by including more detailed information on expected inspection levels and their expected contribution to compliance with relevant laws.

85 Commission Staff Working Paper, 'Commission Report on Implementation of Recommendation 2001/331/EC providing for Minimum Criteria for Environmental Inspections', SEC(2007) 1493, 14 November 2007. See also Martin Hedemann-Robinson, 'Environmental Inspections and the EU: Securing an Effective Role for a Supranational Union Legal Framework' (2017) 6(1) *Transnational Environmental Law* 31

Chapter 5. Publicly available information on environmental inspections

Chapter 5. Publicly available information on environmental inspections

5.1 Overview

The previous chapters explored how both the legislation and the guidance generally afford a high degree of discretion to regulators as to how they undertake environmental inspections. Such discretion means that regulatory decisions are not constrained in advance. However, it also means that third parties cannot predict how such regulatory discretion will be exercised by reference to publicly available legislation or guidance. This places the onus on the regulators themselves to be transparent about their decision-making, to allow others to see how the discretion afforded to them by the law is applied in practice.

It might sometimes be important not to publish information about inspections, for example when undertaken as part of an ongoing investigation, to avoid prejudicing that investigation. But generally, regulators are bound by rules whereby they are obliged to operate as openly as possible, and they should on a regular basis make available timely information about their services, standards and performance.[86]

They are required to publish regular information about their plans, performance and use of public resources.[87] The published information should be in sufficient detail, and be sufficiently regular to enable users and other stakeholders to hold the organisation and its ministers to account.[88]

One of the Hampton Review principles was that regulators should be accountable for their efficiency and effectiveness of their activities.[89] There have been efforts by government and regulators since the Hampton Review to ensure that regulatory information is made publicly available,[90] to enable effective parliamentary scrutiny, and to encourage public access to information to support the effective implementation, monitoring and enforcement of environmental laws.

The House of Lords Industry and Regulators Committee report from 2024 'Who watches the watchdogs?',[91] had this to say about transparency: "Effective scrutiny depends on information being both available and accessible. Regulators should review how they publish and present performance information. In doing so, they should ensure performance information is presented in a prominent and accessible way, and in clear, succinct and simple language that the public and parliamentarians can understand."[92]

86 HM Treasury, 'Managing Public Money' (HMT, 2023) para 4.13.1; Department for Business Innovation & Skills, 'Regulators' Code' (BIS, 2014) para 6.5

87 *Ibid*, para 4.13.2

88 *Ibid*, para 4.13.3

89 Philip Hampton, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' (HM Treasury, London 2005) para 2.92

90 For example – Compliance Assessment Report (CAR) forms will now be proactively published online for all EPR 2016 sectors. The EA will be doing this in stages, starting with water quality discharge CAR forms in 2025. Defra, 'What is changing with Compliance Assessment Report (CAR) forms?' (gov.uk, 10 April 2025) <https://environment.data.gov.uk/support/faqs/715423752/809598986> accessed 14 May 2025

91 House of Lords, Industry and Regulators Committee, *Who watches the watchdogs? – Improving the performance, independence and accountability of UK regulators* (8 February 2024, 1st Report of Session 2023-24, HL Paper 56)

92 *Ibid*, recommendation 21

5.2 Public Registers

One way of trying to understand how regulators are undertaking environmental inspections is to look at the public registers, to see if these are recording what inspections are taking place. We examined what information was available and accessible across our 10 case studies. Table 3 below looks at how public registers are used and what information, if any, they contain about inspections undertaken by the relevant regulator.

Table 3. Summary of legal duties to maintain a public register in the case study regimes

Case study	Is there a duty to maintain a public register?	Does the register make clear information readily accessible to the public?	Is there a duty to record inspections undertaken?	Does the register include a record of inspections undertaken?
LAs – Statutory Nuisance	No	N/A	N/A	N/A
LAs – 5.1B(a) Small Waste Incineration Plant Permits	Yes	Partially. There is not one register (each LA has their own), making it difficult to obtain national data.	Yes	Unknown – Dependent on LA individual register.
HSE –GMO (Contained Use) Notifications	Yes	Partially. Only published in the form of a substantial and complex PDF document capturing both current and former notified contained uses.	No	No
EA – Water Abstraction Licences	Yes	No. The register is maintained electronically but is not publicly accessible. Individuals must submit a request to the EA to obtain information.	No	No

Case study	Is there a duty to maintain a public register?	Does the register make clear information readily accessible to the public?	Is there a duty to record inspections undertaken?	Does the register include a record of inspections undertaken?
EA – Paper and Textiles Permits	Yes	Partially. Not all information required by Schedule 27 of the EPR 2016 is readily accessible. Individuals must submit a request to the EA to obtain certain information. [93]	Yes	Yes, in effect (high-level details of inspections undertaken are published annually in NCAD datasets.)
EA – T11 Waste Exemptions	Yes	Yes	No	No
EA – Bathing Water	No	Yes (in effect – on a website not a register).	Yes (in effect)[94]	Yes (in effect – on a website not a register).
FHI – Aquaculture Production Business Authorisations	Yes	Partially. It is only possible to view entries at an individual level, restricting ability to obtain regime-wide data.[95]	Not in a register, but there is a duty on the Secretary of State to publish certain information in wider annual reports.[96]	No
MMO – Marine Licences	Yes	Partially. It is only possible to view entries at an individual level, restricting ability to obtain regime-wide data.	No	No

93 An EA guidance document states that: "we provide the permit holder with a copy of the form and the law requires us to put it on the EA's public register." EA, 'Waste operations and installations: assessing and scoring environmental permit compliance' (gov.uk, updated 2024) <www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance/assessing-and-scoring-environmental-permit-compliance> accessed 28 February 2025. Mr Justice Fordham also noted in the Suez case: "The CAR is a document, issued by the Agency to the regulated waste site operator who holds the statutory permit, which by law is also required to be published by the Agency in its public register." Additionally, where information of any description is excluded from the public register, a statement must be entered on the register indicating the existence of information of that description: *R (Suez and Recycling and Recovery UK Ltd) v Environment* Agency [2023] EWHC 3012, para 9, reg. 46(5)

94 For the EA bathing water regulatory regime, information is published on the EA website, not specifically on a public register

95 The FHI informed us that a new register is in development which will have a new function allowing the download of data to an excel spreadsheet

96 Regulation (EU) 2017/625 of 15 March 2017 on official controls ... [2017] Official Journal of the European Union L 95/1, art 113

Case study	Is there a duty to maintain a public register?	Does the register make clear information readily accessible to the public?	Is there a duty to record inspections undertaken?	Does the register include a record of inspections undertaken?
APHA – Invasive Non-Native Species Permits	Yes	Partially. There is some inconsistency as to what information is published for each permit, restricting ability to review data on a regime-wide basis.	Not in a register, but there is a duty on the Secretary of State to publish inspection information on a six-yearly basis.	No

5.2.1 Does the register make clear information readily accessible to the public?

Table 3 shows that in the majority of environmental regimes that we examined there was a duty to maintain a public register about regulatory activities (eight of 10). The regime covering bathing waters also makes information accessible even though there is not a duty to maintain a register.

The House of Lords Industry and Regulators Committee's view that information should be presented in a prominent and accessible way,[97] and in clear, succinct and simple language, that the public and parliamentarians can understand, did not always seem to be achieved.

For the eight regulatory regimes where there was a duty to maintain a public register only one of these registers in our view contained all information required by statute in a form which was both consistently clear and readily accessible. Six of the eight provided some information, but it was not always as clear, complete or readily accessible as it could be.

In practice information was commonly very difficult to obtain. Some public register data is limited as it is only available in the public body's offices instead of online. The EA has for many years discharged the public register duty (under regimes like the EPR 2016) by making data available through freedom of information requests.[98]

Some modern environmental legislation contains more specific indications on how information should be provided to the public. For example, the new EU Industrial Emissions Directive has a provision on public information and participation which includes the requirement for "competent authorities to make available to the public, including systematically *via the internet*, free of charge and without restricting access to registered users ... the reports of inspections of the installations" (*emphasis added*).[99]

97 House of Lords, Industry and Regulators Committee, 'Who watches the watchdogs? – Improving the performance, independence and accountability of UK regulators' (8 February 2024, 1st Report of Session 2023-24, HL Paper 56)

98 Note that the EA are implementing plans to change this practice in 2025 in stages. Defra, 'What is changing with Compliance Assessment Report (CAR) forms?' (gov.uk, 10 April 2025) <https://environment.data.gov.uk/support/faqs/715423752/809598986> accessed 14 May 2025

99 Directive (EU) 2024/1785 of the European Parliament and of the Council of 24 April 2024, amending Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC on the landfill of waste, *OJ L, 2024/1785*, art 1(40)

We found instances of public registers that might have been legally compliant, but were in practice difficult to examine. An example of this was the HSE's public register for GMO Contained Use sites, which is published only in the form of a single, substantial (over 17,000 pages), and complex portable document format, containing both current and historic activities.

We also found that public registers might not contain all of the detailed information prescribed by law. For example, we found that the EA was generally not publishing Compliance Assessment Reports (**"CAR"**), required by Schedule 27 of the EPR 2016; although we recognise that the EA does make them available on request, and is now changing its practice by aiming to publish CAR forms on public registers online.[100]

Detailed requirements for the regular provision of public information which used to be incorporated in the national implementation of EU legislation were found to have been subsequently discarded in some of the case studies we examined. For example, in the HSE case study, we found that, historically the UK reported periodically on the relevant regime to the European Commission in accordance with Article 17 of the Contained Use Directive. Since no comparable reporting requirement was introduced in post-Brexit legislative amendments, information regarding the relevant compliance inspections HSE carries out has become less accessible.

5.2.2 Did the register include a record of inspections undertaken?

Two of the regimes included a duty to publish information on inspections as part of a public register. One of these published inspection information, albeit not within the register itself. In the other (the LA SWIPs regime), due to registers being provided at a local level, it was not possible to form a comprehensive view. A third regime (Bathing Water) contained a requirement to publish information, but not in a register.

Six regimes did not provide inspection information as part of public registers. Where the legislation does not require regulators to include a record of inspections undertaken on public registers, the regulator may be justified in not doing so. But the finding that there is not much readily publicly available data on inspections reinforces the broader view that it is hard to understand how the wide regulatory discretion afforded to regulators is implemented in practice and what environmental inspections actually take place.

5.3 The importance of transparency

Access to publicly available information is extremely important. Greater access to environmental information is relevant to environmental democracy and stewardship, and has been described as underpinning the ability for individuals and non-governmental organisations (**"NGOs"**) to effectively protect and enhance the environment.[101]

The UK has recognised fundamental principles regarding access to environmental information through its ratification of the Aarhus Convention, which requires states to confer rights on the public relating to: (1) access to environmental information held by public authorities; (2) participation in environmental decision-making, and (3) the ability to

100 EA, 'Guidance: How you'll be regulated, Environmental Permits' (gov.uk, updated 13 March 2025) <www.gov.uk/guidance/how-youll-be-regulated-environmental-permits> accessed 2 July 2025; and Defra, 'What is changing with Compliance Assessment Report (CAR) forms?' (gov.uk, 10 April 2025), <https://environment.data.gov.uk/support/faqs/715423752/809598986> accessed 12 May 2025

101 Sean Whittaker, *The Right of Access to Environmental Information* (Cambridge University Press 2021)

challenge public decisions made in relation to the environment.[102] Domestic laws such as the Environmental Information Regulations 2004[103] (**"EIR"**) have played a role in entrenching in England such rights of access to environmental information and public involvement in environmental decision-making, alongside the development of a body of case law on access to justice.[104]

Successful policy implementation and accountability depend upon the assessment of feedback, allowing adjustment of environmental laws, policy instruments and regulatory practice. If 'good' environmental regulation is to be pursued, it is essential that Parliament understands the quality of regulation that is taking place. Scrutiny is dealt with in more detail in Chapter 9 of this report.

Targeted transparency does not undermine trust, but has a positive effect on trust in regulated sectors.[105] But the public does not currently have easy access to the information to take a meaningful part in supporting effective monitoring and enforcement. Public involvement, for example, through citizen science initiatives, or oversight of gaps or deficiencies in environmental laws, could contribute to better environmental regulation.

If regulated entities can be prompted to address non-compliance by industry and market forces, journalists or environmental NGOs, or the public, there are opportunities for compliance standards to be raised without the full costs of regulators intervening with investigations and enforcement action.

As President Clinton once remarked, when announcing a proposal to expand community 'right to know' laws – "in the decades since we've passed the first one, businesses have responded by reducing toxic emissions by 43 per cent. Right to know works. Don't be fooled about it. It makes a big difference."[106]

The Corry Review recommended increasing the transparency of the work of environmental regulators by making live information accessible to the public, so that they could see for themselves how regulators were improving the environment in their area.[107] The review considered that opening data to the public was essential to foster transparency and trust, and that this openness should be complemented by welcoming, not fearing, citizen science alongside a strong emphasis on accountability to Parliament to ensure regulatory actions are scrutinised and aligned with public interest.

For environmental regulators themselves, greater transparency and better public registers might reduce their workload in other areas. The EA receives about 46,000 requests under

102 Convention on Access to Information, Public Participation – in decision-making and access to justice in environmental matters (Aarhus Convention), Aarhus, Denmark, 25 June 1998, United Nations Economic Commission for Europe

103 SI 2004/3391. These regulations were introduced to domestically implement requirements of the Environmental Information Directive, which had in turn implemented elements of the Aarhus Convention in EU law

104 Brian Ka Ruddie, 'The Aarhus Convention in England and Wales', in Charles Banner (ed.), *The Aarhus Convention: A Guide for UK Lawyers* (Bloomsbury Publishing, 2015)

105 Stephan Grimmelikhuijsen, Femke de Vries, Robin Bouwann, 'Regulators as Guardians of Trust? The Contingent and Modest Positive Effect of Targeted Transparency on Citizen Trust in Regulated Sectors' (2023) 34(3) *Journal of Public Administration Research and Theory*, 1

106 President Clinton, Kalamazoo, Michigan, August 1996, quoted in William Wilson, *Making Environmental Laws Work – Law and Policy in the UK and USA* (Hart 1998). In the US the Emergency Planning and Community Right to Know Act 1986 resulted in publication by the US Environmental Protection Agency of an annual Toxics Release Inventory. This contributed to (i) an announcement by the CEO of Monsanto that the firm's air emissions would be reduced by 90 percent by 1992; (ii) Silicon Valley electronics industry facilities reporting a reduction of toxic emissions by 89 percent since the Toxics Release Inventory was introduced; (iii) IBM promising to eliminate the chemical freon from all its processes within three years after heading the list of the "dirty dozen" in local newspaper reports based on Toxics Release Inventory data

107 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

freedom of information rules each year[108]. This amount is equal to the whole of the rest of Whitehall.[109] It has recognised that this creates significant resource issues and has stated that it will prioritise work to make more public register documentation available online.[110]

We wrote to the EA to request an action plan detailing the development of an online public register under the EPR in 2022, including planned improvements and proposed dates.[111] The EA complied with this request and we recognise that it is taking steps to improve transparency.

Recommendation 2. Environmental regulators should ensure that details about inspections they have undertaken are regularly published on improved and accessible public registers.

Recommendation 3. Environmental regulators should publish the information outlined at paragraph 6.2(c) of the Regulators' Code (i.e. information relating to their approach to compliance checks) in a more detailed, consolidated, easily identifiable, and accessible standalone document, such as a 'compliance monitoring policy'.

108 EA, 'Corporate Report Environment Agency Freedom of Information Action Plan' (5 September 2023)

109 Phillip Duffy, EA Chief Executive, House of Commons Environmental Audit Committee, Oral evidence: 'The environmental protection work of the Environment Agency', HC 702 Wednesday 24 April 2024

110 EA, 'Corporate Report Environment Agency Freedom of Information Action Plan' (5 September 2023)

111 OEP, Intervention, 'The EA's duty to provide a public register as specified in the Environmental Permitting Regulations (England and Wales) 2016' (20 January 2022) <www.theoep.org.uk/investigation/eas-duty-provide-public-register-specified-environmental-permitting-england-and-wales> accessed 10 January 2025

Chapter 6. The impact in practice of wide legislative discretion as to inspections

Chapter 6. The impact in practice of wide legislative discretion as to inspections

6.1 Overview

As explored in Chapter 4, for most environmental regimes the legislation and guidance provides regulators with a considerable amount of discretion as to the inspection approach and inspection frequency that should be taken, provided they act within their statutory powers. Affording them flexibility and discretion as to how they check compliance might be seen as a justifiable approach; regulators can be seen as knowing best how to regulate and influence compliance. But as is explored in Chapter 5, it can be hard for anyone outside of the regulators to determine how they are using this wide discretion in practice.

To better understand what was happening in practice, we collected data in our case studies which sought to find out more about inspection frequencies and approaches.

6.2 The numbers of regulated entities that are being inspected

We asked the regulators responsible for each of the ten case studies to give us details about how many inspections they were undertaking. We asked for the most recent full year's data. In most cases this was for 2023.

It was more difficult and time-consuming than expected for us to collect these data: not because the regulators we were dealing with were in any way obstructive, but because reliable data was not always readily available. By this we are not just referring to data being made publicly available on websites or on registers, but rather that when we specifically requested data from some individual regulators, they appeared to have difficulties collating and providing such data.

Figures 1 and 2 below illustrate some of our high-level findings regarding what inspections were carried out. Figure 1 summarises the average number of inspections conducted per permit (or equivalent). Figure 2 provides an indication of what proportion of permits (or equivalent) actually received inspections. Both figures cover only the eight case studies which relate principally to the inspection of regulated entities (such as permitted facilities).

In the case of the Bathing Water case study, the main relevant activity is sampling, with some visual inspection. Our understanding is that, broadly, relevant regulatory requirements were met. Local Authority Statutory Nuisance, in which there are no regulated premises inspected, is discussed separately at 6.3 below.

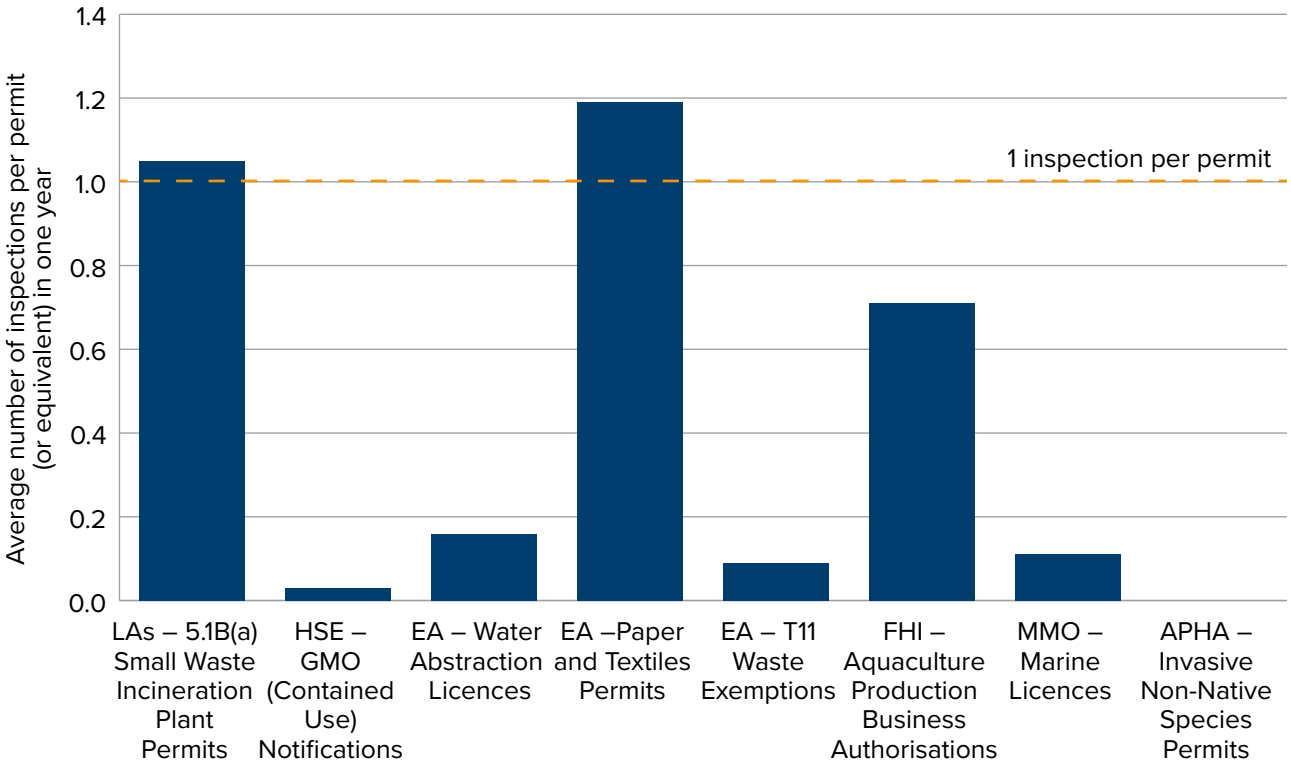
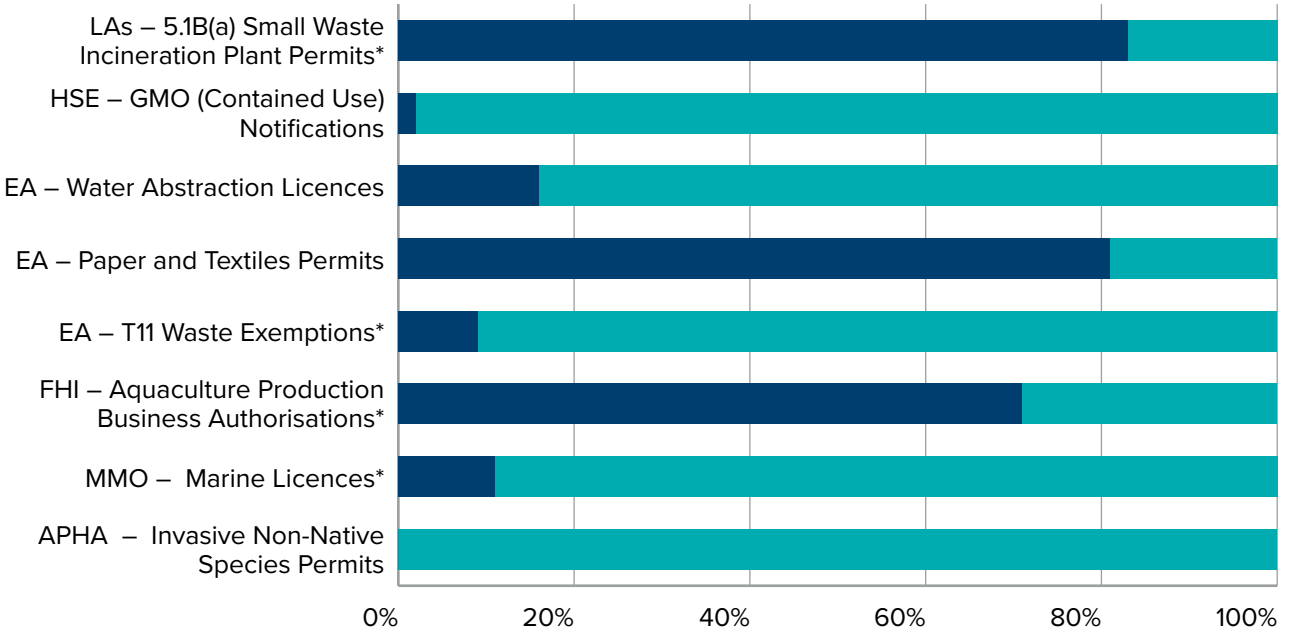


Figure 1. Average number of inspections conducted per permit (or equivalent) over the one-year period examined in each case study



	Estimated percentage of permits (or equivalent) that have undergone an inspection during the year sampled for that case study
	Estimated percentage of permits (or equivalent) that have not undergone an inspection during the year sampled for that case study.
"*"	Where case studies are marked with a "*", it was not possible from the data available to identify and exclude inspections which may have been repeat inspections of a permit. As such, in these cases the figure shows the maximum number of permits (or equivalent) which may have received an inspection, and minimum number which may not have.

Figure 2. Estimated proportion of permits (or equivalent) inspected over the one-year period examined in each case study

It should be noted that the findings in Figures 1 and 2 reflect the variety of regimes covered and are based on varying sample sizes. Some regimes regulate entities numbering in the tens, and others in the thousands.[112] Additionally, due to the various forms in which data was available to us, it was not possible in all cases to reach precise figures. In Figure 2, for instance, it was only possible in some cases to identify the maximum number of permits (or equivalent) which may have received an inspection (and therefore also the minimum number which may not have received an inspection).

As is evident from Figure 1, on average, regulators were conducting fewer inspections than would be required to ensure that all permits would be inspected each year. In only two of the eight cases, are inspections being carried out at an average rate of more than one per regulated entity per year.

Figure 2 indicates that on average across the eight regimes, no more than 34% of permits received an inspection (or equivalent) across the course of a year. At least 66%, therefore, did not receive an inspection. Rates between regimes varied significantly. In five regimes, between 0 and 20% of permits received an inspection. On the other hand, in two of the regimes over 80% did so.

The above findings are a snapshot, with data from only one year. Inspection numbers might fluctuate between different years. For example, APHA did not undertake any Invasive Non-Native Species (**"INNS"**) inspections of permitted sites until the financial year 2024/2025. In that year up to January 2025, it conducted 24 inspections.[113]

Where we found there to be a low inspection frequency in the year examined (e.g. in the regimes where between 80-100% of permits did not receive an inspection), this does not necessarily indicate the regulator is not doing its job correctly, or that there is non-compliance with the underlying laws.[114] There could be many reasons for the inspection variability between regimes. This could be influenced by the risk associated with the entities or activities which are being regulated in each regime.[115] It could be that only inspecting a small percentage of regulated entities in some regimes is entirely justifiable.

Alternatively, low inspection frequencies might instead reflect the resources available to the regulator, rather than environmental risk. In some cases, we found a correlation between charging levels and inspection frequencies. For example, there was a clear difference between the EA's inspection frequencies for T11 waste exemptions (one of our case studies), and the related Approved Authorised Treatment Facility (**"AATF"**) regime (which was not one of our case studies) where charges are much higher.[116] The EA has itself made a clear link between adequacy of funding, compliance levels, and environmental outcomes in the waste exemption sector generally:

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112 Sample sizes: SWIPs: 123; GMOs: 855-903 (start to end of the year); Abstraction: 20,417; Paper & Textiles: 56; T11: 589.5 (being an average derived from the number of T11 Exemptions at the beginning and end of the year); Bathing Water: 424; APBs: 594; Marine Licences: 1155-1147 (start to end of the year); APHA: approximately 108

113 Figures supplied by APHA to the OEP

114 E.g. HSE advised us that "the enduring principle of health and safety law in GB is that those who create risks are best placed to control them, the duty to comply remains with them. We remain confident that the risk-based approach HSE takes to the inspection and any necessary enforcement of dutyholders under the Genetically Modified Organisms (Contained Use) Regulations 2014 (GMO(CU) is proportionate to the risks involved and that our resources are directed appropriately"

115 For example, the FHI did not include 29% of the regulated entities considered in our case study in its regular inspection programme, on the basis that the entities in question are deemed to pose only nominal risk

116 Some T11 Exempt Waste Operations are also Approved Authorised Treatment Facilities (AATFs). These are waste treatment facilities which can issue evidence notes for reuse and treatment on the waste electrical and electronic equipment they receive on behalf of producer compliance schemes. The AATF regime is discussed in further detail in Annex 3 covering our case study on T11 Waste Exemptions

> *"Currently, waste exemption inspections are limited … We have not had dedicated funding to allow consistent, national monitoring of [waste exemption] compliance. Without adequate funding we cannot provide a suitable level of regulatory oversight."* [117]

Approaches to risk-based inspections are considered further in Chapter 7.

The finding of low inspection frequencies for some regimes, albeit from a snapshot year, raises questions as to whether some regulatory regimes are delivering the minimum amount of inspection frequencies that might be appropriate, or that was envisaged by Parliament to result in good environmental outcomes.

But this report only looks at one year of inspections in isolation. Future research might usefully examine inspection frequencies over a longer time period to try and establish trends and conclude whether those frequencies are appropriate and their potential impact on good environmental outcomes.

6.3 Examination of contrasting approaches to the same law

Another way to assess the impact of legislative discretion is to examine regimes where multiple authorities have the same inspection responsibility. We examined the approach taken by English LAs to the performance of their statutory responsibilities to address statutory nuisances.

LAs' duties in relation to statutory nuisances fall under two parts of section 79(1) of the Environmental Protection Act 1990. The first part requires every LA "to cause its area to be inspected from time to time to detect any statutory nuisance" (for the purposes of this report, our main focus has been on this duty). The second part requires every LA "where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint."

6.3.1 The first legal duty

The approach taken by different LAs to the legal duty in section 79(1) "to inspect their area from time to time for statutory nuisances" was approached very differently across England, with 141 of 184 (77%) LA respondents stating that they undertook some form of inspection activity, and 43 (23%) indicating that they did not.

The fact that Parliament has periodically added new statutory nuisances to the legislation[118] strongly suggests that this is not regarded as obsolete legislation where effective inspections do not matter, but rather a working framework to which new legal duties have been added. This was not reflected, however, in the contrasting approaches to LA duties under the same law and in the fact that 23% reported that they undertook no such occasional inspections.

117 EA, 'Environment Agency charge proposals for April 2025: Reducing waste crime and updating time and materials charges' (gov.uk, November 2024) 16 <www.gov.uk/government/consultations/environment-agency-charge-proposals-for-waste-crime-and-hourly-rates> accesed 2 July 2025

118 Environmental Protection Act 1990 s 79(1). For LAs, 'statutory nuisances' to which these duties apply now cover noise (added by Noise and Statutory Nuisance Act 1993 ss 2(3)(b), 12(1)), light pollution (added by Clean Neighbourhoods and Environment Act 2005 s 102(2)), and insects (added by Clean Neighbourhoods and Environment Act 2005 s 101(2))

A sample of statements made by LAs about inspections conducted under this duty are provided below:

> *"All activities undertaken relating to statutory nuisance are dealt with as complaints"*
>
> *"We carry out noise patrols at the time of many events as well as during periods where there may be lots of parties, such as autumn term"*
>
> *"We do not carry out any [proactive] inspections"*
>
> *"We consider potential for statutory nuisance through the consultation process involving the licensing regulatory regime and development control (Planning Authority)"*
>
> *"Neighbourhood Warden team carry out daily patrols of the borough"*
>
> *"None"*
>
> *"[We conduct] site inspections by driving around the borough on the weekend OOH [out of hours] service"*
>
> *"[Targeted pro-active patrols are undertaken by Environmental Crime and Dog Wardens, together with the occasional multi-agency patrols (police, Environment Agency and Housing Associations)"*
>
> *"[Referring to proactive inspections] – We do not work in this way"*

There was a divergence of approaches to the inspection duty. This included some LAs undertaking 'targeted pro-active patrols'; or meeting the duty whilst "driving around their local communities"; whereas others did not apply the duty at all, and indicated they would not regard doing so as a good use of resources.

It is true that LAs are local democracies and should not always be expected to discharge their duties in an identical manner. And yet it is the same legal test.

We did not conduct interviews with LAs to understand the motivations of such divergence. This could be due to many different reasons. But responses from LAs showed that, in the absence of any clear national guidance on discharging their duties on statutory nuisance, different LAs based their operations on divergent guidance. Sample statements from LAs around England on the guidance relied on in relation to statutory nuisances are provided below.

> *"We look toward a variety of British Standards or World Health Organisation (**"WHO"**) specifications"*
>
> *"We use Defra's guidance on agricultural practices in relation to odour and the ILE [now known as Institution of Lighting Professionals] documents"*
>
> *"Bassets Environmental Health Procedures, Institution of Lighting Professionals Guidance, National Farmers Union bird scarers code of practice. Noise Council's code of practice on environmental noise at concerts 1995, British... Standard"*
>
> *"None"*

*"Neighbourhood Noise Policies and Practice for Local Authorities – a Management Guide, British Standards Institute (**"BSI"**) code of practices and guidance"*

"Better Regulation Delivery Office – Regulators Code, Enforcement Concordat Good Practice Guide"

This does raise questions about whether the environmental law and guidance in this area is properly tuned to what is actually required, and whether those administering this area of the law in both local and national government are clear about the best approach to delivering its requirements.

Any lack of clarity in the law itself can result in a 'pick and mix' approach to statutory and non-statutory guidance. The divergence in the way the law is applied may result in wide differences in environmental standards across the country: some areas may get better environmental protection and responses than others.

6.3.2 Response to complaints

In respect of the second legal duty in section 79(1), which requires LAs to respond to complaints about statutory nuisance from members of the public, all of the LA respondents replied that they met this duty.

But the responses suggest that here again, there was significant variation in the way in which, and the extent to which, they did so, with many explaining that they met this legal obligation through their activities under other, overlapping statutory regimes.

Some LAs referred to using Community Protection Notices under the Anti-social Behaviours, Crime and Policing Act 2014 to tackle statutory nuisances: others referred to checking adherence to business licensing conditions.

Without understanding what inspection activities are taking place, and under what legislation, it will be difficult for Parliament and others to understand the effectiveness, or relevance, of some laws.

Chapter 7. Inspection practices

Chapter 7. Inspection practices

7.1 Overview

This chapter considers 'risk-based regulation', remote (off-site) inspections, and the impact that these may have had upon inspection programmes.

7.2 Risk-based regulation

Risk-based regulation has played an increasingly important role in English environmental regulation. The Hampton Review of 2005 laid great emphasis on the principle of risk-based regulation, stating that "regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most" and that "no inspection should take place without a reason."[119]

Some of the outcomes of the Hampton Review were enacted in statute which requires regulatory activities within its scope to be carried out in a way which is transparent, accountable, proportionate and consistent, and to be targeted only at cases where action is needed.[120]

The Regulators' Code[121] is also specific about the fact that regulators should base their regulatory activities on risk.[122]

An alternative to a risk-based approach is uniformity – to apply the same level of regulatory resource to every organisation or activity. For example, to inspect every regulated entity annually, as opposed to inspecting some every six months, some every year, and others every two years.[123] But risk-based environmental regulation, concentrating regulatory effort on things which pose the greatest risks to society or regulatory objectives is still very much current practice in England. The Corry Review recommended that regulators should commence more frequent risk-based monitoring, using real-time and digital approaches.[124]

One of the outcomes of the Hampton Review was a direct reduction, by a third, in the number of inspections undertaken, which may have added to a trend in UK inspections that had already been noted.[125]

The then Chancellor of the Exchequer Gordon Brown, in 2005 promised "a million fewer inspections a year, a reduction in inspections of a third, and a 25 per cent reduction in form filling."[126]

An Organisation for Economic Development (**"OECD"**) report from 2009,[127] based on data taken from 2003 to 2006, showed a marked divergence between trends in inspection

119 Philip Hampton, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' (HM Treasury, London 2005)

120 Legislative and Regulatory Reform Act 2006, s 21

121 Department for Business, Innovation & Skills, 'Regulators' Code' (April 2014)

122 *Ibid*, para 3

123 Melissa Bredbenner, 'Risk-based Regulatory Regimes, The Regulatory Review', June 2, 2024 – interview with Professor Julia Black

124 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

125 See for example evidence of declining numbers of inspections noted in two NAO reports from 2006. These were NAO 'Effective inspection and enforcement: implementing the Hampton vision in the Environment Agency' (NAO, 2006) and NAO 'Effective inspection and enforcement: implementing the Hampton vision in the Health and Safety Executive' (NAO, 2006)

126 HM Treasury, 'Chancellor launches better regulation action plan' (HMT, 24 May 2005)

127 OECD, 'Ensuring Environmental Compliance – Trends and Good Practices' (OECD, 2009)

numbers in France, the USA and Finland (level or trending upwards) and in England and Wales, where the EA's figures showed a noticeable decline at this time.

It is unknown to what extent the above diverging trend in inspections between England and Wales and other countries has changed since the OECD report. But government in England has often continued to champion risk-based smarter regulation initiatives since then.[128]

Risk-based regulation is clearly a sensible concept. But, as Chapter 6 explored, in about half of the regimes examined, large proportions of regulated entities were not being inspected. This could be because risk-based regulation is being applied effectively in those regimes, and that there are no problems with such regulatory strategies. However, it also raises a number of questions as to the implementation of risk-based approaches in practice.

7.2.1 Suitability of the risk-based framework

The first issue relates to the suitability of the risk assessment framework in place for some regimes. Under the Regulators' Code, regulators should ensure that their approach to their regulatory activities is transparent, including details of the risk assessment framework used to target those checks.[129]

Putting risk-based regulation into practice is challenging.[130] It can be difficult to understand how risk assessment is being applied by regulators in practice because the publicly available details about the framework can be basic and lacking in detail.

For some regimes the risk assessment appears to be heavily influenced by the data inputted from the compliance checks that had taken place. If a business is found to be non-compliant then the level of risk they present is perceived to have increased (e.g. Paper and Textiles).

The above approach would seem logical. But if large numbers of businesses do not receive a check this means that their compliance status and what 'new' risk they present is less likely to be known, which is going to impact on the risk assessment process. There could be a disproportionate focus on the same sites if they are found to be non-compliant, with fewer checks on those that have not been inspected. It is difficult to see what checks and balances prevent such a situation occurring if the publicly available risk framework approaches are not detailed or transparent enough.

Regulators should be making prioritisation decisions in risk-based systems that can be clearly articulated and scrutinised. The Corry Review recognised that how risk-based strategies were taking place was currently opaque.[131] It recommended that clear strategic plans should be produced by each Defra regulator for how they are taking a risk-based approach to monitoring, as well as their approach to making the monitoring information more accessible to the public, to support holding businesses and regulators to account.

128 E.g. Department for Business & Trade, 'Smarter regulation: delivering a regulatory environment for innovation, investment and growth' (DBT, 16 May 2024)

129 Department for Business Innovation & Skills, 'Regulators' Code' (BIS, 2014), para 6.2

130 Melissa Bredbenner, 'Risk-based Regulatory Regimes, The Regulatory Review', June 2, 2024 – interview with Professor Julia Black

131 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

Such risk-based regulatory frameworks can obviously still be dynamic to be responsive to the social, economic, political and technological context in which they are operating, while being transparent about the trade-offs this might involve.[132]

7.2.2 Having an element of random inspections

The Hampton Review regarded it as essential to retain an element of random inspections, to test the validity of a risk assessment framework and to inform businesses tempted to break the law that they could be inspected.[133]

This again is understandable. Not having any element of random inspections risks creating a culture of impunity, as was suggested earlier in this report. Professor Chris Hilson has said that "deterrence requires everyone to think that they might be inspected at any time and caught doing bad things."[134]

But again, there appears to be an issue with transparency as to where such random inspection safeguards are built into regulatory systems. For scrutiny to be effective there needs to be some level of reporting as to what random inspections are being conducted.

7.2.3 Dealing with 'low' risk entities

The EA secured a derogation for 500,000 low-risk hazardous waste producers who as a result no longer needed to register in 2005.[135] The EA estimated that this initiative represented a saving to the industry of around £14 million a year.[136] From 2005 holders of 23,000 low-risk water abstraction licences were released from the licensing regime.[137] The EA estimated these businesses, around 48% of abstraction operators, saved approximately £1 million a year in total.[138]

The removal of low-risk sites from inspection systems could be justifiable. However, the question then turns to what level of resource to spend on those low risk sites which still fall within the regulators' responsibilities. A task of regulators is to achieve compliance. If they are only inspecting the worst permit holders, it is not necessarily the best way to achieve compliance, as apparently lower risk entities might develop a culture of impunity, not a culture of compliance.

Focusing exclusively on higher risk entities can mean that operators of low-risk sites know that they are not likely to be inspected. However, the same overall environmental harm from non-compliance might for example come from one large high-risk entity that is inspected, as it does from several entities combined which are classed as low-risk and that do not regularly receive inspections.

The Interim Report from the Independent Water Commission (Cunliffe Review) in 2025 noted that similar questions had been raised recently by the Senedd Cymru Welsh Parliament Climate Change, Environment and Infrastructure Committee, which questioned Natural Resources Wales's "decision to adopt a higher tolerance of risk in managing

132 *Ibid*
133 Philip Hampton, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' (HM Treasury, London 2005). paras 2.31, 2.38, recommendation 1
134 Personal communication to the OEP (3 October 2024)
135 NAO, 'Effective inspection and enforcement: implementing the Hampton vision in the Environment Agency' (NAO, 2006)
136 *Ibid*
137 *Ibid*
138 *Ibid*

pollution incidents." [139] The Committee stated that "focusing on the areas that have the greatest environmental impact has a logic to it, but it remains unclear what the impact will be of the inevitable lack of enforcement in other areas, even if these incidents cause less environmental damage."[140]

We noted in two of our case studies, MMO marine licences and EA T11 waste exemptions, that there had previously been an underlying assumption that most 'low-risk' regulated entities did not require any inspections. There had recently been a change of regulatory approach to undertake more inspections of 'low-risk' or lower category entities, due to a re-appraisal of where there was more risk of non-compliance.

7.2.4 The effectiveness of risk-based regulation

We have not examined in this report whether there has been a downward trend in inspection numbers over time for all the case studies. But there is evidence that some environmental regimes have seen significant falls in inspection numbers (e.g. compliance checks for waste permits were about five times higher in 2005 than they are now).[141] It might be that such changes are because more modern checks are generally more thorough, and therefore more time consuming.[142]

However, where there have been significant reductions in inspection frequencies in some regimes, it might be asked why some regulators thought that a much higher frequency of compliance checks to address and understand risk across the sector was appropriate 10, or 20years ago, but less frequent inspection checks are required now.[143] Has the risk lowered?

The Hampton Review recommended that risk assessments should be dynamic and not static,[144] but it is unclear whether the frameworks for their use in environmental regimes are improving or worsening. Are we seeing very different risk-based frameworks now to what they once were, and why?

Some media reports have suggested a correlation between lower inspection numbers and higher numbers of breaches of environmental laws.[145] If this was the case it could be that subsequent developments of the Hampton principles have held on to the idea of risk-based regulation while gradually losing sight of some of the balancing quality controls that went with it. Real-term cuts in regulatory budgets might have meant that some regimes which were originally risk-based have become more akin to 'resource-constrained' regulation.

139 Independent Water Commission, 'Interim Report,' para 149 (gov.uk, 3 June 2025) <www.gov.uk/government/publications/independent-water-commission-review-of-the-water-sector> accessed 4 June 2025

140 Welsh Parliament, Climate Change, Environment and Infrastructure Committee, 'Natural Resources Wales: Annual Scrutiny 2024/25' p15 (Senedd Wales, May 2025) <https://laiddocuments.senedd.wales/cr-ld17184-en.pdf> accessed 4 June 2025

141 House of Commons Environment, Food and Rural Affairs Committee, 'The Environment Agency' 7th Report of Session 2005–06 (2006). Between 2005 and 2006, the number of low-risk waste inspections fell from 120,000 per year, to 80,000 per year. The figure of 18,282 compliance activities for waste and installation that were carried out in 2023 was taken from: Environment Agency, National Compliance Assessment Dataset (gov.uk, updated 16 January 2025) <www.data.gov.uk/dataset/d49096ed-e89c-488f-9bae-d79ef4891394/national-compliance-assessment> accessed 14 May 2025

142 For example, it was noted by the EA in 2009 that they were focusing increasingly on conducting more detailed site audits, as looking at causes rather than symptoms led to much less recidivism in violations. OECD, 'Ensuring Environmental Compliance – Trends and Good Practices' (OECD, 2009)

143 We acknowledge that inspection frequency will also be influenced by the number of permitted sites. If there are less permitted sites then less inspections might be appropriate. It was difficult to retrieve details about the numbers of permitted sites over the last 20-years to compare this, but we note that the number of waste and installation permits increased between 2018 (13,771) and 2023 (14,009). Figures provided direct from the EA. Additionally, the 18,282 compliance checks referred to in the previous footnote include both waste and installation regimes, which were brought together in 2007, when the Pollution Prevention and Control and Waste Management Licensing regulations were combined into a single framework. This would suggest that the number of inspections might increase after this date

144 Philip Hampton, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' (HM Treasury, London 2005)

145 See e.g. *ENDS Report*, Permitting Review 2025, Part Two, 30 January 2025

The MMO, whose statutory charging rates and caps for marine licence monitoring do not appear to have increased in over a decade, suggested to us that although its inspection programme is risk-based, its ability to recover costs had also influenced which licences were inspected.

Another example of resource-constrained regulation was revealed in a BBC investigation in 2025. This looked at whether LAs were fulfilling their statutory duty to inspect potentially contaminated sites.[146] It found that of 13,093 potentially toxic sites that (some) British councils had identified as potentially high-risk (because they were potentially contaminated with toxic chemicals), only 1,465 had ever been inspected (11%).

The BBC investigation concluded that public health and the environment might be put at risk by the lack of checks. Several councils told the BBC that funding issues were the reason that they had stopped checking possible contaminated land.[147] The bodies that represent councils in Wales and England also voiced their belief that a lack of resources meant that they could not fulfil their statutory inspection duties. There were also fears amongst some councils that by proactively identifying potentially contaminated land, they would expose themselves to costly remediation duties that they lacked the resources to fulfill.

It is unknown whether 'risk-based regulation' is actually producing the inspections that Parliament originally intended when enacting the original environmental statutes, that would objectively be required to achieve the legislative purpose, or support government in achieving its environmental ambitions. It could be that Parliament and government agree with the risk-based frameworks in place for some regimes, even those which have resulted in large proportions of regulated entities where few or no inspections are taking place. But are they looking?

There may be tensions, which have not been fully resolved, between the statutory duties placed on regulators by their constituting environmental laws, and some of the competing expectations of 'better regulation'.

In future, it will be important that there is objective evidence to support the risk-based approach to environmental regulation in England. Twenty years ago the EA commissioned research to provide evidence that its approach to inspections supported the principles of modern risk-based regulation.[148] At that time it believed that that its understanding of the links between compliance assessment, environmental outcomes and environmental risks at that point was not well developed.[149] The EA's research concluded that in 2005 risk-based approaches were being used effectively to support modern regulation.

We could not locate similar reviews after 2005, even though the landscape of risk-based regulation would appear to be very different. Updating and consolidating such research might result in evidence that can positively enhance the application of risk-based regulation in the future.

146 *BBC News*, 'Thousands of high-risk toxic sites unchecked due to lack of cash' (Tomos Morgan and Paul Lynch, 13 March, BBC) <www.bbc.co.uk/news/articles/c4gez4zgk8ko#:~:text=The%20BBC%20Shared%20Data%20Unit,the%20money%20to%20do%20it> accessed 10 January 2025

147 *Ibid*

148 EA, 'Investigating the effectiveness of compliance assurance activities', Science report: SC04OO42/SR (EA, 2005)

149 *Ibid*

Recommendation 4. Defra, working with environmental regulators, should review whether risk-based regulation is still being implemented appropriately, and delivering sufficient inspections to achieve effective compliance with environmental laws, and to secure necessary environmental protections.

7.3 Remote inspections

We found that details of the proportion of inspections undertaken remotely by regulators are not generally included in public registers, or made public by other means. This is not data which is widely available, or much studied.

We noted different approaches across the 10 case studies between whether compliance checks were being undertaken in-person (on-site) or using remote inspections (off-site). Table 4 below shows which regimes were using remote or in-person inspection methods.

Table 4. Summary showing use of remote or in-person inspection methods in the case study regimes

Case Study	Remote or in-person inspection?	Is the percentage of each type known? [150]
LAs – Statutory Nuisance	Unknown	Unknown
LAs – 5.1B(a) Small Waste Incineration Plant Permits	In-person conducted. Remote unknown (appears negligible)	Unknown
HSE – GMO (Contained Use) Notifications	In-person only	In-person **100%**
EA – Water Abstraction Licences	In-person and remote	In-person **91%** Remote **9%**
EA – Paper and Textiles Permits	In-person and remote	In-person **93%** Remote **7%**
EA – T11 Waste Exemptions	In-person only	In-person **100%**
EA – Bathing Water	In-person only	In-person **100%**
FHI – Aquaculture Production Business Authorisations	In-person only	In-person **100%**
MMO – Marine Licences	In-person and remote	In-person **64%** Remote **36%**
APHA – Invasive Non-Native Species Permits	No inspections conducted	N/A

We could not quantify this for the two LA case studies (Statutory Nuisance and SWIPS) because LAs do not standardise how they collect and store data. There was also no breakdown for the INNS case study because APHA had not undertaken any inspections in that year.

150 In some cases, data provided to us was incomplete. For example, the MMO data included eight inspections for which it was not recorded whether they were in-person or remote. The percentage figures in this table are based only on those inspections for which it was known whether they were in-person or remote.

The majority of regulatory regimes in the seven remaining case studies we reviewed relied on in-person inspections only (four of seven). In some case studies, such as T11 Waste Exemptions, aspects of the statutory framework appeared to limit the scope for remote inspections to be carried out.

Three of the other case study regimes (Water Abstraction, Paper and Textiles, and Marine Licencing) used remote inspections to some extent.

One driver for the use of remote inspections was the COVID-19 pandemic period, where it was harder to undertake physical checks. The MMO describes remote inspections as being conducted to "as high standard as the site-based inspections", and used them extensively during the COVID-19 pandemic period, but has nevertheless now largely gone back to in-person inspections.[151] Similar trends have been noted with some regimes that the EA is responsible for,[152] with rates of remote inspections of Paper and Textiles permits falling from 50% in 2020 to just 7% in 2023.

It should be noted, however, that this is not the full picture. In respect of Paper and Textiles permits, if one considered all types of compliance checks (that is in-person inspections, remote inspections, and other compliance checks), in 2023 remote activities continued to play a significant role in checking compliance: overall, 58% of the checks recorded were either remote inspections or other compliance checks (which are typically remote). This represents a fall from 87% in 2020 but continues to represent a majority.

This regime falls under the EA's waste and installations regulatory work, where the overall number of remote checks that were taking place during the 2021 period of the COVID-19 pandemic are the same frequency (46%) as the numbers for the period covering 2023/24.[153] Therefore, for some regimes remote inspections are continuing to play a major role, even after the COVID-19 pandemic.

Such remote inspections and other compliance checks can play an important role in checking environmental compliance. They can help regulators to inform and streamline inspections and to make them more targeted and efficient, for example through pre-inspection reviews of electronic returns, or satellite checks of installations, but mainly this needs to be done as part of a strategic plan, to help inform physical inspections, rather than to move towards replacing them altogether.

It was difficult to find publicly available strategic plans by regulators which set out in what situations they planned on using remote checks. Similarly, it was sometimes hard to determine what a remote check actually was, because very little is published by regulators explaining this.

151 The MMO commented to the OEP that: "[Desk-based inspections] were largely conceived of during the Covid pandemic as a means of continuing a level of assurance. There is a current expectation that all marine licence inspections have now returned to the previous model and are carried out physically"

152 *ENDS Report*, 'Unpacking the Numbers: What the EA data tells us about ratings, breaches, and inspections' (www.endsreport.com, 2025) <www.endsreport.com/article/1903845/special-report-sectors-scored-top-permitting-marks-2018-2023-%e2%80%93-flopped> accessed 15 May 2025; and *ENDS Report*, 'The story behind the data: Why EA inspections dropped – and where permitting goes next' <www.endsreport.com/article/1903845/special-report-sectors-scored-top-permitting-marks-2018-2023-%e2%80%93-flopped> accessed 12 May 2025

153 EA, 'Corporate scorecard 2022 to 2023 – quarter three, 1 October 2022 – 31 December 2022' (EA, 12 April 2023) <www.gov.uk/government/publications/environment-agency-corporate-scorecard-2022-to-2023-quarter-three/environment-agency-corporate-scorecard-2022-to-2023-quarter-three> accessed 13 May 2025. 2023/23 data supplied to us by the EA was drawn from its Qlik People App and FAR Sector Dashboard for the financial year 2023-24. Note that the data in the EA report refers to a calendar year and the data provided directly from the EA is for a financial year

The EA distinguishes in its guidance between remote desktop assessments, which usually focus on a few specific permit conditions, and remote audits, which assess all, or a majority of the conditions within a permit.[154] But it is hard to know what these involve.

Some remote inspections rely on sophisticated technology. The 2025 report by the EA's Chief Regulator gives several examples of the EA's new uses of technology to support its compliance assurance work, including optical gas imaging cameras used to detect methane and biogas emissions from anaerobic digestion plants, improvements to digital systems, a new suite of analysis tools, overlaying environmental data in a mapping system, and earth observation techniques to refine targeting of non-compliant farms for farm inspections.[155]

But the Independent Water Commission (Cunliffe Review) also noted in 2025 that "a key issue raised in relation to the EA is its continued use of legacy IT systems and inability to take advantage of advances in technology. The Commission understands this is limiting the organisation's ability to make use of new data streams coming on line, for example real-time monitors at storm overflows and wastewater treatment works".[156]

Conversely, regulators also rely on more basic technology. Both the MMO and the EA have described video-conferencing to us as forming part of remote checks. Some legislation is also noticeably starting to make reference to the use of 'virtual' inspections.[157]

In some regimes it seemed that basic administrative checks could sometimes be recorded as remote desktop inspections. For waste and installations some recorded compliance activity is automated messages reminding to the operator about not submitting their quarterly waste returns.[158]

There are no standard agreed definitions for what constitutes a remote inspection. Some of the examples above of interactions between regulator and regulated entity would not seem to equate to an inspection – but that is subjective. One expert reviewer of this report commented that in their view anything where a regulated entity could easily lie should probably not be counted as an 'inspection'. An example of this could be lying on a regulatory return document.

Remote inspections can mean different things to different people, as well as significantly varying how comprehensive they are. Sometimes they will be a justifiable and appropriate method of checking compliance, but this will not be the case for all inspection work. Furthermore, in some cases, regulators advised us that it is not possible for remote inspections to fully replace physical inspections.[159] And even where remote inspections may be possible, regulators have appeared in certain cases to still favour physical inspections.[160]

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154 EA, 'National Compliance Assessment Briefing' <https://environment.data.gov.uk/api/file/download?fileDataSetId=b2acd6ae-db5d-4608-bcc7-dcd88f285063&fileName=2023%20National%20Compliance%20Assessment%20Dataset.zip> accessed 12 May 2025

155 EA, 'Environment Agency Chief Regulator's Report 2023-24' (EA, 17 January 2025)

156 Independent Water Commission, 'Interim Report,' para 149 (gov.uk, 3 June 2025) <www.gov.uk/government/publications/independent-water-commission-review-of-the-water-sector> accessed 4 June 2025.

157 For example, see the Greenhouse Gas Emissions Trading Scheme Order 2020, arts 34a and 34b

158 For example, we found that a CAR is issued automatically if a waste return is not submitted, and that this is counted as compliance activity by the EA. In some cases the only compliance activity that year. This was ascertained in a review of CAR forms undertaken by us in a sister project to this one examining the quality of inspections. This second study is due to be published later in 2025

159 For example, the FHI stated: "The FHI Online system will never fully replace in person, on-site authorisation compliance inspections. A condition of authorisation is to operate in accordance with an approved biosecurity measures plan ("BMP") for example and it isn't possible to check that a site is operating against this BMP remotely." The EA has similarly expressed the view that remote inspections aren't always viable – noting for example that that data submissions, which enable a desk-based assessment, are not a requirement of the conditions of the T11 waste exemption

160 As discussed above, rates of remote inspection in certain regimes fell after COVID-19 restrictions were lifted. The EA stated in the context of T11 Waste Exemptions that compliance activity is "best delivered in-person to effectively check the key conditions"

Generally, remote checks might be an important regulatory tool, but as there was little published as to methods and frequency, this made it hard to judge whether their use was appropriate or effective. This raises two further issues.

First, to what extent are resources a factor in the use of remote checks? Remote inspections should not be seen as always second best (to physical checks). However, regulators need to be clear about how they are using them, whether they are using them for good regulatory reasons, and not because they do not have the budget allocations required to do the number of physical checks that might be necessary.

There is also the issue of public acceptability and confidence in the selected approach taken. In 2023, the Food Standards Agency (**"FSA"**), organised discussion groups in the UK to assess consumer views of possible areas of change in regulatory approaches.[161] It wanted to capture views on possible changes to inspection activities, including potentially making use of remote inspections.

The discussion group participants were strongly against remote inspections as an alternative to physical inspections. They formed a view that it was not possible to offer a comprehensive, accurate assessment of food hygiene without visiting a business. Participants discussed how this could provide businesses with the opportunity to 'cheat' the system by hiding things. They were particularly concerned about businesses hiding problems, and the true reality of their premises' state of compliance. They were also worried about inspectors not being able to rely on their senses during remote inspections to identify any potential problems. Similar constraints are likely to apply to many types of environmental regulation. Future research might result in evidence, via interviews or focus groups on this matter, of public views on remote inspections in environmental regulation.

More generally, the public may require assurances that remote inspections are not simply being undertaken for cost reasons, to the detriment of environmental protection.

161 Ipsos UK and FSA, 'The value of the Food Hygiene Rating Scheme and potential changes to regulatory approach: Consumer research' (Ipsos, 2023)

Chapter 8. Resourcing regulatory inspections

Chapter 8. Resourcing regulatory inspections

8.1 Overview

The Hampton Review found that of their total budget of £2.8 billion (2005), national regulators spent 33% – £918 million – on inspection and enforcement activities.[162] Of a total budget of £1 billion (2005), LA regulatory services spent nearly £500 million (2005) on inspection and enforcement activities (50%).[163] We recognise that these figures are now 20 years old, but we have not found more up to date data.

Based on the above figures, inspections can be seen as a significant part of regulation and funding is a key factor in enabling them to occur. But resources can be an important issue, considering the financial constraints faced by many regulators.

As the EA has recently stated in the context of waste exemption inspections: "currently, waste exemption inspections are limited … We have not had dedicated funding to allow consistent, national monitoring of [waste exemption] compliance. Without adequate funding we cannot provide a suitable level of regulatory oversight."[164]

We examine below how money for regulatory inspections is raised, and how it is spent.

8.2 How inspections can be funded

The 10 case studies showed that in practice, regulatory regimes and inspections can be funded in different ways. Regulation is typically funded from general taxation (grant-in-aid)[165] or by those subject to regulation (charges). Those charges can be structured in different ways – which can include (but are not limited to) subsistence[166] or time and material charges.[167]

8.3 Transparency about funds raised and expenditure on inspections

Across the 10 case studies for this report, we considered how readily available information was in respect of the funds raised for and expenditure on inspections. Our findings are set out in Table 5 below.

162 *Ibid*

163 *Ibid*

164 EA, 'Environment Agency charge proposals for April 2025: Reducing waste crime and updating time and materials charges' (gov.uk, November 2024) 16 <www.gov.uk/government/consultations/environment-agency-charge-proposals-for-waste-crime-and-hourly-rates> accessed 2 July 2025

165 This is a sum of money provided to regulators by government to be applied in general support for the objectives of that organisation. A payment by a government department – usually referred to as the 'sponsor department' – to finance all or part of the costs of the body in receipt of the grant-in-aid. Grant-in-aid is paid where the government has decided, subject to Parliamentary controls, that the recipient body should operate at arm's length. The sponsor department does not therefore seek to impose the same detailed controls over day-to-day expenditure as it would over a grant. Government Grant Definitions.<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/654680/2017-09-27_Grant_Definitions.pdf> accessed 2 July 2025

166 Regulatory agencies recover the costs of regulating an activity through periodic (typically annual) subsistence charges, payable from businesses. Subsistence is charged for the time a permit is in force, including for all or part of a financial year

167 Hourly rates are used to reflect the actual costs of carrying out the regulatory activities. Regulatory staff will record the amount of time they have spent working on a project, or piece of work for a permit holder/customer

Table 5. Summary of information on funding and expenditure for inspections in the case study regimes

Case Study	How clear and accessible is information on funding for, and expenditure on, inspections?
LAs – Statutory Nuisance	We located little to no published information regarding funds raised or spent on these inspections. National level financial information relating to LAs' environmental services is published. However, this is too high-level to meaningfully analyse funding/expenditure regarding inspections or individual regimes.
LAs – 5.1B(a) Small Waste Incineration Plant Permits	We located little to no published information regarding funds raised or spent on these inspections. National level financial information relating to LAs' environmental services is published. However, this is too high-level to meaningfully analyse funding/expenditure regarding inspections or individual regimes. Individual LAs were able to provide only very varying levels of detail.
HSE – GMO (Contained Use) Notifications	Information is not published as a matter of course showing funds raised or spent on these inspections. HSE noted to us that for Larger GMOs it recovers costs from Defra, but no equivalent funding arrangement was outlined for other GMOs. HSE provided figures for the cost of its inspections.
EA – Water Abstraction Licences	Information is not published as a matter of course showing funds raised or spent on these inspections. The charging scheme is publicly available, but income and expenditure information is published only at the level of the entire abstraction charging scheme. The EA provided figures for funds raised from subsistence charges, but it does not record the costs of inspections and does not record income generated for inspections specifically. As such whilst the source of funding is relatively clear, how much of it is spent on inspections versus other activities is not.
EA – Paper and Textiles Permits	Information is not published as a matter of course showing funds raised or spent on these inspections. The charging scheme is publicly available, but income and expenditure information is published only at the level of the entire EPR installations charging scheme. Income is not recorded at the same level as the charging scheme and spending is not tracked by activity (e.g., by inspections). The EA provided estimated income and compliance cost figures, although these were not in respect of the same time periods.
EA – T11 Waste Exemptions	Information is not published as a matter of course showing funds raised or spent on these inspections. The charging scheme is publicly available, but income and expenditure information is published only at the level of the entire EPR waste charge scheme. Spending is not tracked by activity (e.g., by inspections). The EA provided estimated income and compliance cost figures.
EA – Bathing Water	We located little to no published information regarding funds raised or spent on these inspections.

Case Study	How clear and accessible is information on funding for, and expenditure on, inspections?
FHI – Aquaculture Production Business Authorisations	We located little to no published information regarding funds raised or spent on these inspections. The FHI works under a Memorandum of Understanding and Defra provides access to funds through grant-in-aid. The FHI provided us with figures for the cost of its functions at a high level (e.g., at the level of its disease and surveillance functions).
MMO – Marine Licences	We located little to no published information regarding funds raised or spent on these inspections. The charging scheme is publicly available. Licence holders are provided with fee estimates relating to post-consent work. Chargeable work (including post-consent monitoring and inspections) is recorded in 15-minute intervals and billed monthly. However, we have not had sight of amounts actually raised or spent.
APHA – Invasive Non-Native Species Permits	N/A – Inspections had not commenced in the period considered by the case study.

It may be expected that regulators would collect data that clearly explains what income they had raised from fees and charges for individual regimes, and what proportion of that they spent on inspections. But we found it difficult to obtain clear information from public records, or from our work on this report, about how much money was raised to support inspections, and how much money was spent on inspections as part of that.

That is not to say that some financial information on income and expenditure is not publicly available for some of the regimes. There is some data provided by regulators in their annual report and accounts.[168] But generally the available information covers high-level regulatory categories,[169] rather than individual regimes which fall under them. For example, it is possible to see income from EPR 2016 installations, but not for the Paper and Textiles regime, which is a sub-category under that category of installations, and is subject to distinct and highly detailed charges.

And even if funding can be identified at the level of a specific regime, it is not necessarily possible to identify how much of it is raised for inspections specifically. In respect of water abstraction licences for example, the EA explained to us that it did not raise funds specifically for abstraction inspections or record costs of inspections specifically, and it did not split the income generated to that level either. As is discussed further at 8.4 below, the money that is raised can be allocated by regulators to many different activities.[170]

Regulators consider that under the current funding rules they do not have to report on how much of what they raise they are spending on inspections. It is therefore unsurprising that there is limited publicly available information showing this expenditure.

168 For example, the EA reports annual expenditure billed for abstractions, and installations, in its Annual Report and accounts. EA, 'Environment Agency annual report and accounts 2023 to 2024' (EA, 20 November 2024)

169 The nine categories that are financially reported by the EA include: (i) Abstraction charges (ii) Navigation licences (iii) Fishing licences (iv) EPR water quality (v) EPR installations (vi) EPR waste (vii) Hazardous waste (viii) Emissions trading and carbon reduction commitment (ix) Nuclear regulation. See, EA, 'Environment Agency annual report and accounts 2023 to 2024' (EA, 20 November 2024)

170 The statutory powers under which regulators charge for compliance inspections are themselves rarely specific: for example, the Environment Act 1995 s 41(2)(c) empowers the EA to charge for "subsistence" and art 4 of the Public Bodies (Marine Management Organisation) (Fees) Order 2014 empowers the MMO to charge for "monitoring"

But regulators found it problematic to supply us with data about how much they were spending on inspections. In practice regulators might know how much money in total they have spent on a regime, in respect to undertaking all their regulatory responsibilities, but they cannot always distinguish which parts of that overall pot of money were actually spent on inspections.

Regulatory expenditure is in some cases tracked at the level of teams undertaking various functions, rather than being identified for individual activities, making it harder to unpick spending on specific regimes and for there to be oversight and evaluation of the implementation and outcomes of specific activities.[171]

We considered current approaches on inspection spend to be opaque and problematic for four reasons:

Firstly, if regulators find it difficult to provide data which clearly explains what sums are spent on inspections, this suggests they will also have difficulty in planning for inspections and monitoring them properly.

Secondly, the money spent on inspections should be influencing compliance. But there is a lack of clarity at the current time about whether (or to what degree) this is happening. For example, it would be useful to understand what impact spending cuts, or increases, might have on inspection regimes and thence on levels of compliance.

Thirdly, the determination of criminal or administrative penalties in cases where there had been a breach of the law might sometimes include the regulator's cost of enforcement action, including inspection costs – so good record keeping might assist in providing calculations.

Finally, the issue of regulators' resources is of critical importance to their overall effectiveness.

The House of Lords Industry and Regulators Committee Report 'Who watches the watchdogs?' made a number of important observations about regulators' resources.[172] These included the importance of regulators having sufficient resources to carry out their functions effectively, and for public body reviews to assess this and to consider options such as revenue raising powers.[173]

The Interim Report of the Independent Water Commission (Cunliffe Review), published in 2025, noted that "the Commission has heard specific and strong concerns about the impact of budget cuts on the environmental regulators' monitoring and inspection functions. The EA's environmental protection budget was more than halved between 2009-10 and 2019-20", although it also noted significant steps to increase regulator funding through updating the charging scheme.[174]

In practice the overall total expenditure from regulatory fees and charges income (£454.8 million) by the EA, for example, in 2023/24 is higher than the income billed (£405.3

171 For example, in three of our EA case studies (Water Abstraction Licences, T11 Waste Exemptions, and Paper, Pulp, Carbon, Tar and Bitumen), the EA noted to us that it tracks expenditure by team rather than by activity

172 House of Lords, Industry and Regulators Committee, 'Who watches the watchdogs? – Improving the performance, independence and accountability of UK regulators', 1st Report of Session 2023–24 HL Paper 56

173 *Ibid,* 32

174 Independent Water Commission, 'Interim Report,' (gov.uk, 3 June 2025) para 149 <www.gov.uk/government/publications/independent-water-commission-review-of-the-water-sector> accessed 4 June 2025

million).[175] In other words, on the face of it, in 2023/24 the EA overspent by 12.2% (£49.5 million) against its charging income.

It would, therefore, seem beneficial for regulators, government and those leading public body reviews to better understand whether such apparent discrepancies between revenue raised and spent are occurring and, if so, why it is happening. If the data on spend is recorded too broadly it might make it harder for regulators (operating in a tough financial climate) to make a proper case for the resources that they need to do their job effectively.

If government is committed to making efficiencies it also needs to understand where it/ regulators are spending money. At the current time this does not appear to be the case with environmental regulation.

8.4 Cross-funding of regimes

Regulators are expected to take an evidence based approach in determining the priority risks in their area of responsibility, and should then allocate resources where they would be most effective in addressing those priority risks.[176] But regulators do not raise/receive money specifically for inspections, and regulation is broader than that.

The money that is raised can be allocated by regulators to many different activities.[177] For example the EA's spending criteria includes direct costs, corporate costs, capital finance costs and bad debt.[178] This is developed in line with HM Treasury's guidance for managing public money.[179] Clearly regulation does not just involve employing inspection staff and undertaking inspections and the spending criteria can be justifiable.

But the opaqueness of the current practice casts into doubt whether the spending rules are being followed, and who is checking how the money that is specifically raised for one regime is actually being spent on that regime, or if money is being moved across to different parts of the regulator to plug gaps in funding.

We found in one case study that cross-regime funding might potentially be taking place (although that interpretation is not accepted by Defra).[180] It was hard to say whether it is happening in other regimes because the lack of transparency on spend does not allow closer examination of this.

A 2021 report by Material Focus found that the EA received somewhere between £4.9 million and £7.2 million in annual registration fees under the waste carrier, brokers and dealers regime (**"CBD"**).[181] This registration money is supposed to be spent on ensuring the CBD registration is effectively administered and regulated, but at the time of the report

175 EA, 'Environment Agency annual report and accounts 2023 to 2024' (EA, 20 November 2024)

176 Department for Business Innovation & Skills, 'Regulators' Code' (BIS, 2014)

177 EA, Guidance, 'How the Environment Agency calculates its charges' (EA, 1 April 2025)

178 *Ibid*. For example, (i) direct costs (people costs, non-people costs, operations management and support, fixed costs) – 66% ; (ii) corporate costs (IT, estates, finance, shared services, communications, human resources, procurement and commercial) – 32%; (iii) capital finance costs – 1%; (iv) bad debt – 1%

179 HM Treasury, 'Managing Public Money' (HMT, 2023)

180 The EA told us its work in respect of bathing waters also relies upon income from water discharge activity permits issued to water companies and other dischargers. Defra do not accept our interpretation that cross regime funding might potentially be taking place. They have confirmed that the EA's account on income is true, but that this doesn't represent cross-regime funding. This is because there is work done which is part of the EA's water discharge activity which contributes to the EA's bathing water responsibilities, but it is correct that the water discharge activity is funded by water discharge charges.

181 Ray Purdy and Mat Crocker, 'An Independent Study into Fly-Tipping and Unregistered Waste Carriers in England' (Material Focus, 2021)

it appeared that the EA was not undertaking any checks and it was not visible how this registration money was being spent by the EA.

Regulators should of course have a certain degree of flexibility in how they spend their money, but money raised to specifically finance one regime should not be used to cross-subsidise another regime, without government authority.[182] Recipients of funding have to ensure that the same need is not funded twice, and this should include an internal and cross-government check of grant funding awards. It is usually essential to segregate inflows from different funding sources since they are usually intended for different purposes.[183]

For subsistence-based schemes, businesses are paying the regulator to fund its regulation (including via inspections) under that regime and it would be unfair if their money was used elsewhere. It is also clear that this is an important rule. For grant-in-aid, the terms of spending are usually laid out in annual delegated authority letters and a framework document that explain the regulator's responsibilities. These will have a section about assuring that the money is used as envisaged.[184]

Quite simply, regulatory funding appears to have become very complicated for an outside observer to assess, making it hard to confidently conclude that the application of current funding models is working well.

If government considers that regulators should be afforded more flexibility in the way that money can be spent, across different regimes, then it might consider changing the Treasury rules. If it thinks that the current rules in place are appropriate then greater accountability is needed to make that accountability more meaningful.

Regulators might also need to re-evaluate how they raise and spend money if there is more scrutiny (and transparency). It might be that if money is currently being diverted between regimes, decisions will need to be made as to whether one regime might not require so many inspections and less money is needed, whereas another environmental regime that is currently underfunded might need more regulatory attention and might require more money (e.g. higher subsistence charges).

Recommendation 5. Environmental regulators should record and periodically publish data about how inspections for each regulatory regime are financed, and containing details for how much was spent in relation to inspections under each regime.

8.5 Staffing

The House of Lords Industry and Regulators Committee Report 'Who watches the watchdogs?'[185] addressed the key importance of regulators being able to resource, recruit and retain expert staff. This was also stressed in the Hampton Review,[186] in the Treasury's

182 HM Treasury, 'Managing Public Money' (HMT, 2023), para 6.7

183 *Ibid*

184 *Ibid*

185 House of Lords, Industry and Regulators Committee, 'Who watches the watchdogs? – Improving the performance, independence and accountability of UK regulators', 1st Report of Session 2023–24 HL Paper 56

186 Philip Hampton, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' (HM Treasury, London 2005)

Managing Public Money document,[187] by the Department for Business and Trade,[188] in the Corry Review[189] and in the Independent Water Commission Interim Report (Cunliffe Review).[190]

But staffing issues are relevant to six of our case studies, as shown in Table 6 below.

Table 6. Summary of staffing difficulties of selected case study regulators.

Regulator	Relevant Case Studies	Staffing Difficulties
EA	Paper and Textiles Permits T11 Waste Exemptions Bathing Water Water Abstraction Licences	The EA has experienced difficulties in recruiting and filling over 75% of frontline inspection and permitting staff due to pay.[191] The EA reported that environmental permitting waste regulation teams in local operations had a high percentage of front-line officers (32%) with less than one year in service.[192]
MMO	Marine Licences	The MMO outlined a significant turnover in Marine Enforcement Officers (**"MEOs"**), leading to shortages of staff qualified to conduct inspections.[193] In addition, it referred to a lack of specific training covering all licensable activities.[194]
APHA	Invasive Non-Native Species Permits	The Non-Native Species Inspectorate has a broad, national remit. While staff levels are rising, as of February 2025, it had only 16 inspectors.[195]

187 HM Treasury, 'Managing Public Money' (HMT, 2023), para 4.9.1

188 Department for Business & Trade, 'Smarter Regulation and the Regulatory Landscape: Summary of Findings from the Call for Evidence', para 17 (DBT, May 2024)

189 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025), 6

190 Independent Water Commission, 'Interim Report,' paras 151 and 192 (gov.uk, 3 June 2025) <www.gov.uk/government/publications/independent-water-commission-review-of-the-water-sector> accessed 4 June 2025

191 Prospect, 'Environment Agency struggling to recruit frontline inspection and permitting staff due to pay crisis', (prospect.org.uk, 15 August 2022) <https://prospect.org.uk/news/environment-agency-struggling-to-recruit-frontline-inspection-and-permitting-staff-due-to-pay-crisis> accessed 11 June 2025

192 EA, 'Corporate Scorecard 2023-2024, Quarter 2' <www.gov.uk/government/publications/environment-agency-corporate-scorecards-2023-to-2024/environment-agency-corporate-scorecard-2023-to-2024-quarter-two> accessed 2 July 2025

193 See Marine Licensing case study in Annex 3

194 *Ibid*

195 APHA communication to OEP, February 2025

Chapter 9. Scrutiny and oversight

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9.1 Overview

There is no single right approach in how to frame environmental inspections – but if regimes rely heavily on regulatory discretion, then evaluation and reporting on the implementation of environmental laws is important to ensure learning and accountability.

There should be a continuous improvement approach that drives effectiveness and improves delivery of environmental law, so that when government is reviewing and making decisions about the future of environmental law such scrutiny can fully play the part intended in protecting and improving the environment.

A key element of propriety is meeting parliamentary expectations, especially transparency.[196] But our findings raise questions about how frequently (and to what extent) scrutiny is taking place. Who is actually providing oversight to ensure that inspections are being carried out satisfactorily, and that there is adequate resourcing, and to consider where efficiencies might be appropriate, and if current inspection practice is resulting in compliance and good environmental outcomes?

9.2 The level of scrutiny that is taking place

We examined for each of the 10 case studies whether there was a duty to review the law(s) underpinning the regime, as well as when the underlying law last received official scrutiny. The results are set out in Table 7 below.

Table 7. Duty to review provisions and scrutiny

Case Studies	Is there a duty to review the law(s) underpinning the regime?	Government scrutiny of the operation of the regime?
LAs – Statutory Nuisance	**No**	**1993 and 2005** – The Noise and Statutory Nuisance Act 1993 and The Clean Neighbourhoods and Environment Act 2005 extended the list of statutory nuisances. **2011-2012** – Defra consulted on exemptions from artificial light nuisance provisions.[197]

196 HM Treasury, 'Managing Public Money' (HMT, 2023), annex 1.1

197 Defra, 'Artificial light statutory nuisance – continued utility of the current exemptions for certain premises: Section 79(5B) Environmental Protection Act 1990' (gov.uk, December 2011) <www.gov.uk/government/consultations/artificial-light-statutory-nuisance-continued-utility-of-the-current-exemptions-for-certain-premises> accessed 11 June 2025

Case Studies	Is there a duty to review the law(s) underpinning the regime?	Government scrutiny of the operation of the regime?
LAs – 5.1B(a) Small Waste Incineration Plant Permits	**Yes** – The Regulations must be reviewed by 31/12/19 and five-yearly thereafter.[198]	**2022** – Debate in House of Commons on permit variation processes for incineration facilities.[199] **2023** – Post-implementation review (**"PIR"**) of EPR 2016 conducted.[200] **2024** – Defra officials "lead on a piece of work considering the role of waste incineration in the management of residual wastes in England."[201]
HSE – GMO (Contained Use) Notifications	**No**	**2013** – HSE consulted on the consolidation of the statutory framework.[202] **Ongoing** – The UK competent authority meets "when there are adequate items for discussion and at a time that is convenient…" to discuss the performance of the regulatory regime.[203]
EA – Water Abstraction Licences	**No**	**2021** – EA consulted on changes to the water resources charging framework.[204] **2021** – Defra consulted on changes to the regulatory framework.[205] **2024** – Written parliamentary response regarding reforms to the licensing regime.[206]

198 Environmental Permitting (England and Wales) Regulations 2016, reg 80

199 HC Deb, 1 December 2022, vol 723, cols 400WH-417WH

200 Defra, 'Post Implementation Review no. RPC-DEFRA-5005(2): The Environmental Permitting Regulations 2016' (gov.uk, 26 May 2023) <www.legislation.gov.uk/uksi/2016/1154/pdfs/uksiod_20161154_en_003.pdf> accessed 2 July 2025

201 Defra, 'Coverage of Ministerial Direction on waste incineration facilities' (defrablogs, 9 April 2024) <https://deframedia.blog.gov.uk/2024/04/09/coverage-of-ministerial-direction-on-waste-incineration-facilities/> accessed 12 June 2025. It should be noted that the associated Ministerial Direction only related to permits granted by the EA, and did not cover SWIPs. As such, this government scrutiny relates to the wider incineration regime

202 Original consultation document not located, but see Explanatory Memorandum to the Genetically Modified Organisms (Contained Use) Regulations 2014, paras 8.1-8.5. Discussed also throughout: Health and Safety Executive, 'Impact Assessment: Consolidation of the Genetically Modified Organisms (Contained Use) Regulations 2000 and its three amending Regulations from 2002, 2005 and 2010' (HSE, 5 March 2014)

203 HSE, 'Who is responsible for the GMO (CU) Regulations?' (hse.gov.uk, undated) <www.hse.gov.uk/biosafety/gmo/whos-responsible.htm> accessed 15 January 2015

204 EA, 'Consultation Outcome: Water resources charge proposals from April 2022: summary of consultation responses' (gov.uk, updated 1 April 2022) <www.gov.uk/government/consultations/water-resources-charge-proposals-from-april-2022/public-feedback/water-resources-charge-proposals-from-april-2022-summary-of-consultation-responses> accessed 15 January 2025

205 Defra, 'Consultation Document: Changes to the regulatory framework for abstraction and impounding licensing in England: Moving into the Environmental Permitting Regulations regime' (gov.uk, September 2021) <https://consult.defra.gov.uk/water/abstraction-impounding-epr-consultation/supporting_documents/Consultation%20Document%20%20AI%20move%20into%20the%20EPR.pdf> accessed 2 July 2025

206 UIN 20368 – Water Abstraction: Licensing – Question for Department for Environment, Food and Rural Affairs, tabled on 25 March 2024 <https://commonsbusiness.parliament.uk/Document/86502/Pdf?subType=Standard> accessed 2 July 2025

Case Studies	Is there a duty to review the law(s) underpinning the regime?	Government scrutiny of the operation of the regime?
EA – Paper and Textiles Permits	**Yes** – The Regulations must be reviewed by 31/12/19 and five-yearly thereafter.[207]	**2023** – PIR of the EPR 2016 conducted.[208]
EA – T11 Waste Exemptions	**Yes** – The Regulations must be reviewed by 31/12/19 and five-yearly thereafter.[209]	**2023** – PIR of the EPR 2016 conducted.[210] **2024-2025** –EA consulted on regulatory charges for certain waste activities.[211]
EA – Bathing Water	**Yes** – Bathing Water Regulations 2013 must be reviewed by 31/07/18 and five-yearly thereafter.[212]	**2018** – PIR of the Bathing Water Regulations conducted.[213] **2024** – Defra consulted on reform of the Bathing Water Regulations 2013.[214] **2024** – OEP review into the implementation of the Bathing Water Regulations in England.[215]
FHI – Aquaculture Production Business Authorisations	**No** – Elements of its implementation are subject to statutory review as part of broader reviews of Multi-Annual National Control Plans[216]	**2022** – The UK's most recent Multi-Annual National Control Plan included reporting on relevant compliance activities and outcomes.[217]

207 Environmental Permitting (England and Wales) Regulations 2016, reg 80

208 Defra, 'Post Implementation Review no. RPC-DEFRA-5005(2): The Environmental Permitting Regulations 2016' (gov.uk, 26 May 2023) <www.legislation.gov.uk/uksi/2016/1154/pdfs/uksiod_20161154_en_003.pdf> accessed 2 July 2025

209 Environmental Permitting (England and Wales) Regulations 2016, reg 80

210 Ibid

211 EA, 'Environment Agency charge proposals for April 2025: Reducing waste crime and updating time and materials charges' (gov.uk, November 2024) <www.consult.environment-agency.gov.uk/environment-and-business/charge-proposals-for-waste-crime-and-hourly-rates/> accessed 11 June 2025

212 Bathing Water Regulations 2013, reg 20

213 Defra, 'Post-Implementation Review no. 2013/1675: The Bathing Water Regulations 2013' (gov.uk, 31 August 2018) <www.legislation.gov.uk/uksi/2013/1675/pdfs/uksiod_20131675_en_003.pdf> accessed 11 June 2025

214 Defra, 'Consultation on reform of the Bathing Water Regulations 2013' (gov.uk, November 2024) <www.consult.defra.gov.uk/water/bathing-water-reforms-consultation> accessed 11 June 2025

215 OEP, 'A review of the implementation of the Bathing Water Regulations in England' (OEP November 2024)

216 Regulation (EU) 2017/625 of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products [2017] OJ L 95/1, art 111(2)

217 Defra and others, 'Annual Report for 2022 on Official Controls performed in Great Britain under the OCR Multi-Annual National Control Plan' (gov.uk, last updated 18 June 2025) <https://www.gov.uk/government/publications/multi-annual-national-control-plan-mancp-annual-reports> accessed 30 June 2025

Case Studies	Is there a duty to review the law(s) underpinning the regime?	Government scrutiny of the operation of the regime?
MMO – Marine Licences	**No**	**2022** – Welsh Government commissioned a review of the marine licensing process.[218] **2023** – Internal Audit Agency audited the MMO. Its audit covered matters such as the governance for marine licence inspections.[219]
APHA – Invasive Non-Native Species Permits	**Yes** – The Invasive Alien Species Order 2019 must be reviewed by 01/12/24 and five-yearly thereafter.[220] Also, Regulation 1143/2014 contains reporting and review provisions, which includes a requirement to report on inspections.[221]	**2019** – House of Commons Environmental Audit Committee inquiry on the impacts of invasive species and their management.[222] Government response in 2020.[223] **2019** – Defra consulted on management measures for widely spread Invasive Alien Species.[224] Government response in 2020.[225] **2021 –** Defra published a review into the implementation of the Retained EU Invasive Alien Species Regulation.[226] **Ongoing:** Defra produces six-yearly reports on aspects of the regime including inspections. The latest was published in 2025.[227]

In half of the 10 case studies there was a duty to review the law(s) underpinning the regime and in half there was no such duty. In the absence of a reporting requirement to government in those laws without a duty, and without much in the way of regular national

218 Matt Bassford and others, 'End-to-end review of the Marine Licensing Process: Summary report,' Prepared for the Welsh Government (ICF 2022) <www.gov.wales/sites/default/files/publications/2023-01/end-to-end-review-marine-licensing-process-summary-report.pdf> accessed 11 June 2025. While the Welsh regime falls outside the scope of this report, both it and the English regime are governed by the MCAA 2009, meaning that this report is likely to contain analysis relevant to practice in England also

219 MMO Response to OEP information request (27 August 2024)

220 Invasive Alien Species (Enforcement and Permitting) Order 2019, reg 43

221 Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species [2014], OJ No. L317, art 24

222 House of Commons Environmental Audit Committee, 'Invasive species' (HC 2019-2020, 88)

223 HM Government, 'Government response to the Committee's 1st Report of Session 2019' (www.parliament.uk, 20 April 2020) <www.publications.parliament.uk/pa/cm5801/cmselect/cmenvaud/332/33203.htm> accessed 15 January 2025

224 Defra and Welsh Government, 'Consultation Document: Management measures for widely spread Invasive Alien Species (IAS) in England and Wales' (Defra July 2019)

225 Defra, 'Consultation outcome: Summary of responses and government response' (gov.uk, updated 3 June 2020) <www.gov.uk/government/consultations/invasive-alien-species-management-measures-for-widely-spread-species-in-england-and-wales/outcome/summary-of-responses-and-government-response> accessed 15 January 2025

226 Defra and others, 'Review of Implementation of the Retained EU Invasive Alien Species Regulation (EU 1143/2014) In Great Britain 2015-2020' (Secretary of State, Scottish and Welsh Ministers acting jointly, 1 March 2023)

227 Non-Native Species Secretariat, 'Report pursuant to Article 24 of the Invasive Alien Species Regulation (EU 1143/2014) in Great Britain 2019-2025' (nonnativespecies.org, 1 June 2025) <www.nonnativespecies.org/assets/GB-Report-Pursuant-to-Article-241-of-the-Invasive-Alien-Species-Regulation-version-for-accessibility-check.docx> accessed 30 June 2025

reviews, it might be challenging for government to know if some environmental laws are robust enough to protect and improve our environment.

For four of the five regimes in Table 7, where there was a duty, this scrutiny was in the form of a PIR. A PIR is a process to assess the effectiveness of a measure after it has been implemented and in operation for a period of time. This PIR process was the subject of a separate report under that title published by us in 2023.[228] This report found that Defra and other government departments had consistently failed to meet the legal requirements for these reports, and these failures appear to be widespread and longstanding.

Our 2023 report did not address the substance of available PIR reports,[229] instead it was concerned with the need to meet the legal requirement for government to complete them, and publish them, in order that they might then perform their intended purpose. There have been improvements to PIR reporting since this report and four of the 10 case study regimes were subject to PIRs later in 2023.

Table 7 also shows that the case study regimes had been subject to different forms of scrutiny, that was not prompted by PIR duties. This had been conducted by government departments and non-departmental public bodies, such as the Government Internal Audit Agency (**"GIAA"**), and the House of Commons Environmental Audit Committee.

Three findings flow from the above findings on oversight and scrutiny.

First, that scrutiny from Parliament and select committees can play a vital role in terms of ensuring there are effective inspection systems. In one of our case studies on INNS, the report from the House of Commons Environmental Audit Committee led directly to the establishment of an entirely new inspectorate.[230]

Whilst select committees of Parliament have the discretion as to whether or not to carry out any inquiry into the working of recent legislation and to investigate implementation issues, the time and resources they have available to examine many regulatory regimes is unfortunately scarce.

Nineteen years ago the Law Commission made a number of detailed recommendations as to how post-legislative scrutiny could be expanded, targeted and improved.[231] It recommended consideration of the establishment of a joint committee on the topic, a suggestion which the government of the day did not endorse.

Secondly, whilst undoubtedly a significant improvement in enabling legislative scrutiny, PIRs do not currently seem to contain any substantive description on inspections in practice and how laws are monitored.

Even where, as in the examples listed in Table 7 above, there has been scrutiny of the operation of a regime, this scrutiny rarely involves any substantive consideration of inspection measures.

For example, in our case study on T11 waste exemptions it was noted that the 2023 PIR of the EPR 2016 did not explore in any detail how effectively the duty to conduct 'appropriate periodic inspections' was being implemented.[232] This was despite the PIR itself explaining

228 OEP, 'Post-implementation Review of Environmental Law' (OEP, March 2023)

229 *Ibid*

230 House of Commons Environmental Audit Committee, 'Invasive species' (HC 2019-2020, 88)

231 Law Commission, 'Post-Legislative Scrutiny' (Law Com No 302, 2006)

232 Defra, 'Post Implementation Review no. RPC-DEFRA-5005(2): The Environmental Permitting Regulations 2016' (Defra 26 May 2023) <https://www.legislation.gov.uk/uksi/2016/1154/pdfs/uksiod_20161154_en_003.pdf> accessed 11 June 2025

that a large part of the rationale for exemptions was to "allow regulators to monitor the situation, and to carry out inspections where appropriate."[233]

Government itself has said that PIRs are essential to the work of government to remove the burden of existing regulation that proves ineffective, or unnecessary, or is found to lead to negative unintended consequences, and to ensure that the design and use of new regulation is proportionate and future-proof.[234]

The Chair of the Regulatory Policy Committee commented in 2024[235] that:

"Around a third of PIRs produced recommend revising the regulation … Clearly, many more regulations would be revised if their performance was assessed."

PIRs could be regarded as a useful opportunity to ask practical questions about implementation, monitoring and enforcement. What do the laws say about inspections? Who carries out inspections under the laws? What are they finding about the effectiveness of the laws, and of how inspections operate in practice? But generally the legal requirements relating to PIR,[236] and guidance available,[237] do not specifically consider inspection practices. The content of such reports is typically outlined at a high level only.

The introduction of legally required PIR reports has been an important step forward. But if PIRs are not reporting on the implementation of laws, and the robustness of regulatory compliance checks, regulatory performance may not be being adequately assessed.

Thirdly, there has been some recognition that there has been inadequate supervision of matters relevant to inspections. One example would be the Defra finding that only limited oversight is given by LAs to the monitoring data received under the Small Waste Incineration Plant regime.[238] But such findings do not seem to have prompted greater focus on inspections and monitoring data on a broader scale.

Recommendation 6. Defra should examine whether future Post-Implementation Reviews of environmental laws could include an improved evaluation of the inspections carried out under those laws.

233 *Ibid*

234 Department for Business and Trade, 'Smarter Regulation and the Regulatory Landscape: Summary of Findings from the Call for Evidence' (DBT, May 2024) para 77

235 Stephen Gibson, 'Lack of government action could be leaving ineffective or out-of-date regulation on the statute books' (Regulatory Policy Committee, 6 August 2024) <www.rpc.blog.gov.uk/2024/08/06> accessed 15 January 2025

236 Small Business, Enterprise and Employment Act 2015, ss 28-31

237 Department for Business & Trade, 'Guidance Producing post-implementation reviews: principles of best practice' (gov.uk, Updated 10 May 2024) <www.gov.uk/government/publications/business-regulation-producing-post-implementation-reviews/producing-post-implementation-reviews-principles-of-best-practice> accessed 16 May 2025; Department for Business & Trade, 'Small Business, Enterprise and Employment Act 2015 Statutory Guidance under s.31 of the Small Business, Enterprise and Employment Act determining whether it is appropriate to make provision for review (Post-Implementation Review Guidance)' (gov.uk, September 2023) <www.assets.publishing.service.gov.uk/media/65083a4022a783000d43e78a/Updated_statutory_Post-Implementation_Review_guidance.pdf> accessed 16 May 2025

238 E.g. "Defra and WG are aware from the annual statistical returns that local authorities often do not spend a great deal of time looking at monitoring data that is sent to them. The data will frequently be an efficient way of ascertaining how well the installation is performing and assessing the need for inspection visits. There is, of course, no value asking businesses to provide data which is not being examined. Defra and WG have also heard that one reason for LAs not looking at monitoring data is that operators don't send it in accordance with permit conditions. Taking formal enforcement action for such failures may often be considered too harsh, but non-compliance may trigger the addition of risk points – so operators can be warned that they risk higher charges (or won't benefit from lower charges) if they don't supply the information." 'Department for Environment, Food & Rural Affairs, Local Authority Pollution Control: general guidance manual' (gov.uk, 26 April 2017) para 27.7 <www.gov.uk/government/publications/local-authority-pollution-control-general-guidance-manual> accessed 16 May 2025

9.3 Internal scrutiny as to the quality of inspections

Under the Regulators' Code all regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards.[239] They also have to publish, on a regular basis, details of their performance against their service standards.[240]

This suggests that regulators should be reviewing and auditing the work of their inspectors to ensure that they are meeting their service standards. Even if the Code does not quite say so (as the language is very broad) we would expect there to be internal mechanisms to check that what is happening on inspections is good enough.

We found that there was a lack of clarity as to whether any internal auditing checks of inspections are happening, who is doing them, and to what degree. Such information is not made public.

9.4 Policy responsibility

There is no single person, or group, within Defra that has specific policy ownership of environmental inspections as a key tool for regulation to secure the department's policy objectives.[241] Instead inspections are the responsibility of different environmentally focused policy groups (e.g. waste, water). This was despite the fact that approximately one third of regulatory spend is on inspection and enforcement activities.[242]

This dispersed approach, where policy responsibility for different environmental sectors is independently held, is understandable. However, it could mean that inspections, as a key policy tool, have received insufficient consideration and that best practice is not being recognised and shared as much as it might.

In the context of best practice it is not clear, for example, to what extent there are currently any systematic assessments of how regulators might use new technologies in their work, or evidence of sharing of best practice among inspection bodies. The rapid advances of technology, such as artificial intelligence, for example, imply that regulators would also benefit from structured and regular collaboration and coordination to exchange best practice and to keep up to date with new technological developments and their use in environmental regulation.

Systems of scrutiny in this area might be enhanced if there was an identifiable policy leader to coordinate the review and application of inspections across multiple operations and teams in a planned way. This might fall to the Head of Regulatory Management, Reform and Better Regulation within Defra.

Recommendation 7. Defra should introduce a system for periodically reviewing the practice and adequacy of inspection regimes in relation to those environmental regulations for which is it responsible, with the results of such reviews made public.

239 Department for Business Innovation & Skills, 'Regulators' Code' (BIS, 2014), para 6.4
240 *Ibid*, para 6.5
241 Communication from Defra to the OEP, 6 May 2025
242 Philip Hampton, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' (HM Treasury, 2005)

9.5 The focus of regulatory reform

Regulation has been frequently examined in England over the last 40 years. Some of the reviews and policy initiatives that have taken place are shown in Table 8.

Table 8. Selected actions and reviews affecting regulation in the last 40 years

Year	Review
1985	White Paper, *Lifting the Burden*
1986	White Paper, *Building Businesses – Not Barriers*
1994	Deregulation Task Force created
1995	HM Government, *Deregulation – the Way Forward*
1997	Better Regulation Task Force established
1998	Cabinet Office, Regulatory Impact Assessments
1999	Regulatory Impact Unit established
2003	Better Regulation Task Force, *Principles for Good Regulation* Better Regulation Task Force, *Environmental Regulation: Getting the Message Across*
2005	Better Regulation Executive established Hampton Review, *Reducing Administrative Burdens: Effective Inspection and Enforcement* Better Regulation Executive, *Better Regulation Action Plan*
2006	Davidson Review, *Implementation of EU legislation*
2007	HM Government, *Next steps on Regulatory Reform* Rogers Review, *National Enforcement Priorities for local authority regulations services*
2009	Regulatory Policy Committee established
2010	Regulatory Policy Committee, Fit for purpose rating of regulations
2011	HM Government, One-in, one-out: statement of new regulation HM Government, Red Tape Challenge
2013	HM Government, One-in, two-out: statement of new regulation HM Government, *Better Regulation Framework M*anual
2014	Better Regulation Executive the *Ninth Statement of New Regulation Regulators' Code 2014*
2015	Regulatory Policy Committee becomes Independent Verification Body for the UK Government HM Government introduced Business Impact Targets HM Government launched the Cutting Red Tape programme
2016	HM Government, One-in three out Regulatory Policy Committee, *Regulatory Overview: The Regulatory Landscape*
2017	HM Government, *Regulatory Futures Review*
2024	Policy Paper, *Smarter Regulation: delivering a regulatory environment for innovation, investment and growth*
2025	Corry Review, *An independent review of Defra's regulatory landscape* Cunliffe Review, *Independent Water Commission: review of the water sector*

The concept of better or smart regulation can mean different things to different people. One view is that it is about achieving good governance through legislative or non-legislative regulatory means, without creating unnecessary burdens such as excessive reporting or other administrative requirements for citizens, business and administrations.[243]

Another view is that it is 'deregulation reforms' (which the Cambridge dictionary describes as "the action of removing national or local government controls or rules from a business or other activity"), designed to grow the economy. [244] In reality it probably encompasses both views; the government's Better Regulation Framework Guidance applies to government officials developing or implementing policy that will 'regulate' or 'deregulate' business.[245]

The smart regulation drivers behind wanting to reduce the number of laws, to lessen administrative burdens, to simplify regulatory monitoring, or to reform measures that impose unnecessary or disproportionate regulatory costs are valid. Adopting risk-based regulation is also a rational and supportable strategy. But whilst reducing regulatory burdens may be justifiable, government has also accepted this should not compromise regulatory standards or, for example, the environmental standards and outcomes expected by Parliament.[246]

Our first concern is how the potential conflict between the aims of environmental legislation and the implementation of smarter regulation are being considered and dealt with.

Regulators are required to act within the powers and duties set by Parliament in environmental laws or they will be acting 'outside their powers' or 'ultra vires' and can face legal challenge. But on top of this government initiatives to implement smarter regulation are sometimes delivered in the form of legislation, but more often as guidance or other policy. In either case, regulators also have to take note of this.

Regulatory systems increasingly seem to have a pivotal role in resolving trade-offs, such as between economic and environmental objectives. Achieving both of the things asked by environmental laws and smarter regulation laws/policies is of course possible, but it can be hard to determine to what extent regulators are in reality giving consideration to the aims of the environmental law, as well as the issues or environmental problems they were originally designed to address, before implementing the smarter regulation objectives.

Regardless of bare minimum legal compliance, regulators need to implement their functions well and as best calculated to achieve the statutory objective. It might be lawful against a duty to undertake 'appropriate periodic inspections' for a regulator to inspect infrequently – but does that deliver the environmental outcome sought? We consider that core evidence is missing as to whether the application of smart regulation might potentially undermine effective implementation in practice of some established environmental laws.

Our second concern was that whilst there have been extensive reviews in England as to how to make regulation 'better' in terms of easing the burdens on those regulated to encourage growth, government does not appear to have given so much attention to looking

243 Martynas Barysas, 'Better regulation and burden reduction,' (*Business Europe*, 12 February 2025) <www.businesseurope.eu/policy-priorities/better-regulation-and-burden-reduction/> accessed 16 May 2025

244 Written evidence submitted by the RSPB (BR10002) (Evidence submitted to the "Better Regulation?" inquiry) (parliament.uk, 11 July 2014) <https://committees.parliament.uk/writtenevidence/51164/html/> accessed 16 May 2025

245 Department for Business & Trade, Guidance – 'Better Regulation Framework' (gov.uk, updated 4 March 2025) <https://assets.publishing.service.gov.uk/media/67587ba55a2e4d4b993bfa83/better-regulation-framework-guidance-2023.pdf> accessed 16 May 2025

246 For example – Department for Business & Trade, 'Smarter Regulation and the Regulatory Landscape: Summary of Findings from the Call for Evidence' (DBT, May 2024) para 77

at the effectiveness of systems of environmental regulation in terms of achieving desired environmental outcomes.

There does not appear to have been a holistic assessment of where the quality of existing regulation might be improved in the better regulation framework. By this we mean can regulatory quality be enhanced, or can the way that regulation is undertaken be improved to any extent in the context of meeting environmental targets and delivering components of the EIP?

We are not alone in our views on the lack of focus on improving environmental regulation. The Corry Review also concluded that "the alignment between the government's more ambitious targets, particularly those in the EIP, and the way regulation works, is far too weak, as these do not effectively translate into the regulations being used and subsequent on-the-ground regulatory practices."[247]

Connected to the above, government can appear to have a one dimensional view on the net benefits to business from better regulation. Namely, that it will contribute to growth by reducing the direct costs of regulation to businesses,[248] and that this will make businesses flourish.

But some UK businesses are clearly unhappy with how environmental regulation is being undertaken at the current time. The EA undertakes a biennial national survey to inform its understanding of the scale and nature of crimes and compliance in the waste and installations sector.[249] Only about one in five of those businesses surveyed by the EA in 2023 agreed with the statement that the EA was effective in how it operates as an organisation in relation to waste regulation (22%); 37% of respondents disagreed with the statement.[250] There is a perception amongst businesses that the EA's inspection and enforcement approaches in the waste and installations sector are not quick enough or robust enough.[251]

Separate surveying regarding what is important to industry shows that it is of the view that the most important factor for them when weighing up investment in the UK, is the stability and transparency of a market's legal and regulatory environment (ranked first).[252] This is considered more important than factors such as tax, strength of markets, and national stimulus packages.[253]

Government itself also recognises that it is vital that regulatory regimes are stable, predictable and consistent and that regulation will need to change where it is not fit for purpose.[254]

247 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

248 Written evidence submitted by the Better Regulation Executive (BRI0040) (Evidence submitted to the "Better Regulation?" inquiry) (parliament.uk, 11 July 2014) <https://committees.parliament.uk/writtenevidence/52042/pdf/> accessed 19 May 2025

249 EA, 'National waste crime survey 2023: results and findings Chief Scientist's Group report' (EA, 2023)

250 *Ibid*

251 ESA, 'Compliance Monitoring Conducted by the Environment Agency' – Evidence note provided to the OEP on 11 December 2023

252 EY, 'Stability and growth. EY UK Attractiveness Survey' (EY, July 2024)

253 *Ibid*

254 HM Treasury, 'Policy Paper: New approach to ensure regulators and regulation support growth' (gov.uk, updated 31 March 2025) <www.gov.uk/government/publications/a-new-approach-to-ensure-regulators-and-regulation-support-growth/new-approach-to-ensure-regulators-and-regulation-support-growth-html> accessed 19 May 2025

For some environmental regimes in England, a lack of regulatory stability and a perception that there is not a level playing field, risk undermining their effectiveness. For example, landfill tax evasion at permitted waste sites is a critical issue affecting legitimate operators. Business respondents to the 2023 national waste crime survey believed that 27% of their competitors mis-described waste and estimated that organisations who did this evaded 35% of their landfill tax bill in the last 12 months.[255] 54% of businesses reported that their business lost £5001 or more a year because of misdescription in the sector.[256] The proportion of waste industry respondents who experienced over £200,000 annual financial costs from misdescription was higher in 2023 (20%) than 2021 (2%).[257]

This paints a picture of a regulatory sector facing serious challenges, that has an increasing non-compliant underbelly, and where organised crime has some influence.[258] As the OECD has commented, "illegal activities flourish when appropriate governance and regulation is lacking."[259]

In terms of better regulation it is likely that most businesses would support reducing the direct costs of regulation to them. But would they support other better regulation initiatives that might reduce the effectiveness of regulation and the positive impacts it can have on sector compliance and stability? Does business actually support reduced inspections or do they want a level playing field where all operators irrespective of size and risk are held to the same standards and checked frequently? There would appear to be a lack of evidence as to what businesses expect, or want, in terms of regulatory changes.

The current programme of smart regulation reform arguably also fails to give sufficient weight to other benefits of regulation to the economy, society, and the environment. It could be that the money and resources spent in ensuring the effective implementation of environmental legislation are in fact a 'saving' in the sense that, by contributing to prevent pollution and environmental damage with the related adverse consequences in terms of human health and public safety, they ultimately avoid a further cost to society.

For example, in 2010, the House of Commons Environment Audit Committee considered that the cost of health impacts of air pollution was likely to exceed estimates of £8 to 20 billion.[260]

Waste crime, aside from being unsightly and polluting, was reported by the House of Commons Committee of Public Accounts to cost the economy around £1 billion a year, though even that is likely to be an underestimate, and the number of incidents of waste crime and the cost of addressing them has been increasing over recent years.[261]

Water pollution in England also poses significant economic and health costs. Economically, it impacts industries like tourism and fishing, reduces property values near polluted waterways, and increases water treatment costs. Health-wise, contaminated water can lead to disease and illness, impacting public health and requiring costly healthcare interventions.

255 EA, 'National waste crime survey 2023: results and findings Chief Scientist's Group report' (EA, 2023)

256 *Ibid*

257 EA, 'National waste crime survey report 2021 – findings and analysis Chief Scientist's Group report' (EA, 2021); EA, 'National waste crime survey 2023: results and findings Chief Scientist's Group report' (EA, 2023)

258 Lizzie Noel, 'Independent Review into serious and organised crime in the waste sector' (HM Government, 2018)

259 United Nations Environment Programme, 'Emerging Environmental Issues 2013' (UNEP, 2014)

260 House of Commons Environmental Audit Committee, 'Air Quality', (HC 2009-2010 229-1)

261 Committee of Public Accounts, 'Government actions to combat waste crime' (HC 2022–23, 18).

The Corry Review recommended that Defra introduce and publish a refreshed set of outcomes for regulators, linked to the EIP, with a clear accountability framework involving measurable outcomes that are monitored regularly by the department and reported on to Ministers and the public.[262] If this recommendation is taken forward Defra (and other departments/regulators) might wish to also consider how they can better scrutinise systems of inspection, which might impact on how some of these environment outcomes are determined.

More generally, government understanding of the links between inspections, environmental outcomes and environmental risks is underdeveloped. This was the view of the EA, who said in 2005 that this represents a gap in scientific understanding of modern regulation and that further research was required.[263] We agree with the EA's view that it would be beneficial for there to be research which provides objective and, preferably, quantitative evidence of the influence of modern regulation on environmental performance. Such research should enable government to consider whether it has scientifically sound and practical evidence that links inspection activities with environmental performance and environmental risk.

If Defra were able to look across all of the regulatory regimes in the Defra Group, it might well be able to identify areas where more effective practices in inspections and improvements in the skills and capacity of individual regulators would result in real improvements in performance and monitoring outcomes. We have found high levels of interest at many regulators in ways in which to share and learn about best practice, but there are limited opportunities for this to take place. There appears to be scope for Defra to achieve real improvements in inspections practice without major expenditure.

Recommendation 8. Defra should consider research to examine more closely the influence of inspections on environmental performance and environmental risk. Such research should be made available publicly and be used to strengthen the evidential basis for the regulatory approaches adopted across the Defra Group.

262 Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape: foreword and executive summary' (Defra, 2 April 2025)

263 EA, 'Investigating the effectiveness of compliance assurance activities, Science report: SC04OO42/SR' (EA, 2005) 17

Annex 1. Acronyms

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Acronyms	Description
AATF	Approved Authorised Treatment Facility
APB	Aquaculture Production Business
APHA	Animal and Plant Health Agency
BSI	British Standards Institute
CAR	Compliance Assessment Reports
CBD	Carrier, Brokers and Dealers
CEFAS	Centre for Environment, Fisheries and Aquaculture Science
CIEH	Chartered Institute of Environmental Health
CoE	College of Experts (Office for Environmental Protection)
CY	Calendar Year
Defra	Department for Environment, Food, and Rural Affairs
EA	Environment Agency
EIP	Environmental Improvement Plan
EPR	Environmental Permitting Regulations
EU	European Union
FHI	Fish Health Inspectorate
FSA	Food Standards Agency
FY	Financial Year
GIAA	Government Internal Audit Agency
GMO	Genetically Modified Organism
GB	Great Britain
HSE	Health and Safety Executive
IAS	Invasive Alien Species
IED	Industrial Emissions Directive
INNS	Invasive Non-native Species
KPI	Key Performance Indicator
LA	Local Authority
LPCSS	Local Pollution Control Statistical Survey
LAPPC	Local Authority Pollution Prevention Control
MANCP	Multi-Annual National Control Plan
MEO	Marine Enforcement Officer
MMO	Marine Management Organisation
NAO	National Audit Office
NGO	Non-Governmental Organisation
NNSI	Non-Native Species Inspectorate
NNSS	Non-Native Species Secretariat
OECD	Organisation for Economic Co-operation and Development
OEP	Office for Environmental Protection

Acronyms	Description
Ofwat	Water Services Regulatory Authority
PIR	Post-Implementation Review
SOP	Standard Operating Procedure
SWIP	Small Waste Incineration Plant
UK	United Kingdom
WEEE	Waste Electrical and Electronic Equipment
WHO	World Health Organisation

Annex 2. Methodology

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1. Introduction

In line with our commitment to transparency and accessibility we have developed the following methodological statement to accompany this report. This provides information on our research approach, including the data sources we have used, our analytical methods and the stakeholder engagement we have undertaken.

2. Legislation Review

The first stage of this project was to develop an understanding of how English legislation governs environmental compliance inspections. To do this, we conducted a review of existing environmental legislation.

We developed a shortlist of 198 pieces of legislation which contained (or were thought likely to contain) environmental law. For this purpose, 'environmental law' means any legislative provision to the extent that it is mainly concerned with environmental protection and is not concerned with excluded matters.[264]

Our objective was to capture the most significant environmental laws currently in force in England (whether of domestic or European origin, and whether primary or secondary legislation). The shortlist reflected the wide scope of English environmental law, though it was not intended to be exhaustive.

We conducted our review between November 2023 – January 2024, with a supplementary review and finalisation of the draft findings following in September – November 2024.

We reviewed each piece of legislation[265] for provisions covering environmental inspection duties and powers, monitoring duties and powers, general duties (where relevant to inspections), and regulators' statutory purposes (where relevant to inspections).

Relevant provisions were identified through searches including but not limited to the following key words: 'inspect', 'inspection', 'monitor', 'sample', 'site', 'visit'. Each provision was then reviewed in context, and any deemed relevant to environmental inspection were logged in a database.

Finally, we categorised the provisions identified according to whether, how, and to what extent they required or empowered regulators to conduct environmental inspections.

3. Case Studies

The next stage of the project was to establish how the legal frameworks were being implemented in practice. We did this through a small number of selected case studies, exploring both how the legislation governing inspections is being implemented in practice and, more generally, to what extent compliance assurance is taking place.

264 Excluded matters being (a) disclosure or access to information, (b) the armed forced forces or national security, or (c) taxation, spending or the allocation of resources within government. Environment Act 2021, s 46

265 Using Westlaw UK and legislation.gov.uk

A shortlist of regimes which could serve as case studies was developed using the results from our statutory review discussed above, in combination with a list of regulatory regimes as classified by regulators themselves in their public documentation.[266]

From this shortlist, 10 case studies were selected. These were chosen to cover a diversity of sectors, regulators and underpinning statutory approaches to inspections. A full list of these case studies can be found in Table (a) below. All of the regimes selected contribute to the protection of the environment.

The viability of each case study was verified through correspondence and meetings with the relevant regulators – with the exception of Bathing Waters (being a subject upon which we already had an established data set) and Statutory Nuisance and SWIPs (given the number of potential regulators involved).

The above verification process helped to identify and address potential issues such as scope limitations, resource constraints and overlaps with our other work. Where necessary, case studies were adjusted or their scope refined to ensure that they could be completed within necessary timeframes and the capacities of the relevant regulator, before we proceeded to gather evidence substantively.

All information underlying the case studies was sourced either from reviews of publicly-available material,[267] or through engagement with the regulators responsible for implementing the relevant inspection regimes.

Information requests were sent to the relevant regulators (including, in respect of Statutory Nuisance and SWIPs, all English LAs).[268]

Questions in the requests explored various aspects of the inspection regimes. For example, information was requested regarding the number and type of inspection (or other compliance assurance) activities that regulators conducted, and the costs and funding of the inspection programmes. Where regulators were already engaging with us on relevant matters, we sought to avoid requesting information previously supplied.

In all cases, data was requested in respect of the most recently available one-year period.[269] Date ranges for the case study data supplied are shown in Table (a).

266 For example, the EA charging regime splits the EPR 2016 into constituent sub-regimes

267 E.g. Published statute, guidance, datasets, reports, and academic research

268 In some cases these matters would be expected to fall outside of certain LAs' remits. For example, county councils do not fall within the definition of 'local authority' in the EPA 1990 s 79, which governs the statutory nuisance regime. However, in initial research we identified examples of county councils nevertheless appearing to conduct statutory nuisance activities. For this reason, the decision was taken to include all LAs in both the statutory nuisance and SWIPs information requests

269 In order to accommodate regulators' potentially differing approaches to recording data, we accepted data in respect of either a full financial year or a full calendar year. In a small number of cases, regulators provided some data in respect of calendar year, and some in respect of the financial year

Table (a): Date ranges for case study data received

Case Study	Date Range
LAs – Statutory Nuisance	Financial year (**"FY"**) 2023/24 and calendar year (**"CY"**) 2023 depending on the local authority
LAs – 5.1B(a) Small Waste Incineration Plant Permits	FY 2023/24 and CY 2023 depending on the local authority
HSE – GMO (Contained Use) Notifications	FY 2023/24
EA – Water Abstraction Licences	FY 2023/24
EA – Paper and Textiles Permits	CY 2023 for permit numbers, inspection rates, compliance costs. FY 2023/24 for subsistence fees
EA – T11 Waste Exemptions	FY 2023/24
EA – Bathing Water	Data in this case study reflects the time period reviewed in the Stantec Report: Stantec/CREH February 2024, Project No. 330202402, published by the OEP November 2024.
FHI – Aquaculture Production Business Authorisations	CY 2023 for authorisation numbers and inspection rates. Mix of F/Y 2023/24 and 2024/25 for financial figures.
MMO – Marine Licences	FY 2023/24
APHA – Invasive Non-Native Species Permits	FY 2023/24

Following a review of regulators' responses, we issued follow-up information requests where necessary to clarify aspects of the data received.

Draft case studies were prepared from September 2024 to May 2025. They were prepared using both publicly available information and from information received in response to the information requests described above.

Copies of initial drafts were sent to relevant regulators to provide them with an opportunity to fact check and to respond to the case studies. In the case of the two LA case studies, due to the number of authorities involved, fact checking was conducted by one experienced local authority regulator. The draft case studies were accompanied by a small number of specific questions. These questions were designed either to clarify outstanding uncertainties, or to support the fact checking of relevant points discussed in the main body of the report, the draft of which was not sent to regulators. The EA requested the opportunity to review the case studies again after the first fact checking exercise and were sent the revised versions. We also sent a revised version to APHA after the first fact checking exercise as this case study was substantially revised.

Detailed and helpful information was received from regulators in response to these fact check requests, and we are grateful to them for their responses. Table (b) below shows the key periods over which we conducted fact checking with regulators.

Table (b): Correspondence with regulators

Case Study	Fact Check Sent	Fact Check Response
LAs – Statutory Nuisance	30 January 2025	12 February 2025
LAs – 5.1B(a) Small Waste Incineration Plant Permits	30 January 2025	12 February 2025
HSE – GMO (Contained Use) Notifications	23 January 2025	07 February 2025
EA – Water Abstraction Licences	24 January 2025	11 March 2025
	24 April 2025	07 May 2025
EA – Paper and Textiles Permits	24 January 2025	11 March 2025
	24 April 2025	07 May 2025
EA – T11 Exemptions	24 January 2025	11 March 2025
	24 April 2025	07 May 2025
EA – Bathing Water[270]	24 January 2025	11 March 2025
	24 April 2025	07 May 2025
FHI – Aquaculture Production Business Authorisations	21 January 2025	11 February 2025
MMO – Marine Licences	21 January 2025	13 February 2025
APHA – Invasive Non-Native Species Permits	19 January 2025	13 February 2025
	2 June 2025	13 June 2025[271]

We carefully reviewed the fact check responses. Where appropriate, we made amendments to the case studies. However, it should not be assumed that the case studies which were fact checked by relevant regulators are still word for word the same. Edits were sometimes made after this process. In the cases of the two LA case studies and the APHA case study in particular, the versions as presented in the report were substantially revised after fact checking and therefore contain material which was not subject to fact checks.

Preparing case studies involving LAs involved processing large volumes of data. Of the 317 LAs to whom information requests were sent, we received responses in respect of 206 regarding the SWIPs case study (65% response rate) and 202 responses for the Statutory Nuisance case study (64% response rate). The figures in this report present the data of those LAs who responded. The final data used reflect that fact that some responses were from LAs with shared services arrangements (so were counted as one response), and calculations are also based only on sets within these responses from which it was possible to extrapolate measurable data.

Responses from LAs were submitted to us in various formats but were collated in a single Excel spreadsheet for analysis.

270 Due to relevant information already being held by the OEP, no information request was issued in relation to the regulation of bathing water

271 The response of 13 June 2025 was from Defra rather than APHA, and related only to aspects of the case study falling within Defra's remit.

When reviewing and interpreting the data, we assumed that information provided by LAs was accurate and within the scope of the information request. However, where evidence indicated otherwise, subjective judgement was applied to address discrepancies and ensure consistency in the data. For example:

- In some instances, permitted SWIPs may be 'mothballed', meaning that they are temporarily not operating. This has implications for inspections, such as reduced inspection frequencies and subsistence charges. In seven cases, LAs notified us that SWIPs were mothballed. We assumed that all other SWIPs LAs provided data for were active, unless their subsistence charges clearly indicated that the SWIP was mothballed.

- LAs were not asked about 'risk levels' assigned to the SWIPs they regulated. We assumed that, where subsistence charges levied clearly aligned with charges outlined in relevant charging schemes, they provide an accurate indication of a permitted facility's assigned risk level in the relevant year.

- Unless clear that LAs meant otherwise, it was assumed that figures provided were regime-wide totals, rather than relating to specific regulated activities/permits.

Furthermore, in some instances, it was necessary to simplify complex data. We sought to do so by applying consistent rules where possible, and without compromising the overall integrity of the findings. For example:

- LAs were asked to provide inspection information in respect of the last complete calendar or financial year. This flexibility was provided in anticipation that authorities may take differing approaches to recording their data. For the purposes of processing the data, we have not differentiated between data provided for calendar years, and data provided for financial years.

- In some instances, it was unclear whether data covered an entire year. For example, it was apparent that some SWIP permits included in LA responses had been granted or surrendered during the course of the year. It was not practical to adjust the data to accommodate part-years. As such, where it was possible to remove these permits and their associated inspections from the data, we did so.

LAs' approaches to recording compliance activities vary. For example:

- they do not necessarily distinguish between 'physical'/'in person' inspections and 'desktop-based' activities, and where they do, they do not all do so in the same way. In some instances, pre- or post-inspection desktop work is recorded as a separate activity to the physical inspection itself; in others, it is not. In such cases, where it was evident that the desktop activity was directly linked to/supported a physical inspection, only the physical inspection was counted.

- LAs' thresholds for what constitutes a recordable compliance activity varies. In some instances, the installation and use of remote monitoring equipment, or desktop 'admin tasks' such as writing emails were included in figures provided to us. Where possible, we sought to exclude activities which did not align with the report's definition of 'inspections'.

- Some LAs work jointly for the purposes of delivering compliance activities, or otherwise pool their regulatory services under a shared team. In some of these cases, it was

not possible for data to be provided on an authority-by-authority basis. In such cases, we evenly divided the data provided between constituent authorities.

In some instances, despite the issuing of additional guidance, LAs interpreted and responded to questions in ways which were unexpected, or which made the response challenging to incorporate into the wider data set. We sought only to exclude responses where they were self-evidently incorrect, not relevant, or otherwise could not be reliably incorporated into our data. For example:

- In some instances, LAs provided us with target inspection figures. E.g. "... the authority aims to carry out one to two physical inspections per facility annually, with additional inspections as necessary". In the absence of clear evidence that inspections had actually occurred in accordance with the targets, such data was not included in the dataset.

As will be evident from the discussion above, it was sometimes necessary to apply our informed judgement in interpreting data received from LAs. Where possible, we sought to apply standardised approaches, developed through careful consideration across the project team, to maximise consistency and objectivity.

To further assure data quality, we conducted secondary reviews of samples of data. These reviews sought to identify errors and instances where the initial reviewer may not have interpreted data in a consistent manner.

It was not practicable to issue drafts of the relevant case studies to all LAs for fact checking. Therefore, based on our engagement through the initial round of information requests, we identified and engaged further with representatives from Worcestershire Regulatory Services who generously conducted fact checking, and provided us with valuable observations on the practical implementation of the relevant regulatory regimes by LAs.

4. Contributors to our Research

The following organisations and individuals kindly contributed to the production of this report through provision of information, and/or through review and comment. We would like to thank them for their contributions.

Expert Reviewers (OEP College of Experts members are identified with a "CoE")

- Professor Neil Gunningham
- Professor Donald McGillivray
- Dr Emanuela Orlando (OEP CoE)
- Professor Margherita Pieraccini (OEP CoE)
- Judge Merideth Wright

Whilst we have taken careful note of the expert reviewers comments the conclusions are our own.

Public Authorities

- Environment Agency
- Fish Health Inspectorate
- Animal and Plant Health Agency
- Marine Management Organisation
- Health and Safety Executive

Substantive responses to our information requests were received in respect of 206 LAs. In some cases the responses were received not from the LAs directly, but from their shared regulatory services teams. We are grateful to all of the regulators for their efforts in supplying us with their inspection data. We are especially grateful to Simon Wilkes from Worcestershire Regulatory Services for his input on aspects of the LA case studies.

Annex 3. Case studies

Annex 3. Case studies

Local Authorities – Statutory Nuisance

1. Introduction/Legislation

The term 'statutory nuisance' is used to describe various matters listed under section 79(1) of the Environment Protection Act 1990 (**"EPA 1990"**) that are 'prejudicial to health or a nuisance'.[272] Examples of matters which might constitute statutory nuisances are presented in Table A.

Table A: Statutory nuisances under section 79(1) EPA 1990

Statutory Nuisances
'smoke emitted from premises'
'fumes or gases emitted from premises'
'any dust, steam, smell or other effluvia arising on industrial, trade or business premises'
'any accumulation or deposit'
'any insects emanating from relevant industrial, trade or business premises'
'artificial light emitted from premises'
'noise emitted from premises'
'noise that is emitted from or caused by a vehicle, machinery or equipment in a street'

Where a LA is satisfied that a statutory nuisance 'exists or is likely to occur or recur',[273] they must serve an abatement notice on the person responsible.[274] The notice requires them to stop, prohibit or restrict the offending activity, and can include taking certain steps to achieve that. [275]

If the nuisance is related to noise only, LAs can delay issuing an abatement notice by a period of up to seven days to take 'other appropriate steps to persuade the responsible person to address the nuisance'.[276] Should the person not comply with the abatement notice they may be criminally liable.

2. Monitoring or Inspection

2.1 Duty & Powers

Section 79(1) of the EPA 1990 places two duties upon LAs. The first duty requires LAs to 'inspect their area from time to time' for any statutory nuisance.[277] The second requires the LA to 'take such steps as are reasonably practicable to investigate' if a complaint of statutory nuisance is made by a person living within its area.[278]

272 Environmental Protection Act 1990, s 79(1)

273 *Ibid*, s 80(1)

274 *Ibid*. The abatement notice can also be served on the owner of the premises where: (1) the nuisance arises from any defect of the structural character of the premises, or (2) where the person responsible for the nuisance cannot be found/not yet occurred

275 *Ibid*, s 80(1)(a)

276 *Ibid*, s 80(2A)(b)

277 *Ibid,* s 79(1)

278 *Ibid*, s 79(1)

To fulfil these two duties, LAs are granted various powers of entry to check if a statutory nuisance exists or to carry out actions, or work, required to abate the statutory nuisance. [279]

2.2 Guidance

The phrases 'from time to time' and 'to take such steps as are reasonably practicable' are not clearly defined in the EPA 1990.

The former duty has been described in one practitioners' text as "very imprecise".[280] Its aim, another suggests, is primarily "to ensure that LAs carry out their responsibilities conscientiously."[281] We have found little published guidance on what form and frequency of inspection is expected under this duty. However, in one specific case the duty has been interpreted as being best discharged through a LA having a "programme of inspection" under which inspections should be conducted at "reasonable intervals" considering prevailing conditions at relevant sites.[282]

The second duty does not use the term 'inspect', and it can therefore be assumed that reasonable 'steps' to investigate can take a range of forms depending on the circumstances. One piece of commentary, for example, suggests that such actions may involve "several inspections and the use of monitoring equipment".[283]

Defra's statutory nuisance guidance[284] does not provide a clear indication as to what form the investigation may take. Guidance on specific aspects of the statutory nuisance regime, however, such as that prepared by the Chartered Institute of Environmental Health (**"CIEH"**) (with the assistance of Defra) on neighbourhood noise policies and practice, provide further detail on how the duty might be discharged:

> *"The nature and extent of the steps an authority might be required to take to comply with the duty to investigate will primarily be determined by the nature and seriousness of the complaint received, however the resources of the authority set against their local conditions and other responsibilities are not immaterial."*[285]

It goes on to note that, strictly, "there is … no legal requirement for a local authority officer to witness an alleged nuisance at all",[286] which indicates that in-person inspection may not always be necessary, although "the best evidence is that witnessed first-hand."[287]

More generally, the CIEH guidance suggests that LAs should resource their services according to 'needs assessments' based on current and anticipated demand; the outcome

279 *Ibid*, sch 3, s 2(1)

280 Neil Wolf and Susan Stanley, *Wolf & Stanley on Environmental Law (*6th Edition, Routledge 2013) 9.5.1

281 Stephen Battersby and John Pointing, *Statutory Nuisance and Residential Property* (Routledge 2019), 6.04

282 Counsel Opinion, Stuart Jessop, 6 Pump Court, 20 July 2021 to London Borough of Ealing (ealing.gov.uk 2021) <www.ealing.gov.uk/download/downloads/id/16684/counsel_opinion.pdf> accessed 12 June 2025

283 Elena Ares, Alex Adcock, 'Nuisance Complaints' (CBP 8040, House of Commons Library, 6 March 2018) <https://researchbriefings.files.parliament.uk/documents/CBP-8040/CBP-8040.pdf> accessed 12 June 2025

284 See for example, Defra Guidance Note, 'Statutory nuisances: how councils deal with complaints' (gov.uk, 7 April 2015) <www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-complaints> accessed 13 May 2025; and specific nuisance guidance such as Defra Guidance Note, 'Noise nuisances: how councils deal with complaints' (gov.uk, updated 21 December 2017) <www.gov.uk/guidance/noise-nuisances-how-councils-deal-with-complaints#:~:text=If%20they%20agree%20that%20a,or%20occupier%20of%20the%20premises> accessed 13 May 2025

285 Defra and CIEH, 'Neighbourhood Noise Policies and Practice for Local Authorities – A Management Guide' (CIEH, 2006) 4.2.3.2 <www.cieh.org/login/?returnurl=%2Fmedia%2Frogjuqqx%2Fneighbourhood-noise-policies-and-practice-for-local-authorities-a-management-guide-2006.pdf> accessed 11 June 2025

286 *Ibid*, 4.3.3.20

287 *Ibid*, Appendix 3, note 1, 4.3

of such needs assessments, and the consequent level and targeting of resources are likely to influence the frequency and form of inspections under both s 79(1) duties.

2.3 Funding

LAs fund their services through various sources, primarily central government grants.

According to the LA revenue expenditure and financing budget for 2024-2025,[288] the predicted total net expenditure for noise and nuisance services across all LAs in England was just over £218 million.

It is however difficult to say with any accuracy what proportion of this anticipated expenditure was attributable to the handling of statutory nuisance under the EPA 1990. This is because the expenditure relating to LAs' noise and nuisance services covers not just the statutory nuisance regime but also other regimes. It includes expenditure for LA activities relating to air quality, contaminated land, pollution prevention and control, noise pollution, light pollution, anti-fly tipping work and various types of environmental crime, such as littering, dog fouling, enforcement of trade waste contracts and graffiti.[289] Finding clear evidence of exactly how LAs' responsibilities for statutory nuisance are funded is therefore a challenge.

3. Findings[290]

We contacted LAs in England[291] requesting information on their approach to their duties under the statutory nuisance regime. The findings below are based on the 195 responses we received. For some questions, responses were unclear or unquantified. As such, the calculations below are based only on those responses from which it was possible to extrapolate measurable data.

3.1 Nearly a quarter of LAs stated that they do not conduct any form of inspection activity relating to the duty to inspect their area from time to time for statutory nuisance

There is significant inconsistency in how LAs implement their duty to inspect their area from time to time to detect statutory nuisances. Nearly a quarter of LAs (43 of the 184 for which measurable data was received, 23%) stated that they did not carry out any proactive inspections for statutory nuisance, despite the legal duty to do so under s 79(1) EPA 1990.

288 Department for Levelling Up, Housing & Communities, 'Local authority revenue expenditure and financing: 2024-25 budget, England' (gov.uk, updated 3 October 2024) <www.gov.uk/government/statistics/local-authority-revenue-expenditure-and-financing-england-2024-to-2025-budget/local-authority-revenue-expenditure-and-financing-2024-25-budget-england> accessed 13 May 2025

289 Ministry of Housing, Communities & Local Government and Department for Levelling Up, Housing & Communities, 'General fund revenue account outturn: specific guidance notes' (www.gov.uk, updated 25 April 2025) <www.gov.uk/government/publications/general-fund-revenue-account-outturn/general-fund-revenue-account-outturn-specific-guidance-notes> accessed 11 June 2025

290 The findings are based on the responses of 195 LAs who responded to the information request. For additional information, an in-depth methodology can be found at Annex 2

291 Some areas of England operate under a two-tier system of local government: (1) county councils and (2) district, borough, or city councils. Other areas operate under a single-tier system, with the main types being: (1) unitary authorities, (2) London boroughs, and (3) metropolitan boroughs. Therefore, all LAs were contacted to ensure comprehensive coverage

Some example responses from LA respondents are given below:

> *"[proactive activities] would be a highly inefficient use of resources for a legal duty with such a loose scope."*

> *"This element of s79 is not something that most local authorities undertake formally... It is really a throwback to the origins of the functions from the 1930s and the Public Health Acts through to the Control of Pollution Act in 1974. It may have been appropriate then, but in the 21st century most creators of nuisance, especially noise, were not even thought about in that earlier period, outside of science fiction writers' notebooks."*

> *"This is a dated and historic provision which after 37 years in the profession, and having worked at a number of different local authorities, I can state I have never known of an active programme to comply with this provision."*

3.2 Where LAs did conduct inspection activity under the duty to inspect their area from time to time, they did so to varying degrees

Most LAs (141 of 184, 77%) reported that they conducted some form of activity to inspect their area from time to time to detect statutory nuisance.

The following examples of responses from LAs underline the considerable variety of approaches to discharging the statutory duty. In the vast majority of cases, the approach appeared to be relatively informal, and therefore hard to quantify:

> *"[We conduct] Site inspections by driving around the borough on the weekend [out of hours] service for 5 hours on Fridays, Saturdays, and Sundays before a bank holiday ... and additionally, the borough is inspected on a nearly daily basis when officers are out on district – this number would be impossible to quantify."*

> *"We undertake [out of hours] inspections as part of a proactive noise patrol during the summer months – we undertook 86 patrols in 2023 ... [but] it was impossible to answer this question from our day to day work as we do not have to keep this information."*

> "*We have no formal inspection programmes. Officers will monitor while travelling to and from environmental health inspections and when in the vicinity but no ad hoc driving around the district is carried out."*

> *"We do not send officers out specifically to inspect the area. However, officers will monitor the area naturally as they drive through the district on visits. We do not however record such interventions."*

> *"That is not something that is done by ....Council. When officers are making routine or reactive visits they will observe any matters that require further investigation or actions but this will not be specifically recorded in the way described."*

Just 17 LAs provided figures for the number of proactive inspections they conducted, which varied widely – from as few as two to over a thousand annually.

In terms of targeting inspections, 12 LAs noted that they conducted proactive inspections during specific events or periods, like stadium concerts or summer months. Other

approaches to targeting the inspections included, for example, prioritising inspections of historical complaint areas.

Finally, we noted that of the 141 LAs which conducted some form of inspections, only 15 (11%) appeared to conduct them as standalone tasks. In contrast, 94 (67%) confirmed that they integrated them with other activities, such as those associated with food standards and licence reviews. For example:

> *"Officers carrying out Food Hygiene Inspections will also check for the existence of Statutory Nuisance ... [and] officers undertaking housing condition inspections ... will check for existence of Statutory Nuisances..."*
>
> *"... officers carrying out routine permitting inspections, food or H&S inspections, licensing inspections are all aware of statutory nuisance provisions and would act accordingly where such issues were encountered."*
>
> *"Officers ... are trained to operate with professional curiosity. They will pick up all issues possible whilst dealing with any job."*
>
> *"Proactive visits may also including gathering intelligence/evidence in relation to licencing activities, planning conditions, food safety ..., ASB."*
>
> *"... it is routine for Officers to look for statutory nuisance whilst engaged in their other multiple strands of work ..."*

3.3 Not all complaints received a reactive in-person inspection

65 of 195 (33%) LAs provided full data sets showing the number of complaints they received of statutory nuisance, and total number of site visits they conducted. These 65 LAs received a total of 109,382 complaints during the year reviewed and in total conducted 37,103 site visits, meaning that no more than 34% of complaints resulted in a site visit.

3.4 The majority of LAs operate their environmental protection services at a deficit

LAs are required to submit Revenue Outturn forms to central government annually.[292] These forms record data relating to LAs' expenditure and income.[293] In the FY 2023/24, 258 LAs (excluding reporting bodies outside of the scope of our own information requests, such as National Park Authorities and Fire and Rescue Authorities) reported their expenditure and income in respect of 'Environmental protection; noise and nuisance'.

As noted above, this expenditure line covers not only statutory nuisance, but also covers LAs' work on noise pollution, air pollution, light pollution, pollution prevention and control, contaminated land, anti-fly tipping work and some forms of minor environmental crime.

According to this data, the total expenditure of the 258 LAs on these services amounted to £244,254,000, in contrast to the income (from fees and charges, for example) of

292 Local Government Act 1972 s 168

293 Ministry of Housing, Communities & Local Government (2018 to 2021) and Department for Levelling Up, Housing and Communities, 'Local authority revenue expenditure and financing' (gov.uk, updated 29 August 2024) <www.gov.uk/government/collections/local-authority-revenue-expenditure-and-financing> accessed 11 June 2025

£57,044,000. The income did not even cover the total running expenses of the services, which amounted to £94,697,000.

Looking at the income and expenditure submitted from individual LAs, 241 out of the 258 LAs (93%) spent more than they received in regulating these services. Those LAs that overspent, spent on average £785,000 more than they received in income. Various of the quoted LA responses, in this case study, indicate that resource levels are having implications in practice for inspection programmes.

4. Analysis

Some of the most striking findings above relate to the implementation of the "from time to time" inspection duty. The approaches taken were very diverse and rarely quantifiable (the lack of measurable data was particularly striking when contrasted with the amount received in respect of the duty to investigate complaints). Given the particular focus in this report on proactive, in-person inspections, this analysis will focus on these findings.

4.1 Guidance

The variety in approaches seen among LAs when inspecting their area from time to time could be attributed in part to the varied guidance they follow. Of the 195 responses we received, 98 (50%) included information on the guidance LAs used in relation to their statutory nuisance duties.

The guidance cited in the responses varied significantly, with some LAs referring to international guidance from organisations like the WHO, while others used national guidance from bodies such as the National Farmers Union. The most cited guidance was the almost two-decades-old CIEH guidance in respect of neighbourhood noise,[294] referred to by 38 of the 98 LAs (39%). It was apparent from the responses that there is no single, comprehensive guidance document covering LAs' statutory nuisance duties. Nor, in its absence, did there appear to be a consistently recognised "set" of discrete guidance documents.

It may be that guidance documents produced in respect of certain aspects of statutory nuisance, such as the CIEH guidance referred to above, contain widely-applicable advice which can be effectively implemented across the statutory nuisance regime as a whole. We have not assessed the extent to which this is the case. However, without a unified set of guidelines, LAs ultimately have little choice but to refer to various sources of guidance, which could contribute to different interpretations and implementation of the s 79(1) inspection duties.

4.2 Resourcing Constraints

LAs depend heavily on funding from the central government. Their ability to conduct certain activities is largely beyond their control, as they are subject to the financial decisions made by central government. This is in contrast to some other environmental regulatory regimes discussed in this report which are funded directly by the regulated community through fees.

294 Defra and CIEH, 'Neighbourhood Noise Policies and Practice for Local Authorities – A Management Guide' (CIEH, 2006) 4.2.3.2 <www.cieh.org/login/?returnurl=%2Fmedia%2Frogjuqqx%2Fneighbourhood-noise-policies-and-practice-for-local-authorities-a-management-guide-2006.pdf> accessed 11 June 2025

Nearly a quarter of LA respondents are not conducting any "from time to time" inspection activities, with some justifying this due to their budgetary and capacity constraints. One LA stated:

> *"In more recent years reductions in Council budgets and associated budget pressures have reduced staffing levels in Environmental Health. This, and the additional legislative responsibilities that have been placed on Environmental Health in recent years, have necessitated a cessation of [proactively] inspecting the district for statutory nuisances."*

Another authority, asked how many proactive inspections were undertaken for statutory nuisances, replied:

> *"Zero. We provide a reactive service. There is no resource available to undertake proactive investigations."*

A third, while confirming that it did conduct inspections, stated that in only three years, relevant staff resources had halved.

It is likely that in situations where resources are limited, the carrying out of investigations (and any associated inspections) in response to existing complaints under s 79(1) will be prioritised over comparatively speculative inspections in relation to nuisances which may or may not exist. As noted above, certain LAs indicated in their responses that they regarded the "from time to time" inspections as "inefficient" and "extraordinarily low value for money". The view expressed by several LAs that the duty is "dated", "historic", and not appropriate in the context of modern forms of nuisance, is likely to deprioritise it further.

In it perhaps unsurprising in this context that some LAs noted that the inspections were carried out during travel which was already taking place for other reasons, or as is discussed further below, in combination with inspections under other statutory regimes. The relative informality of this approach, however, likely contributes to the inability of most LAs to quantify the inspections they had conducted.

4.3 Crossover with other regulatory regimes

A further factor which appears to influence LAs' activities under the statutory nuisance regime is crossover with other statutory regimes.

It is widely recognised that there is a significant interplay between the statutory nuisance regime and others. Defra has, for example, produced guidance specifically addressing the interaction between the environmental permitting regime and LAs' statutory nuisance duties,[295] but various other statutory regimes (such as those relating to anti-social behaviour)[296] also provide mechanisms for managing issues which may qualify as statutory nuisance. Even where other regimes do not provide tools for addressing statutory nuisance, their inspections may nevertheless provide a vehicle for certain statutory nuisance functions to be delivered.

295 Defra, 'Environmental Permitting (England and Wales) Regulations 2016 – Interaction between Environmental Permitting and local authorities' statutory nuisance duties' (www.gov.uk, September 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/646373/epr-statutory-nuisance-sept-2017.pdf> accessed 12 June 2025

296 Under the Anti-social Behaviour, Crime and Policing Act 2014

Although we have not been able to analyse in detail the implications of such overlaps, as noted above a majority of LAs appeared to integrate their “from time to time” statutory nuisance inspections into those conducted under other regimes.

There are likely to be efficiency benefits associated with combining activities in this way. A downside of the approach, on the other hand, is that it likely makes it harder to track in detail to what extent the “from time to time” duty is in practice being implemented, and whether it is achieving its aims.

Local Authorities – Small Waste Incineration Plants

1. Introduction

Defra defines incineration as "the controlled thermal treatment of waste by burning, either to reduce its volume or toxicity"[297] Between 2010 and 2022 the amount of waste incinerated in England increased significantly, rising from approximately 6.1 million tonnes per year, to 17.1 million tonnes per year.[298] It has recently become the focus of particular attention, with government expressing a desire to "crack down on waste incinerators".[299]

Incinerating waste can have negative environmental impacts (such as through the emission of pollutants into the air).[300] The statutory 'waste hierarchy' treats it as one of the least desirable waste management options, according to what is best for the environment.[301]

As an activity which has the potential to harm the environment or human health, incineration requires careful regulation. In England, this regulation is principally delivered through the environmental permitting regime, which aims to provide for "ongoing supervision by regulators of activities which could harm the environment."[302]

This case study examines a key aspect of this supervision – environmental inspections conducted by LAs – in respect of certain small-scale incineration activities in England.

2. Legislation

The principal piece of legislation underpinning the environmental permitting regime is the Environmental Permitting (England and Wales) Regulations 2016 (the **"EPR 2016"**). The EPR 2016 requires 'regulated facilities' conducting a wide range of activities to operate in accordance with an environmental permit.[303] It governs permit applications, grants, monitoring, and enforcement.

This case study focuses on environmental permits which regulate a sub-set of incineration activities outlined in section 5.1, part B(a) of schedule 1, part 2 of the EPR 2016.[304] These activities are the incineration of certain non-hazardous wastes such as vegetable waste, cork waste, wood waste, and animal carcasses in a "small waste incineration plant" (**"SWIP"**)

297 Defra, 'Incineration of Municipal Solid Waste' (gov.uk, February 2013) – Glossary, 2 <https://assets.publishing.service.gov.uk/media/5a7c909ced915d48c24109e5/pb13889-incineration-municipal-waste.pdf> accessed 13 May 2025

298 Defra 'Official Statistics: UK statistics on waste 2024 dataset' (gov.uk, updated 26 September 2024) <www.gov.uk/government/statistics/uk-waste-data> accessed 5 June 2025

299 Defra and Mary Creagh, 'Press Release – Government to crack down on waste incinerators with stricter standards for new builds' (gov.uk, 30 December 2024) <www.gov.uk/government/news/government-to-crack-down-on-waste-incinerators-with-stricter-standards-for-new-builds> accessed 9 June 2025

300 For example, in 2021, the government stated that in 2019, 6.47 million tonnes of carbon dioxide equivalent greenhouse gases were emitted across the UK from waste incineration (UIN 921, 'Incinerators: Question for Department for Environment, Food and Rural Affairs', (tabled on 12 May 2021) <https://questions-statements.parliament.uk/written-questions/detail/2021-05-12/921#> accessed 5 June 2025

301 Defra, 'Guidance on applying the Waste Hierarchy' (gov.uk, June 2011) 3 <https://assets.publishing.service.gov.uk/media/5a795abde5274a2acd18c223/pb13530-waste-hierarchy-guidance.pdf> accessed 5 June 2025

302 Defra and Welsh Government, 'Environmental permitting: Core guidance for the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)', 2020 (gov.uk, revised March 2020) 8 <www.gov.uk/government/publications/environmental-permitting-guidance-core-guidance--2> accessed 11 June 2025.

303 EPR 2016, reg 12(1)

304 This subset reflects a distinct set of incineration activities identified under Defra guidance – for example see Defra, 'Environmental Permitting Guidance: Waste Incineration' (gov.uk, updated 22 December 2015), para 7.1 <https://www.gov.uk/government/publications/environmental-permitting-guidance-the-waste-incineration-directive/environmental-permitting-guidance-waste-incineration#use-flowcharts-to-check-how-the-chapters-apply> accessed 9 June 2025

with an aggregate capacity of 50kg or more per hour (**"5.1B(a) Activities"**).[305] They are considered 'Part B' activities, meaning that they fall within the 'Local Authority Pollution Prevention and Control' (**"LAPPC"**) regime which focuses on regulating emissions to the air.[306]

In order to be classed as a SWIP, a waste incineration or co-incineration plant's[307] maximum capacity for non-hazardous waste must be 3 tonnes per hour.[308] With this upper limit in mind, the amount of waste processed as a 5.1 B(a) Activity should be between 50kg and 3 tonnes per hour.

Under the EPR 2016, 5.1B(a) Activities are normally regulated by the LA in whose area they are situated, and the LA will therefore typically issue and monitor compliance with relevant environmental permits.[309] While SWIPs may in certain circumstances be regulated by the EA[310] (which generally regulates larger-scale, more complex activities),[311] this case study only relates to 5.1B(a) Activities regulated by LAs themselves.

It is important to note for the purposes of the rest of this case study that a single environmental permit may authorise various other permitted activities, in addition to any 5.1B(a) Activities.[312] As such, subject to other factors, for example the type and volume of any other wastes being incinerated (and any other activities being conducted), further rules and requirements may be imposed by the EPR 2016 on both the operator and the regulator.[313]

In addition, although the EPR 2016 classes a SWIP as a distinct type of regulated facility requiring an environmental permit,[314] it also allows SWIPs to operate as part of other types of regulated facilities.[315]

As such, environmental permits that cover 5.1B(a) Activities may be issued, charged for, and governed, taking into account EPR 2016 requirements relating to various activities and types of regulated facility.

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305 EPR 2016, schedule 1, part 2, section 5.1, part B(a)

306 Local Authorities also regulate 'Part A2' activities, which fall under the Local Authority Integrated Pollution Prevention and Control regime, which seeks to protect the environment as a whole. (Defra & Welsh Government, 'Environmental permitting: General Guidance Manual on Policy and Procedures for A2 and B Installations – Local authority Integrated Pollution Prevention and Control (LA-IPPC) and Local Authority Pollution Prevention and Control (LAPPC)' 1.12-1.14 (gov.uk, revised April 2012) <https://assets.publishing.service.gov.uk/media/5a74ad94e5274a56317a63fe/General-guidance-manual-a2-and-b-installations-part1.pdf> accessed 11 June 2025

307 EPR 2016, reg 2 (definitions of a 'waste incineration plant' and a 'waste co-incineration plant')

308 *Ibid*, reg 2 (definition of 'small waste incineration plant')

309 *Ibid*, reg 32(5)

310 For example, under a 'direction' at EPR 2016, reg 33

311 For example, waste incinerators which would be classified as conducting 'Part A1' activities (Defra & Welsh Government, 'Environmental permitting: General Guidance Manual on Policy and Procedures for A2 and B Installations – Local authority Integrated Pollution Prevention and Control (LA-IPPC) and Local Authority Pollution Prevention and Control (LAPPC)' p.2 (gov.uk, revised April 2012) <https://assets.publishing.service.gov.uk/media/5a74ad94e5274a56317a63fe/General-guidance-manual-a2-and-b-installations-part1.pdf> accessed 11 June 2025

312 For example, a regulator may issue a single permit covering multiple regulated facilities on the same site (EPR 2016, reg 17(2)). In addition, as the definitions in the EPR make clear, a single installation may cover activities of various types (EPR 2016, reg 2)

313 The rules are complex: for instance, Defra guidance provides a series of flow-charts to help waste incinerator operators determine the extent to which the EPR 2016 applies Industrial Emissions Directive requirements. (Defra, 'Environmental Permitting Guidance: Waste Incineration' (gov.uk, updated 22 December 2015), para 7 <www.gov.uk/government/publications/environmental-permitting-guidance-the-waste-incineration-directive/environmental-permitting-guidance-waste-incineration#use-flowcharts-to-check-how-the-chapters-apply> accessed 9 June 2025

314 EPR 2016, reg 8(1), read with reg 12(1)

315 *Ibid*, reg 8(4). Counterintuitively, SWIPs conducting only 5.1B(a) Activities are governed by the EPR 2016 as part of Part B Installations, and are excluded from some SWIP technical guidance (e.g. Defra, 'Draft Environmental permitting technical guidance PG13/1(21) – Reference document for the operation of small waste incineration plants (SWIPs)' (Defra, Undated) 2

3. Monitoring or Inspection

The EPR 2016 places LAs under a statutory duty to 'make appropriate periodic inspections of regulated facilities.'[316] Such facilities include SWIPs conducting 5.1B(a) Activities under environmental permits.

Unlike for certain other regulated activities,[317] the EPR 2016 does not for 5.1B(a) Activities cross-refer to other laws providing additional detail on what 'appropriate periodic inspections' entail. It does however impose certain wider duties on LAs regarding how they exercise their functions (such as inspections) – for example requiring that they do so in a way that ensures that relevant installations take 'appropriate preventative measures … against air pollution.'[318]

3.1 Guidance

Two key guidance documents issued by Defra and the Welsh Government provide an indication as to how LAs are expected to discharge their duty to conduct appropriate periodic inspections in practice. Both documents aim to provide guidance to regulators, the regulated, and the wider public:

(1) The Environmental Permitting: Core Guidance (revised 2020) (the **"Core Guidance"**);[319] and

(2) The Environmental Permitting: General Guidance Manual on Policy and Procedures for A2 and B Installations (revised 2012) (the **"General Guidance Manual"**) [320]

The Core Guidance provides information at a high level. It states that compliance assessment should be risk-based, targeting facilities which, for example, "pose the greatest risk to the environment or human health."[321] Inspections can include "reviewing information from the operator as well as carrying out independent monitoring, site inspections, in-depth audits and other compliance-related work."[322] It also notes that regulators should have regard to the Recommendation of the European Parliament and of the Council (2001/331/EC) of 4 April 2001 on the minimum criteria for environmental inspection in the Member States (the **"EU Recommendation"**).[323]

The General Guidance Manual is more specific and detailed. It notes that inspections are not only carried out to assess compliance, check process changes, and respond to

316 *Ibid*, reg. 34(2). LAs are also under a duty to "periodically review environmental permits" under reg 34(1)

317 For instance, activities carried out at Part A Installations, which as discussed in our case study on "Paper and Textiles", must be inspected in accordance with Article 23 of the Industrial Emissions Directive (EPR 2016, sch 7, para 9)

318 EPR 2016, sch 8, para 5

319 Defra & Welsh Government, 'Environmental permitting: Core guidance For the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)' (gov.uk, 2013, revised March 2020) <https://assets.publishing.service.gov.uk/media/5fb3a39dd3bf7f37d7e7270e/environmental-permitting-core-guidance.pdf> accessed 14 May 2025

320 Defra & Welsh Government, 'Environmental permitting: General Guidance Manual on Policy and Procedures for A2 and B Installations – Local authority Integrated Pollution Prevention and Control (LA-IPPC) and Local Authority Pollution Prevention and Control (LAPPC)' (gov.uk, revised April 2012) <https://assets.publishing.service.gov.uk/media/5a74ad94e5274a56317a63fe/General-guidance-manual-a2-and-b-installations-part1.pdf> accessed 14 May 2025

321 Defra & Welsh Government, 'Environmental permitting: Core guidance For the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)' para 11.1 (gov.uk, 2013, revised March 2020) <https://assets.publishing.service.gov.uk/media/5fb3a39dd3bf7f37d7e7270e/environmental-permitting-core-guidance.pdf> accessed 14 May 2025

322 *Ibid*, para 11.5

323 *Ibid*, para 11.6

complaints, but also that they can provide an opportunity to provide advice on wider environmental issues.[324]

It provides a step-by-step outline of the process by which LAs should determine the risk associated with regulated activities, which in turn influences the level of 'regulatory effort' the LA should put in to regulate the activity, and the amount that it should charge in subsistence fees. It is made clear that:

> *"It is not intended that the application of the risk-based method should lead to a significant reduction in overall regulatory effort, rather effort should be prioritised towards those installations which pose the greatest risk of environmental pollution."*[325]

On the basis of the level of risk identified, the General Guidance Manual proceeds to provide specific 'minimum expected' inspection frequencies, and how many hours it anticipates being required overall (taking into account office-based activities such as writing reports and reviewing operator data) to regulate the activity.[326] A summary of these expectations is provided in Table B below. It is, however, important to note that these minimum frequencies will not apply to all permitted SWIPs, some of which are either classed as 'mothballed' or as working at 'reduced operating levels' (the General Guidance Manual notes that where this status is likely to last for more than 12 months, LAs "should be able to dispense with inspecting the premises").[327]

Table B: Breakdown of Defra's minimum expected site visits and regulatory effort (hours) based on permit risk level.

Risk Level	Minimum Inspections (Annual)	LAPPC Regulatory Effort
Low	1 full inspection with extra inspections as required	9-15 hours per year
Medium	1 full and 1 check inspection with extra inspections as required	18-30 hours per year
High	2 full and 1 check inspection with extra inspections as required	27-45 hours per year

'Full' inspections are described in the General Guidance Manual as requiring inspectors to "examine full compliance with all authorisation conditions and look at any process or other relevant (e.g. management) changes". 'Check' inspections are necessary follow-ups to full inspections. 'Extra' inspections may be conducted in response to "complaints, adverse monitoring results, etc".[328]

While the General Guidance Manual does not explicitly state whether such inspections should be conducted in-person or remotely, it expresses an apparent preference for in-

324 Defra & Welsh Government, 'Environmental permitting: General Guidance Manual on Policy and Procedures for A2 and B Installations – Local authority Integrated Pollution Prevention and Control (LA-IPPC) and Local Authority Pollution Prevention and Control (LAPPC)' para 27.12 (gov.uk, revised April 2012) <https://assets.publishing.service.gov.uk/media/5a74ad94e5274a56317a63fe/General-guidance-manual-a2-and-b-installations-part1.pdf> accessed 14 May 2025

325 *Ibid*, para 27.19

326 *Ibid*, paras 27.18 and 27.20

327 *Ibid*, Annex X

328 *Ibid*, para 27.20

person inspection, noting that for example that it can reveal issues which (remote) reviews of monitoring data alone cannot.[329]

Like the Core Guidance, the General Guidance Manual refers to the EU Recommendation. It expects that LAs will follow it for the regulation of all LA-IPPC and LAPPC installations (which includes SWIPs conducting 5.1B(a) Activities), since "it represents good practice", and it would be "difficult and unsatisfactory to adopt different practices for different sectors regulated under the EP Regulations". It notes that alongside outlining inspection actions, the EU Recommendation expects the making of inspection plans, keeping of particular records, and provision of information about inspections conducted to both operators and the public.[330]

Finally, the annexes to the General Guidance Manual provide further information relevant to inspections. For example, Annex VII provides a checklist designed to help LAs assess how effectively they are delivering their services (which includes inspections), and provides a range of examples of actions taken by specific LAs which are described as good practice.[331]

3.2 Charges

LAs charge fees relating to environmental permits under charging schemes drawn up by the Secretary of State under the EPR 2016.[332] These fees include subsistence charges which are intended to cover ongoing regulatory costs after a permit has been issued, including the costs of inspections.[333]

As noted above, charges are determined by the risk level attributed to the activity. For a permit authorising 5.1B(a) Activities (and certain others), the annual subsistence charges are £772 for each low-risk activity, £1,161 for each medium-risk activity, and £1,747 for each high-risk activity.[334]

Various factors may lead to higher or lower charges being levied. For example, if a facility is mothballed, or is operating at a reduced level, the charge may be reduced.[335] Alternatively, the fee may be higher if, for example, a SWIP is used to carry on activities additional to the 5.1B(a) Activity.[336]

4. Findings

4.1 Permit Numbers

We requested information from LAs in England regarding their approach to making 'appropriate periodic inspections' of permitted SWIPs conducting 5.1B(a) Activities. Of the responses received, 68 confirmed that one or more such SWIPs were permitted, and

329 *Ibid*, para 27.13

330 *Ibid*, paras 27.8 – 27.11

331 *Ibid*, Annex VII

332 EPR 2016, reg 65

333 Defra & Welsh Government, 'Environmental permitting: General Guidance Manual on Policy and Procedures for A2 and B Installations – Local authority Integrated Pollution Prevention and Control (LA-IPPC) and Local Authority Pollution Prevention and Control (LAPPC)' para 23.20 (gov.uk, revised April 2012) <https://assets.publishing.service.gov.uk/media/5a74ad94e5274a56317a63fe/General-guidance-manual-a2-and-b-installations-part1.pdf> accessed 14 May 2025

334 Local Authority Permits for Part B Installations and Mobile Plant and Solvent Emission Activities (Fees and Charges) (England) Scheme 2017, para 14

335 *Ibid*, para 18

336 Local Authority Permits for Part A(2) Installations and Small Waste Incineration Plant (Fees and Charges) (England) Scheme 2017, para 15(2)-(3)

provided associated data. These 68 responses covered 73 LAs, as some LAs share combined regulatory services. Where it was not possible to distinguish data provided between individual authorities, we have treated them as a single, combined authority.

Excluding SWIPs which we were able to clearly identify as being either mothballed, operating at a level below the threshold requiring a permit, or only having been operational for part of the year, the responses covered 110 environmental permits for SWIPs carrying on 5.1B(a) Activities.

There was some degree of variation in the subsistence charges levied for these permits. In some cases the charges indicated that other activities (with different risk profiles) may also be covered by the permit. Four permits, for example, were charged at rates under the Part A(2) Installations and SWIPs charging scheme.[337] In other cases (34), it was not clear what other factors had influenced the amount charged. However, in the absence of any clear reason to indicate that permits did not cover 5.1B(a) Activities, we accepted that they did.

4.2 Remote Inspections and Other Activities

The majority of the compliance activities about which LAs provided numerical data related to for in-person inspections. Information received regarding remote compliance activities was comparably limited and inconsistent. Such activities described by LAs ranged from the analysis of monitoring data received from operators, to individual emails sent. In most cases it was not possible to confirm specific numbers of such activities which had occurred.

It appears likely that remote inspections, as understood for the purposes of this report, play a negligible role in LAs' regulation of 5.1B(a) Activities.

4.3 Inspection Rates

For 104 of the 110 permits discussed above, clear information was provided on the number of in-person inspections conducted. On average, these permits received 1.05 in-person inspections per year, across all inspection types ('full', 'check' and 'extra').

However, these inspections were not evenly distributed. For example, at least 18 of the permits received no in-person inspection.

We also found that rates of inspection varied according to the risk level attributed to the permit. It is important to note that, as Figure A illustrates, of the 75 permits for which risk levels could be clearly linked to inspections recorded, only two were deemed high risk, and the data presented in respect of high-risk permits is based on this very small sample. Overall, however, as outlined in Figure B, frequencies of inspection appear to rise with risk levels.

337 Local Authority Permits for Part A(2) Installations and Small Waste Incineration Plant (Fees and Charges) (England) Scheme 2017

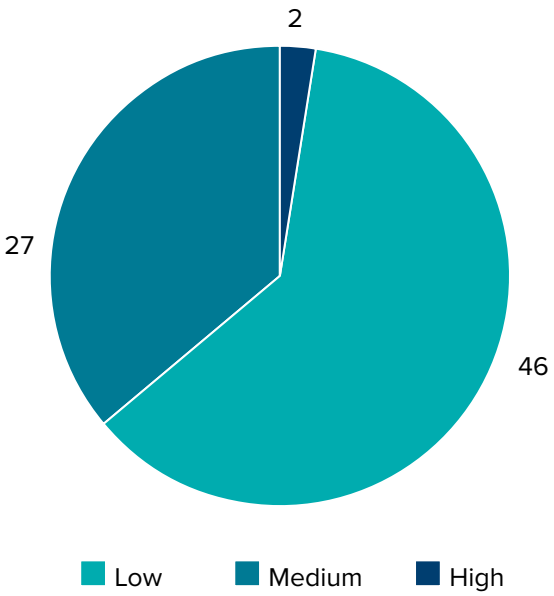

Figure A. Number of permits identified at each risk-level

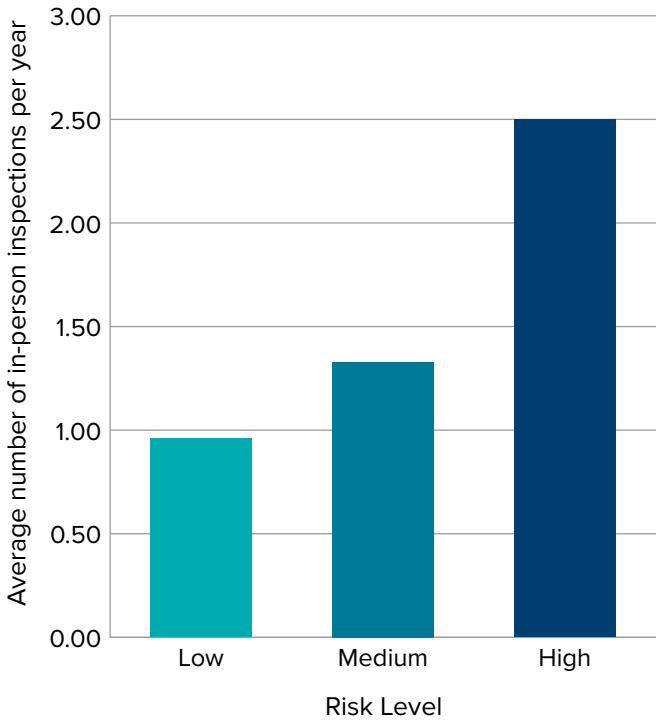

Figure B. In-person inspections per permit

5. Analysis

5.1 Inspection Rates

From the LA responses provided, it was not possible to consistently categorise the inspections into the three types outlined in the General Guidance Manual. However, it appears from Figure B that overall many SWIPs may not be receiving inspections at the rates expected.

While those listed as low-risk are close to receiving, on average, the minimum of one inspection per year recommended by the General Guidance Manual, as discussed above, some SWIPs appear not to have received any inspections at all. Additionally, since it is possible that some 'extra' inspections are captured in Figure B's data, it is possible that the number of 'Full' and 'Check' inspections (being the types subject to the General Guidance Manual's frequency targets) may actually be lower.

The medium and the high-risk sets of permits were further off the minimum inspection rates envisaged in the General Guidance Manual, with the expectation being at least two and three per year respectively. We would however hesitate to draw firm conclusions from the high-risk figure in particular, in light of the very few permits considered.

To the extent that inspection rates are lower than the expected levels, there could be numerous explanations. As will be discussed further below, resourcing inspection activities may be a particular challenge. Reasons LAs gave for below-target inspection rates in

2015/16 included matters such as a lack of available staff, and mothballed or inactive processes continuing to be counted for the purposes of statistics.[338]

As has been discussed above, it is important to note that the in-person inspections detailed above are supported by a range of further compliance activities.

Reviews of self-monitoring data provided by operators, for example, were mentioned by a number of LAs. The General Guidance Manual describes this as playing a potentially important part in compliance assurance, including by supporting the targeting of inspections: "The data will frequently be an efficient way of ascertaining how well the installation is performing and assessing the need for inspection visits".[339] However, it also suggested that at the time of its publication LAs weren't spending enough time reviewing such data, or weren't doing it at all: "There is, of course, no value asking businesses to provide data which is not being examined."[340]

It was not possible from the data we received to quantify remote activities reliably, so we are unable to comment on whether the use of such data has improved since the General Guidance Manual's publication in 2012.

5.2 Outsourced Inspections and Shared Services

10 LAs noted in their responses that they outsourced relevant inspection work to an external contractor. Some others (one group of six having already been mentioned above) used shared regulatory services to deliver relevant functions.

Under the General Guidance Manual, it is suggested that as part of best practice, LAs may "consider options of using consultants or sharing expertise with neighbouring authorities as part of any best value/business planning review and where staffing difficulties arise."[341] It noted that shared working was, at the time of its publication, "uncommon".[342]

The guidance provides specific examples of circumstances where such approaches may be beneficial:

> *"an authority with a small number of Part B processes and/or just one A2 process may find that outsourcing or working with another authority can have benefits. For instance, working with a neighbouring authority which regulates three A2 processes could mean that only one officer in the two authorities has to gain specialist knowledge of the procedures and approaches for IPPC".*[343]

Notably, it also envisages the approaches as a mechanism for filling "gaps in regulatory service", such as those arising from staff shortages. According to a 2022 study by the Local

338 Hartley McMaster Ltd, 'Local pollution control statistics England and Wales 2015-16: Management Summary' (gov.uk, March 2017) <https://www.gov.uk/government/publications/local-pollution-control-statistics--2#:~:text=Updated%2004%20June%202025.,account%20in%20developing%20future%20products> accessed 9 June 2025

339 Defra & Welsh Government, 'Environmental permitting: General Guidance Manual on Policy and Procedures for A2 and B Installations – Local authority Integrated Pollution Prevention and Control (LA-IPPC) and Local Authority Pollution Prevention and Control (LAPPC)' para 27.7 (gov.uk, revised April 2012) <https://assets.publishing.service.gov.uk/media/5a74ad94e5274a56317a63fe/General-guidance-manual-a2-and-b-installations-part1.pdf> accessed 14 May 2025

340 *Ibid*

341 *Ibid*, Annex VII

342 *Ibid*

343 *Ibid*, Annex VII

Government Association, 45% of councils running environmental health services reported difficulties in recruiting environmental health officers.[344]

As we did not expressly ask all LAs about their use of contractors, we cannot confirm how widespread that approach (or the sharing of services) is in practice.

5.3 Guidance

As outlined above, although the legislation provides relatively little detail about the compliance inspections it expects to be carried out on SWIPs conducting 5.1B(a) Activities, comparatively detailed guidance is provided by Defra to regulators, the regulated, and the wider public. In some cases, LAs link directly to this guidance, reiterate aspects of it, or summarise its key principles on their own websites – for example:

> *"…regular compliance inspections are carried out to verifying that permit conditions are consistently met and that the business operates in an environmentally responsible manner. A risk rating score is calculated by one of our officers during their inspection. The annual subsistence charge and inspection frequency are determined by a business's risk rating score. Businesses with a higher score pay more and face more frequent inspections than those with a lower score."*[345]

The principal guidance document, referred to frequently by LAs, is the General Guidance Manual. This document, however, was last revised over thirteen years ago, in April 2012.

This raises questions about how up-to-date the guidance in the General Guidance Manual is. The document predates the EPR 2016, and therefore consistently refers to its predecessor, the repealed Environmental Permitting Regulations 2010.[346] It also predates the transposition of European law relevant to many incineration activities, such as the Industrial Emissions Directive 2010/75/EU,[347] into domestic law and refers to some which has been long-since repealed (such as the Waste Incineration Directive 2000/76/EU,[348] repealed and replaced in January 2014).[349]

Where the guidance cross-refers to relevant resources, these are typically even older. For example, it directs readers to the 2004 revision of the CIEH's Industrial Pollution Control Management Guide for additional advice on good inspection practice.[350] The CIEH itself now lists this document in its digital archive, accessible via a webpage entitled "History of

344 Local Government Association, 'Local Government Workforce Survey' 2022 (local.gov.uk, May 2022) <www.local.gov.uk/sites/default/files/documents/LG%20Workforce%20Survey%202022%20-%20Final%20for%20Publication%20-%20Tables%20Hard%20Coded.pdf> accessed 13 May 2025

345 London Borough of Hounslow, 'Land quality: Environmental Permits' (hounslow.gov.uk, Undated) <www.hounslow.gov.uk/info/20006/environment/1449/land_quality/2> accessed 9 June 2025

346 This is not uncommon for published guidance relating to waste incineration. For example, Defra's online environmental permitting guidance on waste incineration was last updated in December 2015 and states that operators and regulators must follow the EPR 2010. (Defra, 'Environmental permitting guidance: waste incineration' (gov.uk, updated 22 December 2015) <www.gov.uk/government/publications/environmental-permitting-guidance-the-waste-incineration-directive/environmental-permitting-guidance-waste-incineration> accessed 9 June 2025

347 Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast) [2010] OJ No L 334

348 Directive 2000/76/EU of the European Parliament and of the Council of 4 December 2000 on the incineration of waste [2000] OJ L 332

349 House of Commons Library, 'Permit Variation Processes for Waste Incineration Facilities: Debate Pack Number CDP 2022/0223 (parliament.uk, 30 November 2022) 2 <www.researchbriefings.files.parliament.uk/documents/CDP-2022-0223/CDP-2022-0223.pdf> accessed 9 June 2025

350 The General Guidance Manual, para 11.37. The CIEH guidance referred to is as follows: Chartered Institute of Environmental Health, *Industrial Pollution Control by Local Authorities – a Management Guide* (CIEH, 2004)

CIEH".[351] In any event, the link provided to the document in the General Management Guide no longer works.

The examples of good practice from specific LAs, provided in Annex VII to the General Guidance Manual, are also over twenty years old, dating from 2004.[352]

It has not been feasible to examine the implications of this guidance being so old in practice. It may be that it continues to reflect current inspection best practice. However, in so far as practice has developed over the last 13 years (for example, as a result of technological developments), this guidance will not reflect these changes. And as it increasingly refers to out-of-date legislation and external resources, it will inevitably become harder to use (for example, users in some cases can no longer access resources to which it cross-refers), and the risk of it providing incorrect or outdated guidance must also increase.

5.4 Resourcing

As outlined above, the purpose of the subsistence charges levied by LAs in respect of environmental permits is to cover their continuing regulatory costs. It is clearly envisaged under the EPR 2016 that the scheme should, where practicable, cover LAs' expenditure on matters including their duty to conduct 'appropriate periodic inspections'.[353]

The charges are described in the General Guidance Manual as "proportionate to the risk rating",[354] which directly influences the number of inspections to be conducted and the overall number of hours LAs were thought likely to invest regulating each activity.

The principal charging scheme governing 5.1B(a) Activities was introduced in 2017 under regulation 66 of the EPR 2016.[355] As outlined above, it provides for baseline subsistence charges of between £772 and £1,747 per year in respect of these activities (although, as also outlined above, various factors may lead to these charges being higher or lower).

It replaced a charging scheme which had in turn been introduced in 2010. It was noted at the time that already by 2014/15 most LAs had not been able to recover their full costs,[356] at least in part due to inflationary pressures (including wage costs). The consultation prior to the introduction of the current charging scheme proposed a 4.5% increase to "allow efficient LAs to properly fund LA-IPPC/LAPCC regulation while maintaining pressure on LAs to make further efficiencies where possible."[357] It was noted by a number of LAs in their responses to the consultation "that 4.5% would still leave the authority in deficit".[358]

We asked LAs to provide information regarding the costs and funding of their inspections of SWIPs 5.1B(a) Activities. While some indicated that the subsistence fees had covered

351 CIEH, 'History of CIEH' (cieh.org, undated) <www.cieh.org/about-us/history-of-cieh/> accessed 10 June 2025

352 The General Guidance Manual, Annex VII

353 EPR 2016, reg 66(3): "In making or revising a scheme, so far as practicable the appropriate authority must ensure that the fees and charges payable are sufficient to cover expenditure by a regulator— (a) in exercising its functions under these Regulations…"

354 The General Guidance Manual, para 23.7

355 Local Authority Permits for Part B Installations and Mobile Plant and Solvent Emission Activities (Fees and Charges) (England) Scheme 2017. We note that the scheme states that it was introduced under EPR 2016, reg 65. We understand this to be an erroneous reference, perhaps referencing charging provisions under the EPR 2010

356 Defra, 'Consultation on the review of England Local Authority Environmental Regulation of Industrial Plant – 2017 to 2018 Fees and Charges' (gov.uk, March 2017) 5 <https://consult.defra.gov.uk/industrial-pollution-control/local-authority-env-reg-fees-charges/supporting_documents/Consultation%20fees%20and%20charges%20201718%204.5.pdf> accessed 9 June 2025

357 *Ibid*, para 4.17

358 Defra, 'England Local Authority Environmental Permitting Fees and Charges Schemes consultation – summary of responses' (gov.uk, August 2017) <https://assets.publishing.service.gov.uk/media/5a81cacbed915d74e6234235/env-permit-fees-consult-sum-resp.pdf> accessed 9 June 2025

the costs of their inspection activities, others referred also to LA general funds, indicating that subsistence fees alone did not meet their costs. One LA for example stated that "fees charged … for environmental permits, especially low-risk, do not cover council costs to implement them".[359]

It has not been feasible for us to conduct a detailed analysis of LA funding and expenditure in relation to environmental permits covering SWIPs. However, given that some LAs considered that their charges would be insufficient to cover costs in 2017, it would be unsurprising if many LAs were, after eight years of further inflationary pressures, finding that the charges currently prescribed did not cover the cost of their inspection programmes.

5.5 Transparency

While guidance on what inspections should be conducted by LAs under the EPR 2016 is readily available online, there is very little information to indicate what inspections or other compliance activities are taking place in practice, and how effective they are. Statute and guidance indicate that LAs may be expected to proactively publish such information.[360] They may in any event be required to make it available if requested under legislation such as the Environmental Information Regulations 2004.[361]

As responsibility for public registers under the EPR 2016 falls to individual LAs, data regarding relevant permits, to the extent that it is published, is spread across a huge range of separate registers in varying formats.

Historically, information relating to LAs' inspections of SWIPs conducting 5.1B(a) Activities appears to have been captured amongst wider data collected through Defra's annual 'Local Pollution Control Statistical Survey' (the **"LPCSS"**), the results of which were occasionally published online until 2016.

For example, for the year 2015-16, risk-categorised figures were published for Part B Installations on an authority-by-authority basis, alongside rates of 'full' and 'check' inspections conducted.[362] To what extent individual LAs had met "expected" inspection rates was also recorded. High-level inspection data was also published on a year-by-year basis for specific categories of Part B Installation (including 'Incineration (not cremation)', which we understand would capture SWIPs conducting 5.1B(a) Activities).[363]

The findings were summarised in a 'Management Summary',[364] which contained significant findings such as that 46% of LAs had carried out fewer full inspections of Part B Installations than required – with reasons for the shortfall being provided such as "lack of available

359 LA anonymised response to OEP, May 2024

360 The EPR 2016 requires LAs to publish certain information relating to permits on online registers. While this does not explicitly cover records of inspections conducted, it does include matters such as monitoring information obtained by the LA, other information supplied by operators in compliance with permit conditions, and reports published by the LA relating to "an assessment of the environmental consequences of the operation of an installation" (EPR 2016, sch 27). The EU Recommendation, to which both the Core Guidance and the General Guidance Manual refer, is more explicit, requiring that site visit reports (or at least their conclusions), should be "publicly available within two months of the inspection taking place" (EU Recommendation, VI(2)), although, as noted elsewhere in this report, it may be that this can be satisfied by making information available upon request.

361 Environmental Information Regulations 2004, reg 5. It is worth noting that, additionally, the regulations impose a general requirement on public authorities to "progressively make [environmental information] available to the public by electronic means which are readily accessible" (reg 4(1)).

362 Hartley McMaster Ltd, 'Local pollution control statistics England and Wales 2015-16: Annex D – Inspection Rates for Part B's 2015-16' (gov.uk, March 2017) <https://www.gov.uk/government/publications/local-pollution-control-statistics--2#:~:text=Updated%2004%20June%202025.,account%20in%20developing%20future%20products> accessed 9 June 2025

363 *Ibid*, Annex A – Analysis of Part B Installations covered by the LAPPC Regime

364 *Ibid*, Management Summary

staff". Various results, including relating to fee income, were compared against previous years, allowing tracking of progress (or regression) in performance. Information was even provided in relation to performance against the EU Recommendation – with 91% of authorities stating that they made inspection reports available to the public.

Overall, the LPCSS information provided an impressive level of insight into how inspections were undertaken by English and Welsh LAs in respect of industrial activities they regulated. This data appears to have informed important aspects of Defra's decision-making regarding the regime – for example, relating to subsistence fee rates.[365]

Unfortunately, it appears that since the publication of the 2015/16 LPCSS data, no comparable data has been published. A note has been added to the webpage where it was published stating that as of 4 June 2025 "there are no plans to update this statistical release."[366] As of May 2025, the LPCSS remained on the Single Data List of central government data requirements from local government (indicating that data is still collected), although we note that the list is under review, in the context of minimising burdens on local government.[367]

365 Defra, 'Consultation on the review of England Local Authority Environmental Regulation of Industrial Plant – 2017 to 2018 Fees and Charges' (gov.uk, March 2017) <https://consult.defra.gov.uk/industrial-pollution-control/local-authority-env-reg-fees-charges/supporting_documents/Consultation%20fees%20and%20charges%20201718%204.5.pdf> accessed 9 June 2025

366 Defra, 'Research and Analysis: Local pollution control statistics' (gov.uk, updated 6 June 2025) <https://www.gov.uk/government/publications/local-pollution-control-statistics--2#:~:text=Updated%2004%20June%202025.,account%20in%20developing%20future%20products> accessed 9 June 2025

367 Ministry of Housing Communities & Local Government, 'Guidance: The Single Data List' (gov.uk, updated 20 May 2025) <www.gov.uk/government/publications/single-data-list/the-single-data-list> accessed 9 June 2025

Health and Safety Executive – Genetically Modified Organisms

1. Introduction

Genetically modified organisms (**"GMOs"**) are plants, animals, or micro-organisms whose genes have been artificially altered. There can be many benefits to genetic modification (it is, for example, used to make plants more resistant to disease and to create medicines). However, some GMOs can have harmful effects on the environment and human health if they are not properly contained. For example, they:

> *"... may give rise to disease, render prophylaxis or treatment ineffective, promote establishment and/or dissemination in the environment which gives rise to harmful effects on organisms or natural populations present or harmful effects arising from gene transfer to other organisms*."[368]

It is therefore important that an effective regime is in place to ensure that appropriate containment measures are put in place at facilities working with such GMOs. This regime is called the 'contained use' regime.

2. Legislation

The key legislation governing the contained use of GMOs in England is the Genetically Modified Organisms (Contained Use) Regulations 2014 (the **"2014 Regulations"**). These regulations are domestic law made to implement European Council Directive 2009/41/EC on the contained use of genetically modified micro-organisms (the **"Contained Use Directive"**).

The 2014 Regulations manage biosecurity risks associated with any GMO contained use (**"GMO(CU)"**) activity.[369] In respect of genetically modified micro-organisms, the 2014 Regulations are explicitly concerned with preventing harm to both human health and the environment. In respect of larger GMOs (**"LGMOs"**) (such as plants, animals, and insects), they are concerned with preventing harm to human health only, as relevant environmental protections are provided in other legislation, such as the Environmental Protection Act 1990.

For the purposes of this case study, micro-organisms are our principal focus, and our discussion should be assumed to refer to micro-organism-related activities unless specified otherwise.

The 2014 Regulations seek to manage risk by requiring entities conducting GMO(CU) activities to carry out risk assessments, to notify (and in certain cases gain consent from) the Health and Safety Executive (**"HSE"**) prior to commencing the GMO(CU) activity, and to ensure that necessary controls are put in place to manage risk.

The 2014 Regulations outline four risk classifications for GMO(CU) activities, ranging from Class 1 (no/negligible risk) to Class 4 (high risk).[370] These risk classifications broadly correspond to a parallel set of containment levels, which outline the level of containment

368 Health and Safety Executive, 'Guidance notes for risk assessment outlined in the Genetically Modified Organisms (Contained Use) Regulations 2014' (gov.uk) <www.hse.gov.uk/biosafety/gmo/acgm/index.htm> accessed 21 January 2025

369 "Contained use" refers to activities in which control measures are applied in order to limit/prevent contact between GMOs and humans/the environment

370 The Genetically Modified Organisms (Contained Use) Regulations 2014 (2014 Regulations), sch 1

required to contain the risk.[371] For example, for a Class 4 activity, Containment Level 4 is deemed appropriate,[372] meaning that containment measures such as restricted access via an airlock key procedure should be applied in laboratories:[373]

Table C: GMO(CU) risk classifications and containment levels

Risk classification	Containment level necessary to control the risk
Class 1 (contained use of no or negligible risk)	Level 1
Class 2 (contained use of low-risk)	Level 2 (or Level 1 with the addition of certain Level 2 measures)
Class 3 (contained use of moderate risk)	Level 2 (or Level 2 with the addition of certain Level 3 measures)
Class 4 (contained use of high risk)	Level 4 (or Level 3 with the addition of certain Level 4 measures)

Entities wishing to conduct GMO(CU) activities must in the first instance notify HSE of the premises at which they intend to carry out the activities,[374] and then (for Class 2-4 activities) they must also notify HSE of the specific GMO(CU) activities they wish to carry out. For higher risk activities (Classes 3 and 4), HSE must grant consent before the GMO(CU) activity can begin,[375] and this consent may be subject to conditions.[376]

Following notification, entities undertaking GMO(CU) activities must conduct the activities in accordance with the measures prescribed by the 2014 Regulations[377] (and any conditions attached to the consent) and must update HSE if the circumstances or risks relating to the notification change,[378] or if there are any accidents.[379]

HSE states that this framework "ensures that GMOs are managed safely, proportionately and according to the risks involved, protecting the health of people and the environment".[380]

A wide range of further legislative regimes can apply to facilities conducting GMO(CU) activities, governing matters ranging from animal welfare to national security, and from health and safety to the control of hazardous substances. For the purposes of this case study, we are only considering inspections which seek to ensure compliance with the contained use regime itself, as governed by the 2014 Regulations.

371 *Ibid*, sch 8, part 2
372 *Ibid*, sch 1
373 *Ibid*, sch 8, part 2
374 *Ibid*, sch 9
375 *Ibid*, reg 11(1)
376 *Ibid,* reg 11(8)
377 *Ibid*, pt 3
378 *Ibid*, regs 14-15
379 *Ibid*, reg 22
380 Health and Safety Executive, 'Written evidence to the Science and Technology Committee, Engineering Biology Inquiry' (ENB0048) (May 2024) para 10

3. Monitoring or Inspection

The 2014 Regulations make HSE responsible for enforcing the GMO(CU) regime,[381] and provide it with powers to do so.[382] However, they do not impose a duty on it to carry out inspections to ensure ongoing compliance. This is despite the Contained Use Directive (which required transposition in the UK) requiring that member states "ensure that the competent authority organises inspections and other control measures to ensure that users comply with this Directive".[383]

HSE's duties are largely responsive: for example, it must examine notifications and accompanying documentation in order to assess compliance with the 2014 Regulations and various risk management measures when they are received,[384] and it must take certain measures when notified of accidents.[385] It must also maintain a public register,[386] but there is no duty on it to proactively monitor whether data in it remains correct once added.

Statute provides no guidance as to the frequency/form of compliance inspections in respect of notified GMO(CU) activities. The most explicit official requirements on HSE for the inspections it must conduct are found in its memorandum of understanding with Defra:

> *"HSE will implement and operate an inspection and enforcement programme for the 2014 Regulations, that is proportionate to the hazards and risks associated with the contained use of GMOs as defined in the 2014 Regulations … HSE will ensure that personnel are suitably competent to undertake these inspection and enforcement activities".*[387]

HSE publishes little information regarding its ongoing inspection programmes for the GMO(CU) regime, but its public statements in respect of its wider programmes indicate that it generally uses a risk-based inspections framework. It states in its Enforcement Policy Statement that it uses:

> *"a risk-based approach when deciding which duty holders to proactively inspect, taking into account factors such as size, type of activities, industry sector, and the associated death, injury and ill-health rates… we target our inspection and investigation resources primarily on those activities, industries and sectors giving rise to the most serious risks."*[388]

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381 2014 Regulations, reg 30(5)

382 Including to regulate a GMO(CU) "at any time" (for instance imposing conditions, requiring the suspension of a GMO(CU) activity, or revoking/varying a consent) (2014 Regulations, reg 25). HSE's inspectors hold a wide range of enforcement powers including powers to enter premises and to take samples under the Health and Safety at Work Act 1974 (2014 Regulations, reg 30)

383 Directive 2009/41/EC of 6 May 2009 on the contained use of genetically modified micro-organisms (Recast) [2009] *OJ* L 1 25/75 (the Contained Use Directive), art 16. This is implemented by the 2014 Regulations, reg 30 (see the 2014 Regulations' transposition note) which provides for enforcement particularly by reference to ss.16-26 and 22-34 of the Health and Safety at Work Act 1974, but makes no specific provision for compliance inspections. s 18(1) of that act imposes a further duty on HSE to make "adequate arrangements for the enforcement of the relevant statutory provisions", but does not specify that inspections must form part of such arrangements

384 2014 Regulations, reg 23

385 *Ibid*, reg 27

386 *Ibid*, reg 28

387 Defra and others, 'Memorandum of Understanding between the Secretary of State for Environment [and others] in relation to the Regulation of Contained Use of Genetically Modified Organisms' (gov.uk, October 2022) <www.hse.gov.uk/agency-agreements-memoranda-of-understanding-concordats/assets/docs/gmoregs2014-mou-hse-defra-scottish-welsh-govs-120416.pdf> accessed 21 January 2025, section 1, para 9. The memorandum relating to LGMOs is more prescriptive, seemingly referring to specific inspection targets: "The number of proposed LGMO inspections per annum is included in the agreed annual workplan". (Defra and HSE, 'Memorandum of understanding … in relation to the conduct of service provision for the inspections of larger genetically modified organisms in contained use and GM medical and veterinary trials' (gov.uk, 1 April 2024) <www.hse.gov.uk/agency-agreements-memoranda-of-understanding-concordats/assets/docs/mou-hse-defra-gmo.pdf> accessed 21 January 2025, Annex B, para 1.3

388 Health and Safety Executive, 'Enforcement Policy Statement' v1 (HSE, October 2015) paras 6.1 and 6.4 <www.hse.gov.uk/pubns/hse41.pdf> access 11 June 2025

It notes that the Policy Statement conforms with the Legislative and Regulatory Reform Act 2006, the Deregulation Act 2015, and – particularly relevant in terms of the risk-based approach to inspections – the Regulators' Code 2014.[389]

In respect of the GMO(CU) inspection programme specifically, the "Who we are" section of HSE's website notes that a "specialist inspector team":

> *"Undertake inspections of premises undertaking work with micro-organisms classified in Hazard Groups 3 and 4 or research activities with micro-organisms in Hazard Group 2 or any work with genetically modified micro-organisms."*[390]

HSE's 18-year-old 'SACGM Compendium of Guidance' also notes that notwithstanding limited notification requirements for Class 1 activities, at least some "will still be subject to regulatory oversight through inspection programmes."[391]

Guidance as to notifications notes that inspections may occur at the time of notification, with some complex or high-risk notifications triggering inspector visits "to ensure they have the information they require to assess the notification".[392] While fees are charged when notifications are made, the guidance indicates that these are designed to cover the cost of processing/assessing the notification itself, rather than ongoing monitoring.[393]

4. Findings

In response to our information request, HSE provided detail on the frequency and nature of its GMO(CU) inspections.

4.1 The number of notified premises

HSE outlined that inspections occur at the level of individual laboratories where notified GMO(CU) activities are being conducted, rather than the notified premises within which they sit. In light of this, we requested data indicating how many laboratories are operating at each Containment Level, but HSE does not hold data at this granularity, and we have therefore worked with figures for notified premises only.

As of 1 April 2023, 855 premises were notified in England in respect of GMO(CU) activities, rising to 903 by 31 March 2024.[394] Ranking premises according to the highest-risk activity notified to take place there, the risk-classifications of these premises at the latter date was as follows:

Class 1 (no or negligible risk)/non-notifiable LGMO	–	482 premises
Class 2 (low risk)	–	354 premises
Class 3 (moderate risk)	–	60 premises
Class 4 (high risk)	–	7 premises

389 *Ibid*, para 1.6

390 Health and Safety Executive, 'HSE and GMOs' (gov.uk) <www.hse.gov.uk/biosafety/gmo/hseandgmos.htm> accessed 21 January 2025

391 Health and Safety Executive, 'The SACGM Compendium of guidance' – Part 6 (HSE Books, 2007), 22

392 Health and Safety Executive, 'How do I notify?' (hse.gov.uk) <www.hse.gov.uk/biosafety/gmo/notifications/process.htm> accessed 21 January 2025

393 "Notifications … require the scrutiny of technical information and therefore attract a fee" (hse.gov.uk) <www.hse.gov.uk/biosafety/gmo/notifications/fees.htm> accessed 21 January 2025)

394 In respect of new notifications, HSE noted that it undertook 171 desktop assessments and requested further information in 112 cases to determine whether consent should be granted. While we note the important role these assessments play in the broader GMO (CU) compliance regime, our focus in this case study is on ongoing compliance activities in relation to notified sites

As such, 7% of premises (67 of 903) accommodate moderate- or high-risk GMO(CU) activities. The remaining 93% accommodate what HSE has categorised as no-, negligible-, or low-risk activities.

4.2 Inspections

HSE's inspections target higher risk GMO(CU) activities requiring containment measures at Containment Levels 3 and 4. In contrast, laboratories operating at Containment Levels 1 and 2 are not targeted for inspection, although if they are on the same premises as laboratories operating at higher containment levels, inspections of these higher risk laboratories may be extended to include them.

Containment Level 4 (High-Risk) Inspections:

To determine what regulatory activities take place in respect of premises housing laboratories operating at up to Containment Level 4, HSE told us that it "uses a consistent risk-based methodology … We consider a variety of factors including: the biological agents worked with …, the type of work undertaken, … [and] the dutyholder and their performance history". Such facilities are visited "multiple times a year".

In the FY 2023/4, HSE conducted 17 inspections at the seven premises housing laboratories operating at up to Containment Level 4. We have not seen data indicating how these inspections were distributed between these premises, but it is possible that all premises received at least two physical inspections.

Containment Level 3 (Moderate-Risk) Inspections:

Due to the larger numbers involved, HSE uses a "risk ranking and prioritisation system" to allocate premises housing laboratories operating at up to Containment Level 3 with a risk-ranking score ranging from A (highest risk) to D (lowest risk). HSE then "aims" to carry out inspections at a set frequency:

Table D: Containment level 3 planned inspection frequencies

Risk Ranking	Inspection Frequency
A	Annual
B	Every 3 years
C	Every 5 years
D	Information-gathering telephone call every 5 years

We have not received figures indicating how many Containment Level 3 premises have been assigned each risk ranking.

In the FY 2023/4, HSE conducted 12 proactive inspections at premises housing laboratories operating at up to Containment Level 3. None of these inspections was a repeat inspection, meaning that 12 premises (representing 20% of Containment Level 3 premises) were inspected.

Other Inspections and costs:

HSE reported no inspections at premises housing laboratories operating at Containment Levels 1 or 2.

Outside of its regular inspection programme, HSE visited one site in response to a report of an incident involving a GMO and followed up on nine non-GMO-related incidents at laboratories operating at Containment Levels 3 or 4 through site visits or remote enquiries.

It further noted that some inspections conducted pursuant to other HSE regulatory work may have considered GMO(CU) matters, but records will not have been taken of this activity, since it would not have formed the primary purpose of the visit.

In total, HSE reported that in the FY 2023/24, it recorded 261 days working on "inspections or other regulatory work not including notifications which were primarily aimed at regulating activities associated with GMOs." The cost of this activity was reported as £158,000.

Finally, HSE conducted 13 inspections in respect of activities involving LGMOs. It recorded 62 days of work in relation to these inspections, at a cost of £29,000.

5. Analysis

5.1 Frequency of inspections

In total (excluding repeat inspections), HSE's proactive inspections in FY 2023/4 covered 19 of 855-903 notified premises, or a little over 2%. While acknowledging difficulties in conducting a comparison across years, we note that in the most recent EU Commission reports on the implementation of the Contained Use Directive, across the EU somewhat higher rates of GMO(CU) compliance inspection historically appear to have been the norm:

Table E: EU-wide inspection rates

Report Period	Inspection Rates
2019-2021	"... the number of inspections varied between Member States from 6% to 100% of contained use premises."[395]
2014-2018	"The number of inspections carried out during the reporting period varies among Member States, from 10 to 100% of the premises controlled."[396]

On the basis of the data we have received, we cannot confirm whether the rates of inspection achieved meets HSE's own targets for inspections at each containment level.[397]

5.2 Use of risk-based inspections

A large part of the reason for the relatively low overall proportion of premises inspected is the fact that 93% of premises fall outside of HSE's proactive inspection regime entirely, by virtue of their housing laboratories operating only at Containment Levels 1 or 2. As outlined above, HSE does not target such premises for inspection, on the basis of their low risk profile.

On its face, this appears to represent a low rate of compliance scrutiny, especially when one considers that it is the regulated entities themselves who take the lead on assessing and classifying the risk.[398]

However, comparison with 2014-2018 reporting on GMO(CU) compliance inspections across the EU indicates that while it represents the lower end of compliance scrutiny, this approach may not be completely out of line with practice in the EU:

> *"In general, class 1 and class 2 premises are inspected at a lower frequency than class 3-4 premises, and in some countries those are controlled remotely, or they are not controlled as part of a proactive inspection programme."*[399]

Responding to the findings above, HSE stated that those who create risks are best placed to control them, and the duty to comply remains with them. It remains confident that the risk-based approach it takes to the inspection and any necessary enforcement of dutyholders

395 European Commission, *Report from the Commission on the experience of Member States with Directive 2009/41/EC ... for the period 2019-2021 (COM(2023)* 75 final) (EC, 15 February 2023) 5

396 European Commission, *Report from the Commission on the experience of Member States with Directive 2009/41/EC ... for the period 2014-2018 (COM(2021) 266 final)* (EC, 31 May 2021) 8

397 If the 60 Containment Level 3 premises are evenly distributed between the risk rankings, with 15 ranked A, B, C, and D respectively, HSE's 12 inspections in FY 2023/4 will not cover even the 15 "A" ranked premises, which HSE aims to inspect annually. In contrast, if the 60 premises are predominantly assigned lower risk rankings, HSE's 12 inspections would be more than sufficient to achieve its target inspection frequencies:

Risk Ranking	No. of Premises	HSE target frequencies	No. of inspections needed P/A
A	4	Annual inspection	4
B	6	Inspection every 3 years	2
C	20	Inspection every 5 years	4
C	30	No inspections required	0
Total =			**10**

398 Health and Safety Executive, 'Written evidence to the Science and Technology Committee, Engineering Biology Inquiry' *(ENB0048)* (May 2024) para 18

399 European Commission, 'Report from the Commission on the experience of Member States with Directive 2009/41/EC ... for the period 2014-2018 (COM(2021) 266 final)' (EC, 31 May 2021) 8.

under the 2014 Regulations is proportionate to the risks involved and that its resources are directed appropriately.

It is notable also, in this context, that the legislation underpinning the regime, the 2014 Regulations, was itself described as "deregulatory" and "more risk based and proportionate" than the previous regime.[400] The 2014 Regulations were thereby expected to have a "positive impact" on small businesses, many of which conduct the "lowest risk" activities.[401]

5.3 Funding

A further factor potentially influencing the rate of inspection is funding.

HSE charges fees at varying levels for GMO(CU) notifications, but these fees are only intended to cover the cost of its work associated with processing notifications. HSE notes that "we do not currently recover costs for the inspection of premises working with GMOs or investigation of GMO incidents".

The costs associated with inspections can be considerable. HSE states that in the FY 2023/24, it spent 261 days working on "inspections or other regulatory work not including notifications, which were primarily aimed at regulating activities associated with the GMOs" at a cost of £158,000. How much of this time/cost may be attributable to the 29 proactive compliance inspections carried out is not recorded, but it is likely to be substantial on the basis that HSE states that at least four days is required for any inspection:[402]

Table F: Inspection stages

Stage	Time	Activities
Pre-inspection	"Around one day"	Review of procedures, records etc to plan on-site activities
Inspection	"One or more days"	Consideration of the effectiveness of physical control measures and the safety management system; looking at a sample of risk control systems; conducting document review, interviews with relevant personnel, and a physical inspection of the areas where biological agents are handled
Post-inspection	"At least two days"	Analysing findings, comparing to expected standards and report writing post site visit and, where required, taking enforcement action

We note that given the substantial number of open notified premises, even modest subsistence fees (scaled as appropriate to reflect risk classifications) could contribute substantially to the cost of HSE's inspections programme, potentially enabling it to be expanded if necessary.[403]

400 Explanatory Memorandum to the Genetically Modified Organisms (Contained Use) Regulations 2014, para 4.2

401 *Ibid*, para 11.2

402 The information was not provided in table format. We have put it into this format for ease of reference

403 Even basing such a calculation on premises notifications only, the £158,000 cost outlined above could be accommodated by an average annual subsistence charge of ~£178 across the 903 open notified premises in England

5.4 Use of technology

It appears that all of HSE's proactive compliance inspections currently involve a site visit, although much of the preparation and follow-up takes place remotely.[404]

HSE has not indicated specific plans to alter its current approach to GMO(CU) compliance inspections, although we note that it has outlined ambitions to "develop our digital capability and ways of working", and to "introduce new case management technology".[405] We also note the following findings in respect of GMO(CU) inspections in the EU during the COVID-19 period (2019-2021), which indicated that remote inspections may in some cases be a viable and appropriate option:

> "*Member States established digital tools and reported a wide use of instruments for the remote surveillance of activities and facilities, for example video conferences with virtual tours, questionnaires, presentation of photographs, reports, recordings and maintenance protocols. … Some Member States acknowledged that remote inspection is an effective way to inspect laboratories performing low risk work. It saves the inspectors time as well, which gives them more time for assessing uses with higher risk to the environment and health*."[406]

5.5 Transparency

HSE's website provides only a small amount of information as to the nature of the GMO(CU) inspection regime. In addition, some resources it provides, such as the SACGM Compendium of Guidance, are in parts out of date[407] and contain seemingly incorrect information about inspections (e.g. stating that Class 1 GMO(CU) activities will "be subject to regulatory oversight through inspection programmes").[408]

In terms of inspections actually completed, prior to Brexit, the UK reported periodically on its GMO(CU) regime to the European Commission in accordance with Article 17 of the Contained Use Directive. This provided a high level of transparency as to the UK-wide implementation of the Contained Use Directive through the 2014 Regulations (and relevant Northern Irish legislation),[409] including on compliance inspections conducted to enforce the GMO(CU) regime. Comparison with other EU member states also provided benchmarks against which the UK's implementation could be assessed.

Since no comparable reporting requirement was introduced in post-Brexit legislative amendments, information regarding GMO(CU) compliance inspections HSE carries out has become less accessible. HSE annual reports provide high-level figures as to the number of "proactive inspections" it carries out as an organisation overall, but its breakdown in respect of individual regimes is selective and does not include GMO(CU) specific inspection figures.[410]

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404 Other elements of HSE's compliance activities also incorporate remote work. Premises housing laboratories operating at up to Containment Level 3, which in HSE's risk classification system are assigned the lowest risk class of D are "subject to information gathering telephone calls". Certain incidents reported at Containment Level 3 and 4 sites were followed up "remotely". Review of new notifications takes place by desktop assessment

405 Health and Safety Executive, 'Annual Report and Accounts 2022/23' (HM Stationery Office 2023, HC 1599) 39

406 European Commission, 'Report from the Commission on the experience of Member States with Directive 2009/41/EC … for the period 2019-2021 (COM(2023) 75 final)' (EC, 15 February 2023) 5

407 For instance, the SACGM Compendium of Guidance consistently refers to the 2014 Regulations' long-revoked predecessor, the Genetically Modified Organisms (Contained Use) Regulations 2000. Parts 1-6 of the guidance available at <www.hse.gov.uk/biosafety/gmo/acgm/acgmcomp/> accessed 21 January 2025

408 Health and Safety Executive, 'The SACGM Compendium of guidance' – Part 6 (HSE Books, 2007) 22

409 The 2014 Regulations do not apply to Northern Ireland

410 E.g. in 2022/2023, HSE reported that in total it delivered "over 16,800 proactive inspections" Health and Safety Executive, *Annual Report and Accounts 2022/23* (HM Stationery Office 2023, HC 1599) 7

Finally, we note that even the number of notified premises/activities regulated by HSE (and therefore potentially requiring inspection) is not readily available information, despite the existence of a statutory register of notifications.[411] This register is required to contain a range of information, but its form is not prescribed by law and the means by which it is made available to the public is left to HSE's discretion.[412] The register is consequently published in the form of a (as of 22 January 2025) 17,029 page PDF document containing details of both open and closed premises and activities. Substantial time and knowledge of the GMO(CU) regime would be required to establish from this document the number of premises/activities regulated at any given time, within a particular jurisdiction.

5.6 Crossover of regimes

A difficulty highlighted by HSE in providing information in respect of its GMO(CU) inspection activities is the fact that GMO(CU) activities can be subject to multiple legislative regimes simultaneously. Such regimes highlighted by HSE were the Control of Substances Hazardous to Health Regulations 2002/2677 and the Specified Animal Pathogens Order 2008/944. Due to this "overlapping picture", HSE told us its work "under the GMO(CU) regs is not always discretely separated out for recording and monitoring purposes as more than one regime may apply."

5.7 Scrutiny

No PIR has been conducted in respect of the 2014 Regulations. In contrast to more recent legislation governing aspects of the control and regulation of GMOs,[413] the 2014 Regulations contain no requirement to conduct one. As such, we are aware of no formal assessment having taken place in England of whether the statutory framework governing compliance assurance for GMO(CU) activities is working as well as it ought to.

This is not, however, to say that there is no oversight of the GMO(CU) regime.

HSE states that its activities are supported by an external scientific advisory committee, the Scientific Advisory Committee for Genetic Modification (Contained Use), which provides advice on matters including hazard identification and risk assessment.[414]

In addition, according to HSE's website, there is oversight of the effectiveness of HSE's GMO(CU) inspection regime by the UK competent authority, comprising representatives from Defra, HSE, HSENI, and the Scottish Government. This body "will consider reports and performance of the enforcing authority on their regulatory activities in relation to the GMO(CU) regulations including operation of the … inspection regime…"[415] Findings from this body do not, however, appear to be publicly reported as a matter of course.

Finally, we note that HSE recently responded to the House of Lords Science and Technology Committee's inquiry into engineering biology and stated that "… the current regulatory framework for genetic modification in contained use settings provided by GMO(CU) is appropriate and adequate, and that it strikes the right balance between public

411 2014 Regulations, reg 28(2)

412 *Ibid*, reg 28(8)

413 E.g. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019, SI 2019/1517, reg 56

414 Health and Safety Executive, 'Written evidence to the Science and Technology Committee, Engineering Biology Inquiry (ENB0048)' (May 2024) para 7

415 Health and Safety Executive, 'Who is responsible for the GMO (CU) Regulations?' (gov.uk, undated) <www.hse.gov.uk/biosafety/gmo/whos-responsible.htm> accessed 21 January 2025.

assurance and ensuring that the work can be undertaken safely by the workers and without risks to the environment."[416] While not an example of targeted scrutiny of the regime instigated by government, this is an example of a manner in which Parliament is provided with insight into the operation of the regime.

416 Health and Safety Executive, 'Written evidence to the Science and Technology Committee, Engineering Biology Inquiry (ENB0048)' (May 2024) para 23

Environment Agency – Water Abstraction Licences

1. Introduction

Water is abstracted either from freshwater (surface water and groundwater) or coastal waters. In England, the main uses of water abstracted include public water supply, use in agriculture, and electricity generation, such as power station cooling. There are major regional variations in the availability of water and in geology, so that, for example, in the South East of England, nearly 100% of drinking water supplies are from groundwater.[417]

The importance of effective abstraction licensing was underlined by a series of droughts, such as the national water shortages in 1976, and dramatic instances of over-abstraction such as the River Darent in Kent running dry in the late 1980s. These examples underlined rising concern and levels of knowledge about the impacts of climate change, for example on river flows and groundwater recharge rates. There are in addition regional pressures from increasing population and increasing development, for example with projected population increases in the South East of England, and in areas of proposed development such as the East of England.

Water abstraction licensing in England was first introduced in the Water Resources Act 1963, and became regulated by the EA through duties set out in the Water Resources Act 1991, which were passed to the EA when it was established by the Environment Act 1995.

Recent revisions of abstraction licensing have tended to introduce more controls for water abstraction licences, and to strengthen the ability of regulators to attach environmental conditions, for example restricting abstractions at times of particular water shortage. Water abstraction licensing is therefore one key measure in protecting the environment while ensuring public water supply and the availability of water for other uses such as agriculture and electricity generation.

2. Legislation

Water abstraction and impounding is regulated in England by the EA under the Water Resources Act 1991.[418] An abstraction licence is required for various types of water abstraction,[419] and a licence to abstract water from one source of supply over a period of twenty-eight days or more, for any purposes, is known as a 'full licence'.[420]

The Water Resources (Abstraction and Impoundment) Regulations 2006[421] also make further detailed procedural provision about the regulation of this area.

417 EA, 'Drinking Water Protected Areas Pressure (EA, 2019)
418 Water Resources Act 1991, chapter II, ss 24-72
419 *Ibid*, part II, (Water Resources Management) chapter II (Abstraction and Impounding)
420 *Ibid*, s 24A(1)(a)
421 Water Resources (Abstraction and Impounding) Regulations 2006

3. Monitoring or Inspection

Section 6(2) of the Environment Act 1995 states that "It shall be the duty of the Agency to take all such action as it may from time to time consider... to be necessary or expedient for the purpose-

(a) of conserving, redistributing or otherwise augmenting water resources in England..., and

(b) of securing the proper use of water resources in England ... including the efficient use of those resources."

Section 216 of the Water Resources Act 1991, a provision headed 'Enforcement: powers and duties' makes it clear that the EA, as an 'appropriate agency' has a duty to enforce provisions under Part II Chapter II of that Act, which includes abstraction and impoundment.

Defra has proposed that the regulation of abstraction and impounding of water should be moved into the EPR 2016 regime, and consulted on policy proposals to that end in 2021.[422] However, the current government has not yet confirmed its intentions with respect to this policy proposal.

EA guidance states that: "The EA carry out site inspections to check compliance with licence conditions. They also give advice and guidance on how to comply. They take a risk-based approach on how often they inspect a site. They inspect more often where there is a high potential for damage to the environment or where there is a poor compliance history, for example –

(1) where hands-off flow conditions or section 57 irrigation bans have been imposed;

(2) in response to incidents, such as reports of low flows;

(3) if the records of actual abstraction you submit to us ('returns') suggest over-abstraction or other non-compliance."[423]

Defra have reported that: "The EA undertakes compliance inspections throughout the year to check that abstraction and impoundment licence holders are adhering to the conditions included in their licences. Undertaking compliance work ensures that the water environment is protected and lawful abstractors are not being undermined by water theft. Completing these inspections takes on added importance during periods of dry weather, as the warm and dry weather puts pressure on the water environment, and the number of visits during such times will increase."[424]

The EA aims to levy charges upon abstraction licence holders to reflect the cost of running the regime, based on volumes taken, locations and volumes returned, under a charging scheme.[425]

422 Defra, 'Changes to the regulatory framework for abstraction and impounding licensing in England: Moving into the Environmental Permitting Regulations regime, Consultation Document' (gov.uk, 2021) <https://consult.defra.gov.uk/water/abstraction-impounding-epr-consultation/supporting_documents/Consultation%20Document%20%20AI%20move%20into%20the%20EPR.pdf> accessed 2 July 2025

423 Environment Agency, 'Comply with your water abstraction or impounding licence' (gov.uk, 27 March 2018) <www.gov.uk/guidance/comply-with-your-water-abstraction-or-impounding-licence> accessed 4 April 2025

424 Defra, 'Abstraction reform report Progress made in reforming the arrangements for managing water abstraction in England' (gov.uk, May 2019) <https://assets.publishing.service.gov.uk/media/5f50bc18d3bf7f60ff316dcb/abstraction-reform-report.pdf> accessed 4 April 2025

425 The Environment Agency (Environmental Permitting and Abstraction Licensing) (England) Charging Scheme 2022

There is a legal requirement on the EA to keep a register of impoundment and abstraction licences.[426] There is no requirement for that register to contain any information about inspections.

The EA advised us that this register is held electronically on internal systems, but not as an online public register that is accessible. Members of the public can make individual requests for information contained on the register. A limited amount of information is excluded from the register for reasons of national security or commercial confidentiality. The EA has said that it is committed to improving sharing of public register information.

4. Findings

4.1 Numbers of Abstraction Licences in force in the 2023/24 financial year and in-person inspections carried out by EA inspectors in respect of Abstraction Licences in that year.

We had initially aimed to limit the scope of this inquiry to full abstraction licences which we understood the EA categorised internally as for 'agriculture (excluding spray irrigation).'

However, the EA's responses to information requests indicated that their data was not kept in a way which would have allowed a clear response to this. They advised us that they are not able easily to provide information about the volume of water represented by the licences inspected, although they hope to be able to do so once they roll out their National Compliance Assessment Database for water resources. We note however that the EA has provided, for other OEP purposes, a breakdown of figures on the criticality of abstraction licences with a primary purpose of agriculture split by EA charge region, with data extracted from the National Abstraction Licensing Database.

Accordingly, we base our conclusions in this report on the total number of full abstraction licences in force for the relevant year. The figures provided by the EA for the number of water resources licences in force in 2023/24 are provided in Table G below.

Table G: Number of abstraction licences in force

Licence type[427]	Number of licences in force in 2023/24[428]
Full abstraction licence	17,000
Temporary abstraction licence	8
Transfer abstraction licence	1005
Impounding licence	2404
Total	20,417

426 Water Resources Act 1991, s 189

427 For a definition of different licence types see Environment Agency, 'Apply for a water abstraction or impounding licence', 8 May 2014 (gov.uk, updated 17 March 2025) <www.gov.uk/guidance/water-management-apply-for-a-water-abstraction-or-impoundment-licence> accessed 04 April 2025: (a) "A full abstraction licence – for most types of water abstraction over 20 cubic metres per day; (b) A transfer abstraction licence – to move over 20 cubic metres of water a day from one source to another without intervening use; (c) Temporary abstraction licence – to abstract more than 20 cubic metres of water a day over a period of less than 28 days; (d) An impounding licence – to create or alter an impoundment structure such as a sluice, weir or dam"

428 The EA has confirmed that this total includes previously exempt abstractions brought into abstraction licensing through the Water Abstraction (Transitional Provisions) Regulations 2017 SI 2017/1047. It excludes exempt abstractions, including those below 20m3/day, which became exempt on 1 April 2005

By way of comparison, we noted that on 1 April 2005, holders of 23,000 low-risk water abstraction licences were released from the licensing regime.[429] The EA estimated at the time that these businesses, representing around 48% of abstraction operators, would save approximately £1 million a year in total, by being excluded from regulation.[430] The EA has confirmed, that the licences still within regulation do not include those 23,000 already excluded in 2005 by the EA as low risk.[431]

The EA noted compliance inspections of abstraction licences are carried out after a licence has been issued. In rare situations, such as at particularly complex sites, permitting officers could choose to carry out a site visit during determination by the EA of an application for an abstraction licence.

The EA gathers data about water resource compliance inspections as part of its Key Performance Indicator (**"KPI"**) reporting, but it stated to us that it splits this data by sector rather than individual licence purpose. As a result, it was not straightforward to obtain the exact information sought.

The EA advised us that they do not currently record water resources inspection information by licence type, so they could only provide inspection figures for all full, transfer and temporary abstraction licences together as set out below in Table H.

Table H: Numbers of inspections

Type of inspection	Number completed in 2023/24
Site-based inspections	2921
Desk-based inspections	295
Total	3216

The EA are developing a new water resources compliance database that will improve tracking and reporting of water resources compliance activities, including reporting by licence type. They told us that they expect this to be operational in 2025.

4.2 Other compliance/monitoring activities carried out by EA inspectors in respect of Abstraction Licences in the relevant year

The EA cited a number of relevant activities. They included –

(i) Abstraction returns

The EA stated to us that it compares records of water abstracted provided by licence holders against licence conditions, with investigations of potential breaches being conducted by the local area teams. The EA advised us that full abstraction licences of less than 100 m^3/day (transfer and impounding licences) are not normally required to submit a return.

429 UK Groundwater Forum, 'Modernising the Regulation of Water Resources' <www.groundwateruk.org/Modernising-the-regulation-of-water-resources.aspx> accessed 4 April 2025

430 *Ibid*

431 National Audit Office, 'Effective inspection and enforcement: Implementing the Hampton vision in the Environment Agency' (NAO, 2008), 15

In 2023/24, 13,796 licences required holders to submit a return, and returns were received from 86% of them. This would appear to indicate a 14% level of non-compliance with licences, at least in the matter of submitting returns.

Returns are checked against licence volumes to check for breaches of licence conditions, and this analysis is used to direct follow up inspections. However, by the time that this happens, we assume that any impact upon the environment will already have occurred.

(ii) Abstraction alerts

This activity reviews 'hands-off flow' conditions on licences, which require abstractors to limit or stop abstracting when flow at relevant gauging stations falls below given thresholds. Alerts are sent to abstractors when restrictions are imposed, and then lifted.

(iii) Other monitoring data

The EA stated that some licences contain further conditions, such as groundwater conductivity or ecological conditions, which are overseen and followed up by EA area teams.

(iv) Environmental monitoring

EA operations are also informed by its network of hydrometric monitoring sites, checking such parameters as river flow, river level, rainfall and groundwater level, viewed on the EA's Hydrology Data Explorer site.

4.3 Estimate of the cost of inspections/monitoring activities that the EA carried out in relation to these Abstraction Licences, and how these costs are funded

The EA advised us that for the 1,469 applications for full licences determined in 2023/24, the total application charges received amounted to £914,224. However, 2023/24 was an atypical year due to a high backlog of water resources applications made under the earlier charging scheme, and the EA forecast that the charge income for applications during 2024/25 would be significantly higher, almost double the figure for 2023/24.

The EA advised that in accordance with its charging scheme, holders of transfer, temporary or impounding licences are not required to pay a subsistence fee. All water resources subsistence charge income is paid by full abstraction licence holders. The water resource income from subsistence charges for 2023/24 was approximately £163 million. Income from agricultural licences represented 2.8% of total water resources charges income.

The EA advised us that it used a risk-based approach to prioritise inspections of abstraction and impounding licences. Licences are assigned a criticality classification that influences the routine inspection frequency. This is based on factors such as licence complexity, sensitivity of environmental setting, and licence holder compliance history. The EA aims for the following frequency of abstraction and impounding licences:

- Highly critical licences – one inspection per year.
- Critical licences – one inspection every three years.
- Less critical licences – an inspection once every 20 years.

The EA advised us of the figures for licence criticality for abstraction licence types for 2023/24. These are shown in Table I below.

Table I: Licence criticality for abstraction licence types

Licence type	Less critical	Critical	Highly critical	No criticality recorded
Full licence	6,263	9,186	1,551	–
Temporary licence	3	3	2	–
Transfer licence	431	472	102	–
Impounding	1,809	376	151	68
Total	8,506	10,037	1,806	68

The above may be compared with the figures given in the ENDS Report in December 2024 on numbers of abstraction licence breaches recorded over 10 years.[432] This data, based on the EA's Compliance Classification Scheme between January 2014 and December 2023, noted that agriculture was responsible for 43% of the 6,000 breaches recorded over 10 years.[433] We do not currently have information on what this represents in terms of volume.

ENDS reported that the licence breaches could be categorised as show in Table J below:

Table J: Categories of abstraction licence breaches

Category of breach	Numbers of Breaches
Category Four (no impact)	2,484
Category Three (minor impact)	3,539
Category Two (significant impact)	84
Category One (major impact)	6
Total	6,113

The conclusion of the ENDS article appears to be that at a time when inspection numbers were trending downwards, numbers of breaches of abstraction licences appear to be trending upwards.

However, the EA has noted in its guidance[434] that it is committed to recording all non-compliance. Therefore, the increase in breaches could be because it now recorded a greater number of licence compliance breaches.

The EA has advised that its charging scheme for water resources abstraction licences is designed to cover all of its costs related to water resources management, including modelling, regulation, planning and asset management.[435]

432 Shosha Adie, 'What do the 6,000 abstraction licence breaches recorded in past decade tell us?' *ENDS Report Weekly Bulletin* (Endsreport.com, 4 December 2024) <www.endsreport.com/article/1898652/exclusive-6000-abstraction-licence-breaches-recorded-past-decade-tell-us> accessed 4 April 2025

433 *Ibid*

434 EA, 'Abstraction and impounding activities: assessing licence compliance' (gov.uk, updated 13 March 2025) <www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance/abstraction-and-impounding-activities-assessing-licence-compliance> accessed 4 April 2025

435 EA responses to fact checking of OEP case studies, 11 March 2025

The EA Report and Accounts 2023 to 2024[436] shows the overall abstraction charges income and expenditure. The EA explained to us that these figures were by charge scheme at charge scheme level (so at abstraction level, not at applications or subsistence level). This covers all relevant expenditure under Managing Public Money[437] and so covers all EA related spend as well as financing charges and provision for bad debt.

The EA also informed us that "we don't break this down into spend on inspections or other component parts of spend".[438]

The EA has made it clear that it does not raise funds specifically for abstraction inspections, and does not record costs of inspections specifically and does not split income generated to that level either.

In its responses to us, the EA spell out a whole range of Defra group Corporate Services and Shared Services to which abstraction charges contribute. They include Environment and Business; Operations (both national and area); and Corporate and Support Services.

The EA also cited eight components as water resources operational activities.[439] These activities are delivered in an integrated way across a range of EA teams where there are common activities between funding regimes, and in order to maximise efficiency and effectiveness of available funding and skills to deliver the activity. This is why there can be issues separating out spend on individual operational activities.

5. Analysis

For the relevant year under review, there were 20,417 abstraction and impounding licences in total (including 17,000 full abstraction licences).

Based on the EA's criticality assessment, its aim to inspect each highly critical licence once per year, critical licences once every three years and less critical licences once every 20 years, our estimate would be that 5,577 licences (27.3%) could be expected to be inspected for 2023/2024, with 72.7% of licences not receiving an inspection.

The EA stated that in 2023/24 it inspected 16% of water resources licences, which equates to 84% of licences not being inspected.[440]

It is also arguable that for the 'less critical' licences (8,506, or 41% or the total licences issued), the decision not to require inspections more frequently than once in every 20 years effectively might be seen to amount to having no inspection at all.

We acknowledge, that water abstraction licence charges have to contribute to the support of a whole range of central functions of the EA, and its water resources management operations.

436 EA annual report and accounts 2023-2024 (gov.uk, 20 November 2024) Table 22, p 86 <www.gov.uk/government/publications/environment-agency-annual-report-and-accounts-2023-to-2024> accessed 4 April 2025

437 HM Treasury, 'Managing Public Money' (gov.uk, updated 4 May 2023) <www.gov.uk/government/publications/managing-public-money> accessed 4 April 2025

438 EA responses to fact checking of OEP case studies, 11 March 2025

439 (i) Asset management and operation, (ii) Monitoring, assessment & reporting on the environment, (iii) Modelling, (iv) Assessing proposals to abstract water, (v) Achieving sustainable abstraction, (vi) Water resources regulation & compliance, (vii) Planning for resilience and the future, and (viii) Incident management

440 EA responses to fact checking of OEP case studies, 11 March 2025

The EA has historically not collated data in a way which allows for a breakdown of the analysis in more detail such as by licence type. It is, therefore, difficult to establish a clear understanding of any relationship between funds raised from abstraction licence holders and the real cost of the inspections undertaken for abstraction licences, because this accounting by team rather than by activity appears to make it difficult to say clearly and simply what the inspection programme costs, which in turn limits scrutiny. It could also limit the EA's ability to make informed decisions about programmes.

We do note that in its responses to OEP information requests, the EA has drawn attention to the fact that it is developing a new water resources compliance database, that will improve tracking and reporting of water resources compliance activities. The EA currently expects this to be operational from Autumn 2025.

We would also note that current regulations do not require that information about inspections be placed on electronic public registers. In some ways, this tends to limit transparency and oversight, whilst not being a requirement on regulators under current regulations.

Environment Agency – Environmental Permitting – Paper and Textiles

1. Introduction

Industrial activities which have the potential to harm the environment or human health require careful regulation in order to monitor and reduce the risk of them doing so. In England, this regulation is principally delivered through the environmental permitting regime. Under this regime, a person must not operate a 'regulated facility' unless they hold (and comply with) an environmental permit, or operate in accordance with a registered exemption.

The regime aims to provide for "ongoing supervision by regulators of activities which could harm the environment."[441] This case study examines a key aspect of this supervision – environmental inspections – in respect of one set of activities permitted through the regime in England, relating primarily to paper and textiles treatments.

2. Legislation

The principal piece of legislation underpinning the environmental permitting regime is the Environmental Permitting (England and Wales) Regulations 2016 (the **"EPR 2016"**).

The EPR 2016 governs permit applications, grants, monitoring, and enforcement in respect of a wide range of activities. In doing so, it transposes requirements from various EU Directives into domestic law. For the purposes of this case study, relevant provisions are transposed from Directive 2010/75/EU[442] (the **"Industrial Emissions Directive"**, or the **"IED 2010"**).

This case study focuses on certain activities carried out at industrial 'installations.'[443] These activities are outlined in Schedule 1, Part 2, Chapter 6, Sections 6.1 – 6.4 of the EPR 2016. They may broadly be summarised as:[444]

- Paper, pulp and board manufacturing activities[445]
- Carbon activities[446]
- Tar and bitumen activities[447] and
- Coating activities, printing and textile treatments.[448]

441 Defra and Welsh Government, 'Environmental permitting: Core guidance for the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154), Revised March 2020' (Defra 2020) 8

442 Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast) [2010] OJ No L 334

443 Meaning a "stationary technical unit where one or more activities are carried on, and any other location on the same site where any other directly associated activities are carried on…" EPR 2016, sch 1, pt 1, para 1(1)

444 According to the sub-headings used by the EPR 2016 itself

445 EPR 2016, sch 1, chapter 6, s 6.1, Part A(1): "(a) Producing, in industrial plant, pulp from timber or other fibrous materials" and "(b) Producing, in industrial plant, paper and board where the plant has a production capacity of more than 20 tonnes per day"

446 *Ibid*, s 6.2, Part A(1): "(a) Producing carbon or hard-burnt coal or electro-graphite by means of incineration or graphitisation"

447 *Ibid*. s 6.3, Part A(1): "(a) distilling tar or bitumen in connection with any process of manufacture" or "heating tar for the manufacture of electrodes or carbon-based refractory materials", in either case "where the activity is likely to involve the use in any 12-month period of 5 or more tonnes of tar or of bitumen or both in aggregate"

448 *Ibid*. s 6.4, Part A(1): "(a) Pre-treating (by operations such as washing, bleaching or mercerization) or dyeing fibres or textiles in plant with a treatment capacity of more than 10 tonnes per day"

For charging purposes, the EA groups these activities under the heading 'Paper, pulp, carbon, tar and bitumen'.[449] For the purposes of its published compliance activity data, it groups them under the heading 'Paper and Textiles'.[450] For the purposes of this case study, these activities will be referred to as **"Paper and Textiles Activities"**.

Installations where Paper and Textiles Activities are carried out are 'regulated facilities',[451] which must only be operated in accordance with an environmental permit.[452] For some (typically smaller) facilities, permits are issued and regulated by LAs.[453] This case study considers only those regulated facilities (referred to in the EPR 2016 as Part A(1) installations) for which permitting functions are exercised by the EA.[454] The permits through which the EA regulates Paper and Textiles Activities at these regulated facilities will be referred to as "**Paper and Textiles Permits**".

3. Monitoring or Inspection

3.1 Inspections and reporting

The EPR 2016 imposes the following duties on the EA:

> *"34. — Review of environmental permits and inspection of regulated facilities*
>
> *(1) The regulator must periodically review environmental permits.*
>
> *(2) The regulator must make appropriate periodic inspections of regulated facilities*."[455]

The EPR 2016 does not define "appropriate periodic inspections". However, in addition to this general inspection duty, the EPR does incorporate more detailed inspection requirements from the IED 2010.[456] Article 23 of the IED 2010 includes requirements to:

- Set up a system of environmental inspections of installations addressing the examination of the full range of relevant environmental effects from the installations;[457]
- Ensure that all installations are covered by a regularly reviewed environmental inspection plan at national, regional, or local level;
- Based on the inspection plans, regularly draw up programmes for routine environmental inspections, including the frequency of site visits for different types of installations (the period between such site visits should be based on systematic

449 EA, 'The Environment Agency (Environmental Permitting and Abstraction Licensing) (England) Charging Scheme 2022', Version 1.4 (EA, October 2024) 48 and 121

450 See databases published at EA, 'National Compliance Assessment', (gov.uk, updated 16 January 2025) <www.data.gov.uk/dataset/d49096ed-e89c-488f-9bae-d79ef4891394/national-compliance-assessment> accessed 14 April 2025

451 EPR 2016, reg 8(1)(a)

452 *Ibid*, reg 12(1)(a)

453 *Ibid*, reg 32(5)

454 *Ibid*, reg 32(1)(a). In some cases, the EA may be directed to exercise functions which would otherwise be carried out by a LA (EPR 2016, reg 33). The EA has confirmed that it is not regulating any of the permits in this case study under such a direction

455 *Ibid*, reg 34

456 *Ibid*, sch 7, para 9

457 This requirement and that in the following bullet point are framed in the IED 2010 as being duties of the Member State. However, under EPR 2016 Schedule 1A, paragraph 6(2)(b)-(c), Member State should be read as "competent authority, which for these purposes is the regulator

appraisals of environmental risk[458] and shall not exceed one year for the highest risk installations and three years for the lowest risk);

- Where an inspection identifies an important case of non-compliance with permit conditions, conduct an additional inspection within six months;
- Conduct non-routine environmental inspections to investigate serious environmental complains, accidents, incidents and occurrences of non-compliance; and
- Prepare reports on the compliance findings from site visits, which should be notified to the operator within two months of visit, and made publicly available[459] within four months of the visit.

For the purposes of the IED 2010, an 'environmental inspection' is defined as:

> *"…all actions, including site visits, monitoring of emissions and checks of internal reports and follow-up documents, verification of self-monitoring, checking of the techniques used and adequacy of the environment management of the installation, undertaken by or on behalf of the competent authority to check and promote compliance of installations with their permit conditions and, where necessary, to monitor their environmental impact."*[460]

How the requirements of the EPR 2016 and IED 2010 are interpreted in the UK is indicated by guidance issued variously by Defra and by the EA itself.[461]

For example, the most recent revision of the Environmental Permitting Core Guidance, published in 2020 by Defra,[462] outlines what a 'risk-based compliance assessment' should consider,[463] and explains that inspections can "include reviewing information from the operator as well as carrying out independent monitoring, site inspections, in-depth audits and other compliance-related work."[464] It also notes that regulators should have regard to the Recommendation of the European Parliament and of the Council (2001/331/EC) on the minimum criteria for environmental inspection.[465]

Defra and the EA's online guidance for operators[466] outlines the following forms of compliance check which may be conducted in relation to an environmental permit:

- assessment – a desk-based check of whether operators are complying with their permit, for example checking they are sending in required information;
- an inspection – where an officer visits a permitted site; and

458 Based on at least criteria including the potential and actual environmental and human health impacts of the installations and the record of permit compliance

459 In accordance with the Environmental Information Regulations 2004 (EPR 2016, sch 1A, para 6(13)(b))

460 Industrial Emissions Directive (IED) 2010, art 3

461 A piece of Defra guidance which is not quoted here is Defra and Welsh Government, 'Industrial emissions Directive EPR Guidance on Part A installations' (Defra, February 2013). Although this discusses inspections, it primarily reiterates the IED Directive

462 To which the EA must have regard (EPR 2016, reg 65(2))

463 It should target facilities on the basis of their greatest risk to the environment and human health, standards of operation, compliance with their permit, and the lifecycle of the facility. It should reduce the regulatory burden on the consistently compliant operators. Defra and Welsh Government, 'Environmental permitting: Core guidance for the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)', Revised March 2020 (Defra and Welsh Government, 2020) para 11.1

464 *Ibid*, para 11.5

465 *Ibid*, para 11.6

466 EA, 'How you'll be regulated: environmental permits' (gov.uk, updated 13 March 2025) <www.gov.uk/guidance/how-youll-be-regulated-environmental-permits> accessed 04 April 2025

- sampling of permitted water discharge activity or groundwater activity.

The above guidance notes that installations will "definitely be assessed or inspected." Inspections are "usually unannounced" and involve looking around sites, asking questions, reviewing documents or talking to operators' staff. Details of any non-compliance will be recorded in a "Compliance Assessment Report" ("**CAR**"), which will be provided to the operator.

The EA consistently states that it targets its inspections on the basis of risk. For example:

> *"We use past environmental performance, operational intelligence and other data we collect to identify sites that pose the greatest risk to people and the environment. This means that sites with more problems will receive a greater compliance effort."*[467]

3.2 Charges

The EA is empowered under statute to charge for permit applications (e.g. for grant, variation, transfer, renewal, or surrender) and for permit subsistence.[468] Subsistence charging "covers the costs of regulating an activity. For example, carrying out checks to make sure [operators] are complying with the conditions in [their] permit."[469]

The EA's charging scheme[470] outlines baseline annual subsistence charges for the Paper and Textiles Activities,[471] ranging from £3,323 (for carpet manufacturing) to £17,168 (for an "integrated or multi product mill with four additional components").

In practice, operators pay adjusted figures, depending on their compliance records and the level of compliance effort the EA consequently regards as necessary to regulate them.[472] The most compliant operators pay 95% of the baseline charge. The least compliant operators pay 300%.[473] As such, in practice, individual operators could pay between £3,156.85 and £51,504 in annual subsistence fees for their permitted Paper and Textiles Activities (depending on the activity).[474]

467 EA, 'Evidence annex: Environment Agency Chief Regulator's report 2023-24' (gov.uk, updated 14 February 2025) <www.gov.uk/government/publications/environment-agency-chief-regulators-report-2023-24/evidence-annex-environment-agency-chief-regulators-report-2023-24> accessed 4 April 2025

468 Environment Act 1995, s 41(2), read alongside s 56(1)

469 EA, 'Environmental permits: when and how you are charged' (gov.uk, updated 26 February 2025). <www.gov.uk/government/publications/environmental-permitting-charges-guidance/environmental-permitting-charges-guidance> accessed 4 April 2025

470 Environment Agency, 'The Environment Agency (Environmental Permitting and Abstraction Licensing) (England) Charging Scheme 2022', Version 1.4 (Environment Agency, October 2024).

471 *Ibid*, Table 2.9

472 E.g. In respect of sites which must improve to achieve permit compliance, increased subsistence fees "reflect the increased regulatory effort needed during the year to identify and address an unacceptable risk to human health, quality of life or the environment." Environment Agency 'Policy Paper: Waste operations and installations: assessing and scoring environmental permit compliance' (gov.uk, updated 13 March 2025) <www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance/assessing-and-scoring-environmental-permit-compliance#calculating-subsistence-charges-for-waste-activities-and-installations> accessed 9 April 2025

473 *Ibid,* 17

474 These figures are calculated on the basis that subsistence charges are as stated in table 2.9 of the EA's 2022 EPR Charging Scheme (EA, 'The Environment Agency (Environmental Permitting and Abstraction Licensing) (England) Charging Scheme 2022', Version 1.4 (EA, October 2024)). Additional subsistence charges and aggregate group permits may impact these figures in practice

4. Findings

We requested information from the EA about its compliance inspections in relation to Paper and Textiles Permits. The following findings come from both the EA's responses and further OEP research.

4.1 Number of permits

Across the calendar year 2023, the EA reported that the number of Paper and Textiles Permits in force fell from 58 to 56. The EA excluded one permit surrendered during the year from its inspection figures, and as such provided data relating to only 57 Paper and Textiles Permits. These permits relate to the following activities:

Table K: Paper and Textiles Permits in 2023

Activity Type	Number of Permits
Paper, pulp and board manufacturing	32
Carbon, tar, and bitumen[475]	1
Coating activities, printing and textile treatments	24
	Total: 57

4.2 Number of inspections

The EA reported that it conducted a total of 150 'compliance activities' in respect of the Paper and Textiles Permits during the year. These activities are split into five types, which are in some cases conducted in person, and in others remotely.

Table L: Compliance activities conducted in respect of the Paper and Textiles Pemits

Compliance Activity Type	"In-person" or "remote"	Number Conducted
Site visit (inspection)	In-person	51
	Remote	2
Site audits (more in-depth and complex inspections)	In-person	12
	Remote	3
Check monitoring	Remote	0
Data reviews (reviewing monitoring submissions required by the permit)	Remote	73
Procedure reviews	Remote	9
		Total: 150

All of these activities would appear to qualify as 'environmental inspections' for the purposes of the IED 2010, and all play an important role in monitoring compliance. However, for the purposes of this case study, we will focus particularly on-site visits and site audits (which are the activities characterised by the EA itself as 'inspections'[476] and which can be

475 Although these are treated as two distinct activity types by the EPR 2016, for the purposes of recording compliance activities, the EA groups them under a single 'Other' heading

476 EA, 'National Compliance Assessment Database 2023 Briefing' (gov.uk, 16 January 2025). <https://environment.data.gov.uk/api/file/download?fileDataSetId=b2acd6ae-db5d-4608-bcc7-dcd88f285063&fileName=2023%20National%20Compliance%20Assessment%20Dataset.zip> accessed 4 April 2025

performed either in-person or remotely), rather than those activities which are exclusively desk-based document checks/reviews.

No compliance activities of any type were recorded in respect of 8 (14%) of the Paper and Textiles Permits.[477]

4.3 Funding

The EA provided estimates for the cost of its compliance activities in relation to Paper and Textiles Permits. These estimates were based on the number of hours' compliance work recorded by its officers, and were stated to represent only the total costs associated with the officers' time spent on compliance activities, rather than all expenditure the EA is required to recover through the subsistence fees. It also provided figures showing sums raised from the Paper and Textiles Permits' subsistence charges,[478] although it is important to note that these cover a different (albeit overlapping) one-year period to the costs figures.

Table M: Subsistence income and compliance costs in respect of Paper and Textiles Pemits

Activity Type	Compliance Hours 2023	Estimated Compliance Costs 2023[479]	Subsistence Income (FY 2023-24)
Paper, pulp and board manufacturing	2,253	£210,520.32	£421,000
Carbon, tar, and bitumen	0	£0	
Coating activities, printing and textile treatments	912	£85,217.28	
	Total: 3,165	Total: £295,737.60	Total: £421,000

5. Analysis

5.1 Risk-Based Inspections

As outlined under section 3 above, the frequency of the EA's compliance inspections in respect of the Paper and Textiles Permits must be based on environmental risk. On this basis, one would expect to find that high-risk permitted facilities receive more frequent inspections than low-risk facilities. Under the IED 2010, the gap between inspections must not exceed one year for the highest risk permitted facilities and three years for the lowest risk.

In its response to our information request, the EA did not break down its inspection figures according to the risk it attributes to the Paper and Textiles Permits. However, for 2023, the

477 The EA noted that it may have engaged with these permit holders in other manners (for example, through providing advice and guidance)

478 It also raised between £50-60,000 in application charges, but as the proceeds from these charges are not spent on ongoing compliance, they will not be considered further

479 The EA calculated these figures by taking the average hourly rate of its grade 4 and grade 5 officers (by whom the sector is regulated in a "pretty even split", being £93.44. It used rates from the 2023–24 financial year to align with the 2023 calendar year's recorded hours data as far as possible. The figures do not reflect all expenditure the EA covers through the subsistence fees

compliance banding scores by which subsistence charges are determined were published for 56 of the 57 Paper and Textiles Permits (see Figure C) below.[480]

These bands are derived from the number and severity of risk-categorised non-compliances recorded by the EA for each permit over the preceding year. Bands range from A (highest rate of compliance, lowest risk) to F (lowest rate of compliance, highest risk).[481]

As can be seen from Figure C, most of the Paper and Textiles Permits for which data was available were in Bands A or B, meaning that the EA considered them to be at the expected level of compliance. Only 5 out of 56 were deemed to require improvement to achieve permit compliance, and these were all Band C, which is the least severe non-compliant banding. None fell into Bands D, E or F, which would be associated with higher levels of non-compliance.

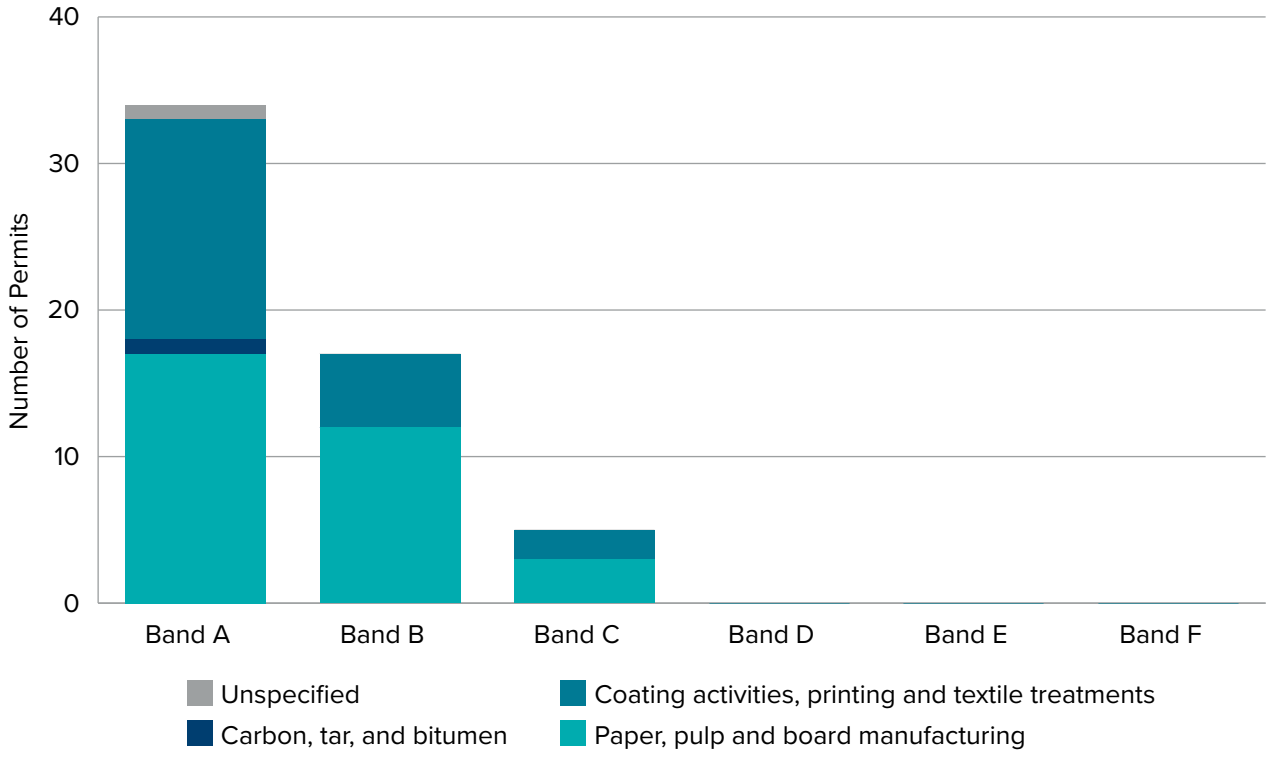

Figure C: Paper and textiles permits – compliance bands (2023)

Comparing these figures with published records of compliance activities conducted[482] (see Figure D), it is apparent that in 2023 the EA concentrated its site visits and audits most heavily towards less compliant, higher risk Paper and Textiles Permits. Higher risk Band C permits on average received such inspections more than twice as frequently as lower risk Band A permits. Including desk-based check monitoring, data reviews, and procedure reviews too, the pattern remains broadly the same.

480 EA, 'Compliance Ratings (Waste and Installations)' (gov.uk, updated 16 January 2025) <www.data.gov.uk/dataset/1b268e32-d399-4e1c-87a0-00a17a11fce6/compliance-ratings-waste-and-installations> accessed 14 April 2025

481 The EA describes the bands in the following terms:
Bands A and B are showing expected levels of permit compliance.
Bands C and D require improvement to achieve permit compliance.
Bands E and F must significantly improve in order to achieve permit compliance.
EA, 'Policy Paper: Waste operations and installations: assessing and scoring environmental permit compliance' (gov.uk, updated 13 March 2025) <https://www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance/assessing-and-scoring-environmental-permit-compliance#explaining-the-outcomes-of-a-compliance-assessment> accessed 09 April 2025

482 EA, 'National Compliance Assessment', (gov.uk, updated 16 January 2025) <www.data.gov.uk/dataset/d49096ed-e89c-488f-9bae-d79ef4891394/national-compliance-assessment> accessed 14 April 2025

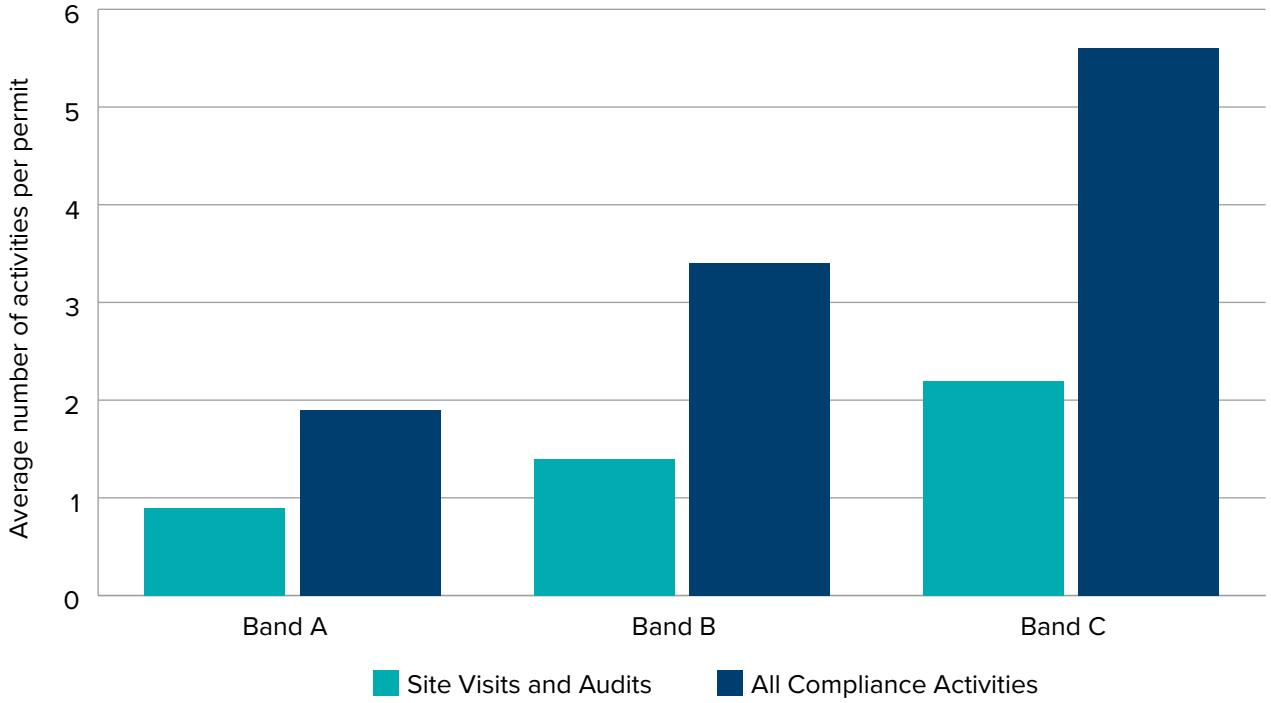

Figure D: Compliance activity recorded per paper and textiles permit (2023)

All of the eight Paper and Textiles Permits which received no recorded compliance activity were in the lowest risk compliance band, Band A.

It has not been within the scope of this case study to assess the EA's methodology for calculating risk, or for targeting its inspections in accordance with risk.[483] However, the analysis above indicates that the EA appears to be targeting its inspections of the Paper and Textiles Permits according to its measures of environmental risk, and that it is, on average, satisfying (indeed, exceeding) the minimum inspection frequencies required by the IED 2010.

5.2 Inspection rates over time

We did not request data from the EA regarding inspections in the years before 2023. However, using published EA data, rates of site visits and audits (and of compliance activities more widely) can be identified.

Figure E shows the average number of compliance activities conducted per Paper and Textile Permit.

483 We do note, however, that in so far as inspection targeting is determined by compliance bandings (which are calculated from the previous year's compliance findings), the targeting may be influenced by historic, rather than current, environmental risk levels. Where the compliance findings on which bandings are based are recent, this approach may nevertheless be effective; but the potential for targeting failing to reflect *current* risk could be exacerbated, for example, if a permit is not subject to compliance checks in the previous year

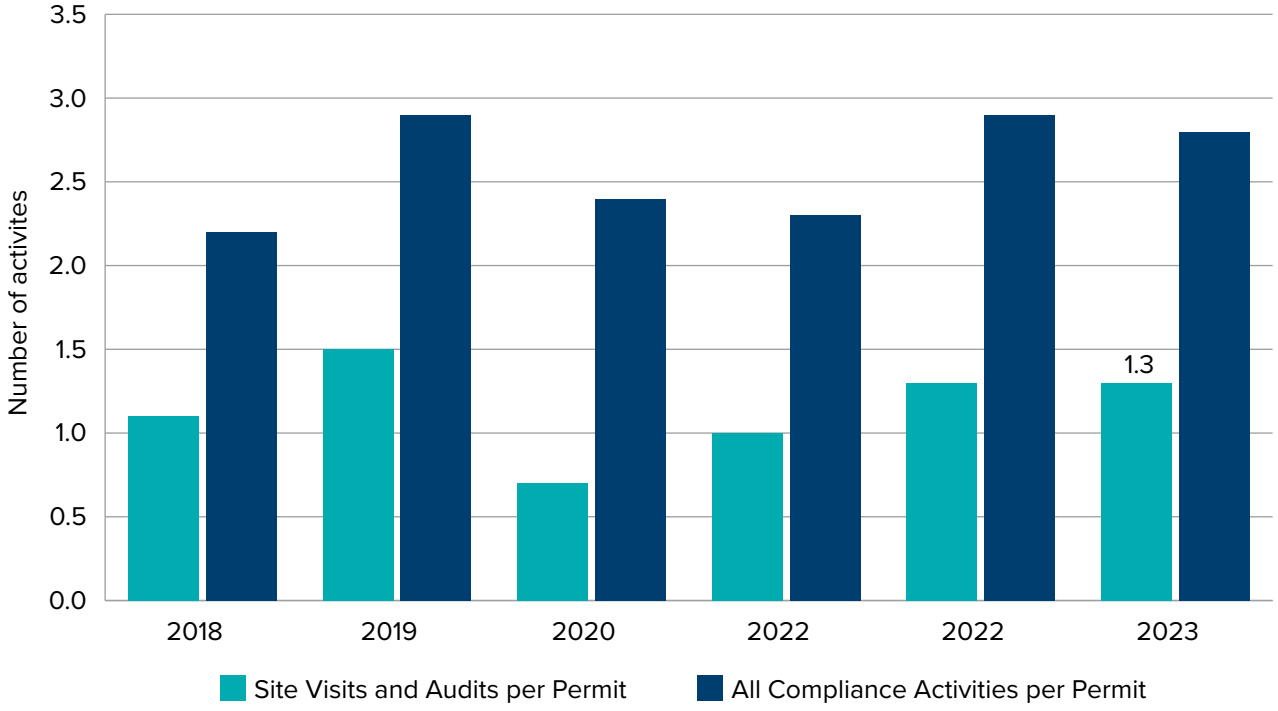

Figure E: Average number of compliance activities per paper and textiles permit (2023)

Whether considering just site visits and audits (both in-person or remote), or all compliance activities, the impact of the COVID-19 pandemic is clear, with the rate of compliance activity falling from 2019 to 2020. The impact is particularly noticeable for site visits and audits, due to their primarily in-person nature.

However, in 2022 and 2023 the frequency with which site inspections and audits were conducted for Paper and Textile Permits were comparable to the rates reported in the pre-pandemic years of 2018 and 2019. The finding is the same if all compliance activities are taken into account. While this data is limited, it indicates a relatively rapid post-pandemic recovery, and no substantial upwards or downwards trends in inspection rates.[484]

5.3 In-person and remote activities

The EA has highlighted increased use of remote inspections in certain regulatory areas.[485] In respect of permit compliance inspections under the EPR 2016, the EA noted during the COVID-19 pandemic that it was possible in some cases to replace previously in-person site visits with remote inspections:

484 We note that recent reporting in the environmental media has highlighted challenges faced by the EA in returning to pre-pandemic inspection levels (e.g. *ENDS*, Matt Ross, 'Permitting Review 2025: Why EA inspections dropped – and where permitting goes next' (*The ENDS Report*, January 2025) <www.endsreport.com/article/1903846/special-report-why-ea-permitting-inspections-dropped-post-pandemic-%e2%80%93-happens-next> accessed 10 April 2025). From the figures we have reviewed, inspection rates in respect of Paper and Textile Activities appear to have recovered relatively quickly

485 E.g. EA, 'Review of activities regulated by the Environment Agency, 2022' (gov.uk, updated 28 February 2024) <www.gov.uk/government/publications/review-of-activities-regulated-by-the-environment-agency-2022/review-of-activities-regulated-by-the-environment-agency-2022> accessed 11 April 2025

> *"[The EA] is using technology to carry out its role as an effective regulator where face-to-face visits are restricted … the organisation has carried out virtual inspections of permitted waste sites to check they are complying with regulations. Using online services such as Zoom, checking CCTV video footage and requesting specific evidence … the [EA] has been successfully carrying out its inspections."*[486]

In its response to our information request, the EA distinguished between in-person and remote compliance activities it conducted in respect of the Paper and Textiles Permits. Of the 68 site visits and audits conducted, 63 (93%) were in-person, and 5 (7%) were remote. Considering all recorded compliance activities (i.e. including check monitoring, data reviews, and procedure reviews, which are all exclusively desk-based), the balance shifts, with 63 (42%) being in-person and 87 (58%) being remote.

Data distinguishing between remote and in-person compliance activities has only been published since 2020, so it is not possible to assess whether there are long-term trends in the use of remote compliance activities to regulate Paper and Textiles Permits. However, as is evident from Figure F below, the proportion of site inspections and audits being conducted remotely has fallen sharply, dropping from 50% in 2020 to just 7% in 2023, indicating that the EA continues to show a clear preference for carrying out such activities 'in-person' where circumstances allow.

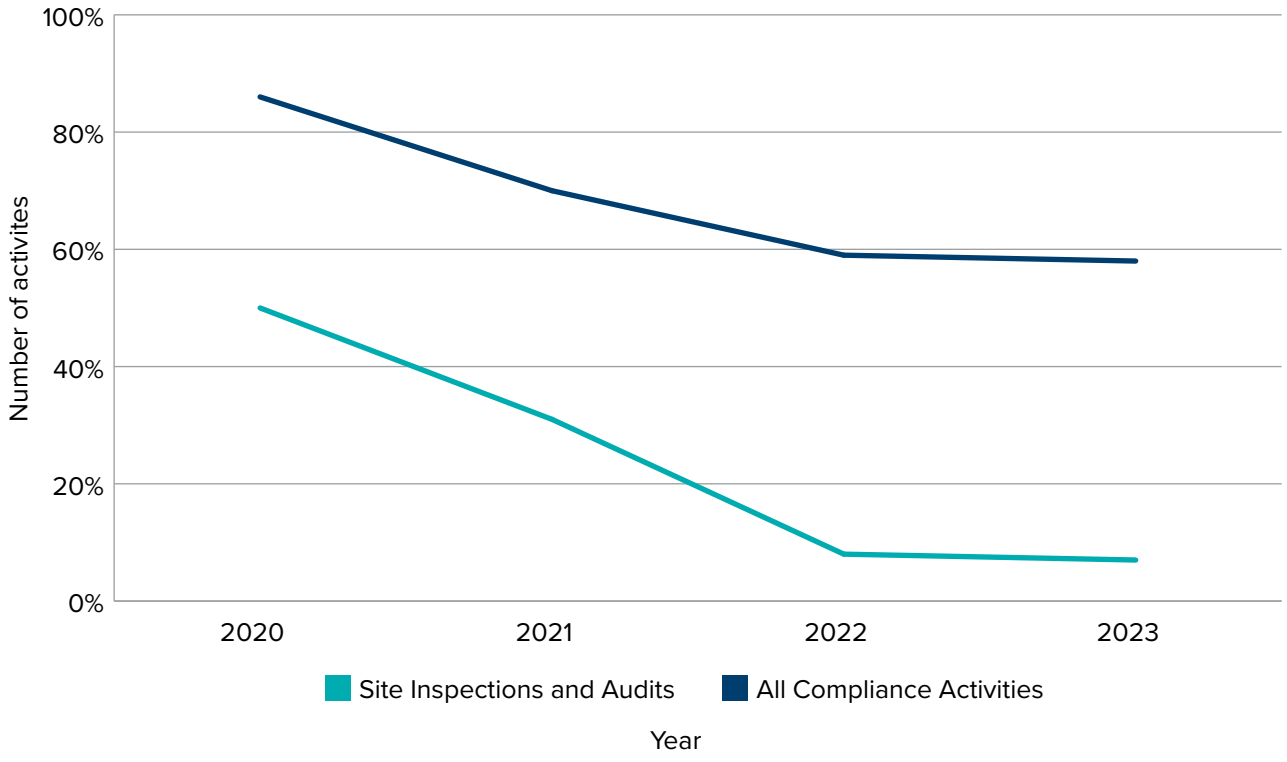

Figure F: Percentage of compliance activities conducted remotely in respect of Paper and Textiles Permits

486 EA, 'Regulating the waste industry during the coronavirus pandemic' (gov.uk, 28 May 2020) <www.gov.uk/government/news/regulating-the-waste-industry-during-the-coronavirus-pandemic> accessed 11 April 2025

5.4 Fees and Funding

The EA's charging schedule indicates that individual operators of the Paper and Textiles Permits likely paid between £3,156.85 and £18,884.80 per permit in annual subsistence fees in 2023.[487]

As outlined above, the EA supplied estimated costs of its compliance activities for the Paper and Textiles Permits in the calendar year 2023 (£295,737.60), and the total money raised from subsistence charges in the financial year 2023/24 (£421,000).

Various factors limit the scope for any meaningful analysis of these figures, and contribute more generally to a lack of clarity as to the funding and costs of inspections:

- The costs and subsistence figures provided cover overlapping but not identical year-long periods;
- The figures are estimates (the costs figures were described as a "guide" by the EA);
- There is limited scope to review the figures against published information (since expenditure and charge income data is published only in respect of the entire EPR installations regime).[488]
- We are unable to break down the costs figure to distinguish, for example, between the costs of the various types of compliance activity. The EA noted that it monitors expenditure by team cost centre rather than activity, and that it therefore does not track spend by inspection. Similarly, there appears to be limited scope to break down the charges figure: the EA told us that although its charging scheme "shows the charge payable under the different schedules, … our main finance system does not record income at that level."
- The costs figure only relates to costs associated with officers' time on compliance, and the EA told us that this "does not take into account all of the expenditure" that the EA cost recovers through its charges.

The EA has indicated that once all costs being recovered under the subsistence charges are taken into account, there is no surplus between subsistence charged and the costs it covers. It is our understanding that since the £295,737.60 estimated cost of the compliance activities only includes 'costs associated with officers time', it excludes matters such as corporate costs, capital finance costs, and bad debt provision. According to information provided by the EA, these matters typically account for 34% of monies raised by a charge.

A conclusion that there is no surplus would align with the EA's wider published financial results, which showed in FY 2023/24 a £7.2 million deficit between income billed and expenditure in respect of EPR installations permits (under which umbrella the Paper and Textiles Permits fall).[489]

If the EA, or government, were to try to evaluate outcomes of this compliance assurance regime based on inspection spending, or were considering where to focus on efficiency

487 These figures are calculated on the basis that all permits fall within compliance Bands A-C, and that subsistence charges are as stated in table 2.9 of the EA's 2022 EPR Charging Scheme (EA, 'The Environment Agency (Environmental Permitting and Abstraction Licensing) (England) Charging Scheme 2022', Version 1.4 (EA, October 2024)). We acknowledge that factors such as additional subsistence charges and aggregate group permits may impact these figures in practice

488 See, for example: EA, 'Annual Report and Accounts for the financial year 2023 to 2024' (EA, 2024) 86

489 *Ibid*

savings, the discussion above suggests that the current approach to recording finances is too high-level, (being designed to manage expenditure as a whole), to be helpful. The EA note that other approaches to assessing the efficiency of compliance work, such as reviewing team activity and ways of working, are available. However, the result is ultimately that it is difficult to for the EA to deliver a clear picture of the relationship between charges raised and expenditure applied.

5.5 Transparency – the law

The well-recognised complexity of the EPR 2016[490] and the wider legislative regime governing inspections of Paper and Textiles Permits is unlikely to assist the EA in its efforts to transparently communicate what inspections permit holders should expect to receive. Nor does it help any permit holder who may wish to confirm whether the EA is conducting inspections in accordance with legal requirements.

Relevant provisions on compliance inspections are found not only in the body of the EPR 2016 itself, but also in the IED 2010.[491] Domestic guidance introduces further considerations, stating that the EA should "have regard" to the EU's recommendations on minimum standards for environmental inspections.[492] And the Regulator's Code, to which the EA must also "have regard",[493] adds further principles relevant to inspections.

Not having consolidated inspection requirements in one place would appear to make it harder to understand what is supposed to happen. The above provisions are complex to digest and consider. One may question whether a permit holder can reasonably be expected to understand what, if any, inspections it should legally expect to receive, and in what form it should expect to receive them, for the subsistence fees it pays.

5.6 Transparency – availability of information

Alongside its general duty to conduct regulatory functions in a "transparent [and] accountable" way,[494] the EA is required to publish or make available a range of specific information regarding its inspections under the EPR regime.

(i) Guidance

While the EPR 2016 itself does not require the EA to publish guidance on its inspection programmes (unlike for matters such as enforcement undertakings and its use of civil sanctions and cost recovery),[495] the Regulators Code (to which it must "have regard") requires it to publish a set of clear service standards including information on its "approach to checks on compliance … clearly setting out what those they regulate should expect".[496]

490 E.g. "… the system is complex: the [EPR 2016] stretch to some 220 pages, with nearly thirty Schedules making a bewildering number of references to rules and principles found in EU Directives … the [EPR 2016] raises questions in respect of the ability of individuals to keep up with an important area of law and, more importantly, perhaps, the ability to challenge unlawful implementation." Stuart Bell, Donald McGillivray, Ole Pedersen, Emma Lees, and Elen Stokes, *Environmental Law (Tenth Edition,* OUP 2024) 410

491 To further complicate matters, the IED 2010 as referred to in the UK, now looks very different to the IED 2010 in the EU, which has been substantially amended by a new Industrial Emissions Directive (Directive (EU) 2024/1785 of the European Parliament and of the Council of 24 April 2024).

492 Defra and Welsh Government, 'Environmental permitting: Core guidance for the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)', Revised March 2020 (Defra and Welsh Government, 2020) 66

493 Legislative and Regulatory Reform Act 2006, s 22(2)

494 *Ibid*, s 21

495 EPR 2016, sch 26, para 9; sch 26A, para 14

496 Regulators' Code, para 6.2

For operators of the Paper and Textiles Permits, the most apparent relevant guidance is the "How you'll be regulated: environmental permits" webpage,[497] published jointly by the EA and Defra, which outlines how the EA checks compliance, reports on it, and acts upon issues. The webpage also offers a contact number for further enquiries. Additionally, although it is published by Defra rather than the EA, the Environmental Permitting Core Guidance provides guidance to both operators and regulators on inspections.[498]

(ii) Environmental inspection plans

As noted above, the IED 2010 requires that all installations be covered by an environmental inspection plan. The EA's inspection programmes in respect of the Paper and Textiles Permits should be prepared on the basis of such a plan or plans.

EU Reporting on the implementation of the IED 2010 indicated that, as of 2019, such a plan/plans existed for the UK.[499] However, there is no clear duty on the EA to publish such plans, and none is currently in the public domain which is relevant to the Paper and Textiles Permits. While we note that the comparison is historic, in 2016 it was found that environmental inspection plans were publicly available on the internet in 21 out of 24 EU member states; the UK was one of only three countries in which they were available on request only.[500]

The EA has outlined to us that it currently produces internal "sector plans" ("Paper, Pulp, and Textiles" being one such sector), which outline key priorities and help area delivery teams to plan their compliance activities. We understand that these plans are shared and discussed with trade associations in draft on an annual basis, but are ultimately only accessible on request. Nor, based on the example we have seen,[501] do they appear to contain information comparable to an environmental inspection plan under the IED 2010.

Environmental inspection plans contain a range of useful information (for example, detailing the relevant environmental issues, the installations covered by the plan, information approaches to both routine and non-routine inspections, and how different inspection authorities will cooperate).[502] This being considered alongside the fact that they should form the basis for the EA's inspection programmes of Paper and Textiles Permits,[503] the EA may wish to consider updating any such plans it previously prepared, and making them publicly accessible.

(iii) Reports

As outlined above, under the IED 2010, the EA must provide inspection reports to operators within two months of site visits, and must make them publicly available in accordance with the Environmental Information Regulations 2004 ("**the EIR 2004**") within four months. The

497 EA and Defra, 'How you'll be regulated: environmental permits' (gov.uk, updated 13 March 2025) <https://www.gov.uk/guidance/how-youll-be-regulated-environmental-permits#assessments-and-inspections> accessed 14 April 2025

498 Defra and Welsh Government, 'Environmental permitting: Core guidance for the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)', (Defra, revised March 2020) 66

499 Natalia Anderson, Tim Scarbrough, Gratsiela Madzharova, Andrea Illes, John Hekman, Sam Stephenson and James Sykes, 'Assessment and summary of Member States' reports for Modules 1, 3 and 4 of Annex II of Commission Implementing Decision 2012/795/EU' (Ricardo Energy & Environment, 2019) 11 <https://circabc.europa.eu/ui/group/06f33a94-9829-4eee-b187-21bb783a0fbf/library/382c15d0-7b64-4939-9920-00a3f2dc40aa?p=1&n=10&sort=modified_DESC> accessed 14 April 2025

500 Josephine Armstrong, Victoria Cherrier, Claire Dupont, Ioanna Kourti, Keith Lawton, Keir McAndrew, Hetty Menadue, 'Assessment and summary of the Member States implementation reports for the IED, IPPCD, SED and WID' (Amec Foster Wheeler Environment & Infrastructure UK, 2016) 73

501 Environment Agency, 'Paper, Pulp & Textiles – Sector Priorities, 2023/24' (PowerPoint document provided by the Environment Agency to the OEP, 7 May 2025)

502 IED 2010, art 23(3)

503 *Ibid*, art 23(4)

EIR 2004 requires the EA to make environmental information, which will include inspection reports, "progressively … available to the public by electronic means which are easily accessible", and "available on request".[504]

The EA publishes certain permit documents on its Industrial Emissions public register including decision documents prepared following statutory reconsideration and updating of permit conditions (in accordance with the IED 2010).[505] Such reconsiderations must use information resulting from monitoring or inspections.[506]

However, the EA does not as a matter of course currently publish inspection reports themselves.[507] This appears, from the EU's reports on the implementation of the IED 2010, to have historically been in line with other EU member states.[508] The EA has confirmed to us that the reports are "on a public register and available on request. We are working to improve this to make these reports available online." More generally, the EA has stated to us that "in the longer term we are developing a solution to have an accessible online public register." We note that they intend to implement changes to the way that they publish CAR forms through 2025.

(iv) Inspection data

At a higher level, historically the UK provided information to the EU Commission about the implementation of the IED 2010,[509] including information on the authority responsible for inspections, the number of site visits actually conducted, and how site visit reports could be accessed.[510] Analysis of this data at both an EU-level and country-level was made publicly available,[511] providing both insight into the inspection programmes, and also allowing comparison with neighbouring countries also implementing IED's 2010 requirements. Since EU exit, the UK no longer reports this information to the Commission.

However, the EA has since 2014 published data regarding compliance activities carried out at permitted sites for waste operations and installations through its annual National Compliance Assessment Database (NCAD) datasets.[512] These allow users to review what types of inspections have taken place[513] at various levels of granularity (e.g. at high-level, such as for all Paper and Textile Activities, to the level of individual permits/assessments). Separate datasets are published showing high-level detail of permit condition breaches.[514]

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504 EIR 2004, reg 4(1) and reg 5(1)

505 IED 2010, art 21

506 *Ibid*, art 21(2)

507 Reports are published on a more sporadic basis. For example, a review commissioned by the European Commission on the UK's reporting of the implementation of the IED in 2017-2018 found that:

"*URLs have been reported that provide access to site inspection reports for 10 installations (presented in PDF reports at installation level, in English). In addition, a general URL has been reported for installations located in North East Lincolnshire (at local authority level). Site inspection reports are available for the installations via this URL (PDF, in English).*"

Hattie Menadue, John Hekman, Gratsiela Madzharova and Sophie Elmhirst, "*Assessment and summary of Member States' reports under Commission Implementing Decision 2018/1135/EU Country level analysis for the United Kingdom*" (Ricardo, www.europa.eu, 2020) <https://circabc.europa.eu/ui/group/06f33a94-9829-4eee-b187-21bb783a0fbf/library/703942f6-361a-4af5-b759-49f3b5a78ca8/details> accessed 14 April 2025

508 "For site visits, the available information is often limited." European Commission, 'Report from the Commission to the Council and the European Parliament on the implementation of Directive 2010/75/EU on Industrial Emissions, COM(2021) 793 Final' (EC, 2021) 8

509 IED 2010, art 72(1)

510 Commission Implementing Decision (EU) 2018/1135, Annex I

511 For example, see the IED implementation reports referred to above

512 EA, 'National Compliance Assessment', (gov.uk, updated 16 January 2025) <www.data.gov.uk/dataset/d49096ed-e89c-488f-9bae-d79ef4891394/national-compliance-assessment> accessed 14 April 2025

513 The five types of compliance assessment covered were outlined above at Table L

514 Environment Agency 'Compliance Classification Scheme' (gov.uk, updated 15 January 2025) <https://environment.data.gov.uk/dataset/5f2149c0-d465-11e4-b632-f0def148f590> accessed 14 April 2025

The latest datasets published are in respect of 2023. They were made available in January 2025.

As such, notwithstanding the removal of historic EU reporting requirements, inspection data in respect of the Paper and Textile Permits is published in somewhat more detail than we have seen for various other case studies in this report.

Environment Agency – Environmental Permitting – T11 Waste Exemptions

1. Introduction

The UK is thought to generate more electronic waste (e-waste) per person than any other country in the world except Norway,[515] and has lower collection and recycling rates for e-waste than other European countries.[516] If not managed correctly, e-waste can have serious environmental impacts (e.g. "releasing as many as 1,000 different chemical substances into the environment including harmful neurotoxins").[517] With e-waste volumes rising,[518] it is an important area of focus for environmental regulation.

T11 waste exemptions form an important part of the regulatory framework governing the treatment of e-waste in England. They are governed primarily through the Environmental Permitting (England and Wales) Regulations 2016 **"EPR 2016"**. They are designed to regulate the small-scale "repair, refurbish[ment] or dismantl[ing of] various types of Waste Electrical and Electronic Equipment (**"WEEE"**) so that WEEE items or any parts can be reused for their original purpose or recovered."[519]

2. Legislation

Under the EPR 2016, a person must not operate a 'regulated facility' unless they hold (and comply with) an environmental permit. Waste operations (operations which involve the recovery or disposal of waste)[520] are one type of regulated facility.[521]

However, the EPR 2016 classes some waste operations as 'exempt facilities', meaning that they do not require environmental permits.[522] These are known as 'exempt waste operations.' They fall instead under the EPR 2016 exemption regime, which is intended to govern activities which "pose a sufficiently low risk [that they] can be exempt from the need to hold a permit".[523]

The exemption regime is wide ranging (the EPR 2016 provides for 57 types of exempt waste operation alone) and well-used (129,740 exemptions of all types are registered as of January 2025).[524]

515 Environmental Audit Committee, 'Electronic Waste and the Circular Economy' (2019-21, HC 220) 13

516 *Ibid*

517 World Health Organisation, 'Electronic waste (e-waste)' (www.who.int, 1 October 2024) <www.who.int/news-room/fact-sheets/detail/electronic-waste-(e-waste)> accessed 14 January 2025

518 *Ibid*

519 EA, 'Guidance: T11 waste exemption: repairing or refurbishing waste electrical and electronic equipment (WEEE)' (gov.uk, updated 3 April 2018) <www.gov.uk/guidance/waste-exemption-t11-repairing-or-refurbishing-waste-electrical-and-electronic-equipment-weee> accessed 14 January 2025

520 Environmental Permitting (England and Wales) Regulations 2016, reg 2(1)

521 *Ibid*, reg 8(1)(c)

522 *Ibid*, reg 8(2)(a). Nb. "Excluded waste operations" are also not regulated facilities under reg 8(2)(b), but they are not relevant to this case study.

523 Defra, 'Environmental permitting: Core guidance for the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)', Revised March 2020 (Defra 2020) 85

524 Data taken from EA's Register of Waste Exemptions: <https://environment.data.gov.uk/public-register/view/search-waste-exemptions> accessed 14 January 2025. The EA have noted to the OEP that each registration may cover more than one type of waste exemption. For example, "at the end Sept 24 there were 126,661 waste exemption registrations, containing 403,563 waste exemption 'types' (U1, etc)"

In England, the majority of exempt waste operations must be registered with the EA.[525] Registrations of exempt waste operations which involve WEEE are valid for three years,[526] and must be renewed by the same statutory procedure as the original registration.[527]

"Repair or refurbishment of WEEE (T11)" is one type of exempt waste operation. Alongside the legal requirements relevant to all exempt waste operations,[528] various specific conditions apply to waste operations conducting T11 activities, such as:

- Certain provisions of the WEEE Directive[529] must be complied with;
- The quantity of waste treated or stored over any twelve month period must not exceed 1,000 tonnes;
- Best available treatment, recovery and recycling techniques must be used;
- Waste must be stored in such a manner that its environmentally sound re-use or recycling is not hindered; and
- The operation must be for the purposes of re-using the WEEE for its original purpose, re-using any dismantled components for their original purpose, or dismantling the WEEE components for the purposes of recovery.[530]

In this case study, any waste operation in England which is an exempt waste operation registered to conduct T11 activities in accordance with the requirements outlined above will be referred to as a T11 Exempt Waste Operation and the exemption under which it is registered will be referred to as a T11 Waste Exemption.

3. Monitoring or Inspection

The EPR 2016 imposes a statutory duty on the EA to carry out "appropriate periodic inspections of establishments and undertakings carrying on exempt waste operations."[531] This includes T11 Exempt Waste Operations. The EPR 2016 does not define for these purposes what "appropriate periodic inspections" means.

Defra's Environmental Permitting Core Guidance states that "compliance effort for exempt facilities should follow the same principles as for regulated facilities."[532] For both permit and exemption inspections the inspection process can include reviewing information from the operator as well as carrying out independent monitoring, site inspections, in-depth audits and other compliance-related work.[533]

525 EPR 2016, sch 2, para 4(1)(b); and reg 32(1)(a). Two types of exempt waste operation (T3 and T7) are registered with LAs (EPR 2016, sch 2, para 2(2))

526 *Ibid*, sch 2, para 15(1)

527 *Ibid*, sch 2, para 15(4)

528 For example, its operations must be conducted without endangering human health or the environment (Directive 2008/98/EC of 18 November 2008 on waste and repealing certain directives [2008] L 312/3, art 13, by reference in EPR 2016 sch 2, para 4(1)(c)), it must keep certain records (EPR 2016, sch 2, para 17), and it must comply with any of the EPR 2016's general or specific conditions (EPR 2016, sch 2, para 4(1)(a))

529 Directive 2012/19/EU of 4 July 2012 on waste electrical and electronic equipment (WEEE) (recast) OJ L197/38

530 EPR 2016, sch 3, ch 3, s 2, para 11

531 *Ibid*, sch 2, para 18

532 Defra, 'Environmental permitting: Core guidance for the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154), Revised March 2020' (Defra 2020) 85

533 *Ibid*

This does not mean that the amount of compliance activity targeted at exempt facilities such as T11 Exempt Waste Operations will be the same as for permitted facilities. Risk-based compliance assessment recommends "targeting those facilities that … pose the greatest risk to the environment."[534] Exempt waste operations are considered to be 'low risk' and therefore receive what Defra describes as "light-touch" regulation.[535]

The lower priority of inspections for exempt waste operations is reflected in the EA's funding model:

> *"… the inspection of exempt waste operations is funded through Defra … grant-in-aid (GiA) alone. This is different from operations subject to an environmental permit, where applicants pay fees and regulated facilities are subject to annual charges [which] fund ongoing compliance checking at these permitted waste sites"*[536]

There is, however, a distinction between T11 Waste Operations (regulation of which is in fact partly funded by charges) and other exempt waste operations. The EPR regime historically imposed specific inspection duties on the EA in respect of waste exemptions involving WEEE such as the T11 Waste Exemption. The EA was required to conduct inspections prior to registration of the exemption,[537] and on an ongoing (at least annual) basis.[538] These provisions were part of domestic implementation of European legislation.[539]

While these requirements were removed at the European level in 2012[540] (and at present the EPR 2016 merely empowers the EA to "carry out an inspection of the [WEEE] operation before adding the information to the register"),[541] T11 Waste Exemptions continue to attract a charge on registration, currently of £1,221,[542] indicating that a higher level of compliance activity remains envisaged for them than other exemptions. There is no subsistence charge to be paid during the three-year lifespan of the exemption, but each renewal attracts the full registration charge.

The EA does not outline specifically in guidance what level and form of compliance inspection T11 Exempt Waste Operations should expect to receive in respect of this charge, if any.

4. Findings

We requested information from the EA about its compliance inspections in relation to T11 Exempt Waste Operations.

In the FY 2023-24, the number of T11 Exempt Waste Operations regulated by the EA rose from 570 to 609. In that period, the EA recorded 51 in-person inspections of T11 Exempt Waste Operations. No remote inspections were carried out.

534 *Ibid*, 65

535 Defra, 'Consultation Document: A consultation on proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care' (Defra, January 2018) 34

536 *Ibid*, 35

537 Environmental Permitting (England and Wales) Regulations 2010, sch 2, para 7(4) (as enacted)

538 *Ibid*, sch 2, para 15(2)

539 Directive 2002/96/EC of 27 January 2003 on waste electrical and electronic equipment (WEEE), [2003] OJ L037/24, art 6(2)

540 Directive 2012/19/EU of 4 July 2012 on waste electrical and electronic equipment (WEEE) (recast) *OJ* L197/38, art 23, requires only "appropriate inspections and monitoring"

541 EPR 2016, sch 2, para 11(3). The EA has informed us that at present it is not carrying out pre-registration inspections

542 EA, 'Guidance: T11 waste exemption: repairing or refurbishing waste electrical and electronic equipment (WEEE)' (gov.uk, updated 3 April 2018). <www.gov.uk/guidance/waste-exemption-t11-repairing-or-refurbishing-waste-electrical-and-electronic-equipment-weee> accessed 14 January 2025

Assuming that there were no repeat inspections, this means that approximately 9%[543] of T11 Exempt Waste Operations received an inspection for the purpose of checking compliance with the terms of the T11 Waste Exemption. Given that T11 Waste Exemptions last three years, at this rate of inspection, approximately 73% will not receive a compliance inspection during their lifespan.

It is not entirely clear why those 9% of Exempt Waste Operations were selected for inspection. Inspections of exempt waste sites are typically limited and reactive: "regulators inspect exempt waste sites when problems arise or there is intelligence of illegal activity."[544] It could therefore be that those sites were selected because they were suspected of potentially being linked to unpermitted illegal waste sites, although the EA do "also carry out some targeted campaigns of inspection of particular waste streams or industry sub-sectors."[545]

In total, the EA noted that 804 hours of time was recorded "assessing T11 Waste Exemption compliance" by area operational teams. These hours include inspections (including travel) and the preparatory/follow-up work, but also time spent responding to queries from operators and the EA's own registration team during the registration process. This work, alongside that associated with processing registrations, hosting the public register of waste exemptions, and assessing the limits and conditions of T11 Waste Exemptions, is funded by charge income.

In addition to data relating to T11 Waste Exemption compliance inspections, the EA noted that some T11 Exempt Waste Operations are also Approved Authorised Treatment Facilities (**"AATFs"**),[546] and the EA told us that inspections conducted under that parallel regime[547] could in some instances identify T11 Waste Exemption compliance issues:

> *"[AATF] audits do not focus on compliance with T11 exemptions … however, if EA officers happen to identify any breaches of T11 conditions of approval … these will be highlighted to the operator and fed back to the Area team."*

It is beneficial that there are communication channels between the different regulatory teams about compliance issues, but in respect of inspections this siloed but parallel regulatory approach might be viewed as potentially being inefficient.

For the FY 2023/24 the EA conducted audits of 17 AATFs which were also T11 Exempt Waste Operations. While it is not practicable to calculate precise rates of inspection from

543 This figure is calculated using a figure of 589.5 for the number of T11 Exempt Waste Operations, being an average of the number at the start of the financial year 2023/4 and the figure at the end

544 Defra, 'Consultation Document: A consultation on proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care' (Defra, January 2018) 35

545 *Ibid*

546 AATFs form part of the WEEE regime governed by the Waste Electrical and Electronic Equipment Regulations 2013 SI 2013/3113 (the WEEE Regulations 2013). One aim of the regime is to encourage environmentally sound treatment of WEEE. T11 Exempt Waste Operations may apply to the EA to become an AATF. Under the AATF compliance regime they must comply with a range of conditions (WEEE Regulations 2013, reg 63(1))

547 The WEEE Regulations 2013 impose various duties on the EA in respect of AATFs. It must for example monitor the "the accuracy of the information provided by an operator …" (reg 78(h)) and enforce provisions relating to AATF operators' compliance with approval conditions (reg 87(2)(a)). The EA explains that "application[s] will be subject to … checks and may include a site visit." (EA & others 'WMP5 Version 10' (June 2023)). Some audits may be unannounced (EA, 'Questions supplementary to the EAC Inquiry into Electronic Waste and the Circular Economy, EWa0026' (parliament.uk, October 2020) <https://committees.parliament.uk/writtenevidence/12728/html> accessed 15 January 2025). To support these AATF compliance activities, the EA charges fees for annual AATF approvals. These range from £600 for "small" AATFs, to £3,500 for "large" AATFs

the information provided, it is evident that T11 Exempt Operations which are also AATFs are far more likely to be inspected than those which are not.[548]

While not considered 'inspections' for the purposes of this report, we note that the EA also conducts quarterly desktop checks on all AATFs which are also T11 Exempt Waste Operations, to identify any which may have breached the specific condition of T11 Waste Exemptions that "the total quantity of waste treated or stored annually does not exceed 1,000 tonnes".[549] The EA said that if it appears that there has been a breach "the Producer Responsibility Team will attempt to verify the data with the AATF and feed this back to the area teams." We have not seen data regarding how such referrals are then acted upon.

5. Analysis

5.1 Frequency of Inspections

Despite the charges for registration, and the fact that the T11 Exempt Waste Operations registered at the end of the FY 2023/24 were between them entitled to treat/store up to 609,000 tonnes of WEEE annually, it appears that no more than approximately 9% of them receive any compliance inspection from the EA in any given year.

Indeed, for approximately three quarters (73%) of operations, "appropriate periodic inspections" currently equates to no compliance inspection during the three-year life of the exemption.

Considering that annual inspections of all operations were formerly required by statute, inspection figures of 9% were perhaps lower than expected. They are all the more striking when one considers that the initial registration process seems, generally, not to involve substantial compliance checks either. The EA explained to us that for T11 Waste Exemptions, "there is a basic check for completeness of the application form only". It can, it notes, refuse to register an exemption if it carries out a pre-registration inspection and is not satisfied that the operation in question would meet the statutory conditions for registration – but as discussed above, such pre-registration inspections are no longer statutorily mandated.

To what extent such figures may be a problem, however, is a more complex question. Low levels of compliance assurance in the wider waste exemption regime is a recognised issue. Discussing the waste exemption regime as a whole, the EA itself highlights that this can have serious consequences:

> *"In its June 2019 strategic assessment, the [Environment] Agency stated that exemptions have been widely abused since their inception. … The Agency regards registering an exemption as an easy route into the waste industry because of the low barriers to entry and low levels of regulatory oversight."*[550]

548 As AATF approvals last for only one year, annual application figures provide an indication of the maximum number of AATFs potentially in operation. In 2023, the EA received AATF approval applications from 39 T11 Exempt Waste Operations. In 2024 to 16 August, the EA received applications from 36 T11 Exempt Waste Operations. On this basis, at most 75 AATFs which were also T11 Exempt Waste Operations may have been operational at once in the financial year 2023/24 (though the figure is likely much lower, considering that many applications may be renewals). Even using this maximum figure, 17 audits represent an inspection rate of 23% (assuming no AATF received more than one audit)

549 EPR 2016, sch 3, ch 3, s 2, para 11(3)(a)

550 National Audit Office, 'Investigation into government's actions to combat waste crime in England' (NAO 2022) 22

> "*We know a significant number of operators register exemptions and do not comply. For example, we found 42% of registrants inspected in 2022 were non-compliant. Waste exemptions are abused to hide illegal waste activities creating widescale risk of pollution and harm to communities.*" [551]

External trade associations such as the Environmental Services Association have long called for overhauls of the exemptions regime.[552] A programme of reforms has been commenced by Defra[553] and the EA has recently conducted a consultation on introducing charging across the waste exemption regime to help fund additional compliance activities.[554]

T11 Waste Exemptions specifically appear not to be the focus of these proposed changes. As of 2016, T11 Waste Exemptions did not fall into the 10 waste exemptions most identified by the EA with illegality.[555] In 2020, the EA stated that "we do not consider there to be significant fraud within the WEEE system",[556] and it told us that it expects the percentage of non-compliant T11 Exempt Waste Operations to be lower than the 42% cited above in respect of the wider exemptions regime.

However, at least one major industry stakeholder has advocated for the T11 Waste Exemption to be abolished, suggesting that it is a "shortcoming of the existing WEEE system". [557] This was at least in part because operators could be held to higher standards. "[If all operators were AATFs, they] would have to operate to a higher standard … This would increase overall treatment standards of WEEE in the UK."[558]

5.2 Funding

The EA makes a clear link between adequacy of funding, compliance levels, and environmental outcomes in the waste exemption sector generally:

> *"Currently, waste exemption inspections are limited … We have not had dedicated funding to allow consistent, national monitoring of [waste exemption] compliance. Without adequate funding we cannot provide a suitable level of regulatory oversight."* [559]

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551 EA, Environment Agency charge proposals for April 2025: Reducing waste crime and updating time and materials charges (EA November 2024) 9

552 "The 2017 ESA Report … recommended that waste exemptions should be reviewed so that they only cover 'genuinely low risk activities', and that funding be made available to support regular inspections" (Defra, 'Consultation Document: A consultation on proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care' (Defra January 2018) 35)

553 E.g. Defra, 'Our Waste, Our Resources: A Strategy for England' (Defra 2018). For additional detail on the nature of the reforms, see Defra 'Consultation outcome: Supplementary government response' (gov.uk, updated 6 October 2023) <www.gov.uk/government/consultations/reducing-crime-at-sites-handling-waste-and-introducing-fixed-penalties-for-waste-duty-of-care/outcome/supplementary-government-response> accessed 15 January 2025. See also Defra and Welsh Government, 'Exemptions Reform to the Environmental Permitting (England and Wales) Regulations 2016' (Defra and Welsh Government, April 2025), which acknowledges that necessary reforms to the exemptions regime have been subject to delays. To help streamline necessary changes, it proposes to enhance the EA's powers to determine whether facilities should be exempt, and what conditions should apply to them

554 EA, 'Environment Agency charge proposals for April 2025: Reducing waste crime and updating time and materials charges' (EA, November 2024)

555 This is: Defra, 'A consultation on proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care' (Defra, January 2018) 36

556 EA, 'Questions supplementary to the EAC Inquiry into Electronic Waste and the Circular Economy, EWa0026' (parliament.uk, October 2020) <https://committees.parliament.uk/writtenevidence/12728/html> accessed 15 January 2025

557 Dixons Carphone PLC, 'Written evidence submitted by Dixons Carphone plc' (www.parliament.uk September 2019) <https://committees.parliament.uk/writtenevidence/104250/pdf/> accessed 15 January (Submitted in relation to following inquiry: Environmental Audit Committee, 'Electronic Waste and the Circular Economy' (2019-21, HC 220)).

558 Ibid. Responding to the comment, the EA has stated to us that operators of T11 Exempt Waste Operations are already expected to comply with Best Available Treatment Recovery and Recycling Techniques

559 EA, 'Environment Agency charge proposals for April 2025: Reducing waste crime and updating time and materials charges' (EA November 2024), 16

> *"Better monitoring of waste exemptions will help … deter criminals from operating … and enforce better environmental standards."* [560]

In respect of T11 Waste Exemptions specifically, it appears that in 2018, when charge levels were revised, they did not increase to the level the EA initially felt necessary. It initially proposed that registration charges should increase to £1,452 in order "to fully cover compliance checks."[561] However, following concern from respondents, a reduced charge of £1,221 was set on the basis that exempt waste operations "[fell] towards the smaller size range" and therefore required reduced regulatory effort.[562]

On the basis of current charges, the EA has outlined to us that it currently raises approximately £250,000 annually from T11 Waste Exemption registration charges. In 2023/24, 804 hours of operational teams' time was recorded on compliance activities, equating to costs of approximately £80,400.

Activities covered include inspections but also other matters (e.g. dealing with T11-related queries from operators and queries raised by the registration team during the registration process).[563]

Even if all of this time were spent on compliance inspections, it would appear to be inadequate to cover preparatory work, on-site inspections,[564] follow-up work, and travel for anything but a small proportion of T11 Exempt Waste Operations.

There is a striking contrast between these figures and the charges levied for the more rigorous AATF regime, which charges up to £3,500 annually per approval (i.e. over 10 times the annual cost of a T11 Waste Exemption), and which, as discussed above, sees higher levels of compliance inspection.

The EA is currently consulting on a new waste exemption charging scheme, banded by risk. The new charges are intended, at least in part to "allow us [the EA] to […] carry out proactive compliance activity. This will help us ensure waste exemptions are complied with."[565]

As T11 Waste Exemptions are not allocated a banding, we understand that they are likely to be unaffected beyond benefiting from annual charge increases in line with inflation.[566] However, the EA has recently stated compliance monitoring aims for the exemptions which *are* banded. It proposes to "assess" the compliance of all exemptions falling within 'Band 1', despite charging only £420 over the three-year lifetime of the exemption.[567] And exemptions falling under the 'Upper Band', charged £1,236, will be "assessed" annually.[568]

While "assessment" does not necessarily mean an in-person inspection, it appears that the EA is proposing a rate of compliance checks for some banded exemptions which is

560 *Ibid*, 9

561 EA, 'Consultation on Charge Proposals: 4. The model for the EPR charging scheme' (gov.uk, November 2017), 28. Available at <https://consult.environment-agency.gov.uk/engagement/environmentagency-charging-proposals-fromapril2018/user_uploads/section4.pdf> accessed 15 January 2025

562 EA, 'Consultation response document annexes: Charge proposals from 2018' (EA 2018) 26

563 The EA has informed us that expenditure information cannot be provided for inspections specifically, as expenditure is tracked by team rather than by activity

564 Which might involve assessing waste types and quantities, whether operators are using best available treatment, recovery and recycling techniques, whether site infrastructure is fit for purpose, and whether pollution is evident

565 EA, 'Environment Agency charge proposals for April 2025: Reducing waste crime and updating time and materials charges' (EA, November 2024) 10

566 *Ibid*, 13

567 *Ibid*, 18. A further £56 will be charged as a registration fee, but this will not contribute to compliance activities

568 *Ibid*

approximately 10 times higher than that currently being achieved for T11 Waste Exemptions, for a roughly comparable charge.

5.3 In-person vs remote inspections

The EA informed us that at present, "non-in person compliance inspections for T11 exemption[s] are generally not carried out". It has told us that it does not consider remote inspection to be the best means of assessing T11 exemption compliance, and that T11 exemption compliance activity is "best delivered in-person to effectively check the key conditions." In any event, the EA does not regard such inspections as viable, noting for example that data submissions, which enable a desk-based assessment, are not a requirement of the conditions of the T11 exemption.

This is in contrast to the AATF regime, where the EA uses data reported by operators to conduct a significant amount of desk-based compliance monitoring, with 5 of the 17 AATF audits discussed above being remote, and all AATFs which are also T11 Exempt Waste Operations receiving some form of desktop check.

We have not been made aware of any plans to introduce desktop compliance inspections of T11 Exempt Waste Operations, although we note that the EA is suggesting it will do so in respect of proposed 'Band 3' exemptions.[569]

5.4 Transparency

We noted a relative lack of transparency about the nature and extent of inspections that operators in England should expect.[570] For example, the EA's T11-specific guidance provides no indication as to what ongoing compliance inspections might take place following registration,[571] and nor does the standard form of confirmation letter.[572] Its waste exemption registration guidance urges operators to check that they can comply with exemption conditions, but makes no reference to how the EA may check their compliance.[573]

Nor is information published as a matter of course (e.g. in a public register) regarding what compliance inspections have been carried out in practice. The EA have stated to us that the

569 *Ibid*, 32. It is not suggested that inspection will be only desk-based: there will also be "targeted campaigns," which the EA has stated to us "could for example include in-person inspection an [sic] ad hoc basis, for example because of intelligence information, incident reports, etc"

570 In contrast, Natural Resources Wales, which is the regulator for T11 Waste Exemptions in Wales, states explicitly that "we may carry out inspections of exempt waste activities to check they are meeting the limits and criteria" (Natural Resources Wales, 'Register or renew your waste exemptions'. (www.naturalresources.wales, updated 12 December 2024) <https://naturalresources.wales/permits-and-permissions/waste-permitting/register-or-renew-your-waste-exemptions/?lang=en> accessed 20 January 2025. In respect of T11 Waste Exemptions specifically, guidance also states clearly that there will be a site visit prior to registration (Natural Resources Wales, 'Register a waste electrical and electronic equipment exemption (WEEE)' (www.naturalresources.wales, updated 29 October 2024) <https://naturalresources.wales/permits-and-permissions/waste-permitting/register-a-waste-electrical-and-electronic-equipment-exemption-weee/?lang=en> accessed 20 January 2025)

571 EA, 'Guidance: T11 waste exemption: repairing or refurbishing waste electrical and electronic equipment (WEEE)' (gov.uk, updated 3 April 2018) <www.gov.uk/guidance/waste-exemption-t11-repairing-or-refurbishing-waste-electrical-and-electronic-equipment-weee> accessed 20 January 2025

572 EA, 'Form WEEEX001: Registration of an exemption to treat waste electrical and electronic equipment' (gov.uk, August 2017 (version 4)) <https://assets.publishing.service.gov.uk/media/5d4ad4d3ed915d71856d4bad/Form_WEEEX001.pdf> accessed 20 January 2025

573 EA, 'Guidance: Register your waste exemptions' (gov.uk, 12 December 2024) <www.gov.uk/guidance/register-your-waste-exemptions> accessed 20 January 2025
Furthermore, the WEEEX001 form that operators fill in to register the exemption makes a reference to the possibility of a site inspection "to check your facilities and make sure that you can keep to your responsibilities", but then states that "this will be undertaken before we register the exemption". The EPR core guidance provides no information specific to T11 Waste Exemption inspections, instead noting generally that exemption registration authorities are under a duty to conduct "appropriate periodic inspections", and providing a brief overarching description of what inspections under the EPR 2016 may include. (Defra, 'Environmental permitting: Core guidance for the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)', Revised March 2020 (Defra 2020) 66

EPR 2016 does not require it to put Compliance Assessment Reports (where the findings from inspections are recorded) following inspections of Waste Exemptions on a public register (although they are available on request).

This lack of information may create uncertainty for operators, and it challenges anyone seeking to understand how the EA interprets its inspection duty in the context of T11 Waste Exemptions. It also makes is difficult to see what is actually being assessed by the EA in these inspections.

5.5 Guidance

In our discussion of current inspection practices above, we have referred to remarks on inspections in Defra's Environmental Permitting Core Guidance, published in 2020. We have not, however, referred to Defra's more specific guidance on waste exemptions[574] since it was published to accompany the EPR 2010, the repealed predecessor to the EPR 2016.

We note that in respect of inspections of T11 Waste Exemptions, the waste exemptions guidance states that "The WEEE Directive requires an initial inspection prior to registration and subsequent annual audit to take place…"[575] This has been incorrect for over a decade.

It is troubling to find substantively out-of-date guidance published on official platforms without obvious warning indicating that it may no longer be accurate. This is all the more problematic when the guidance itself assures its readers that it "will be revised from time to time" so as to ensure that it is "current and up to date."[576]

5.6 Post-Implementation Review (PIR)

The waste exemption regime generally has, by virtue of its well-known weaknesses, been subject to significant scrutiny over recent years, both by government and non-government bodies. Various reforms, both statutory and non-statutory are in the works. Some of these are directly related to the EA's duty to conduct 'appropriate periodic inspections.'[577]

However, the most recent PIR of the EPR 2016 (which must be conducted 'from time to time' by the Secretary of State),[578] published in 2023,[579] does not explore in any detail the well-recognised issues with implementing the exemptions inspections duty.

The key criteria for analysing the regulations' success does not include reference to whether compliance checking occurs. No data relating to compliance checks is proposed to be requested from the EA for the five years following the PIR. The sole reference to the subject is included in a discussion of feedback received from the EA's Regulated Business Forum, where it is noted that:

574 Defra, Environmental Permitting Guidance: Exempt Waste Operations (Defra, March 2010)

575 *Ibid*, 28

576 *Ibid*, 8

577 EA, 'Environment Agency charge proposals for April 2025: Reducing waste crime and updating time and materials charges' (EA November 2024) refers to the existing duty, 15). The proposed charges are designed to rectify the EA's current inability to provide "a suitable level of oversight", 16

578 EPR 2016, reg 80

579 Defra, 'Post Implementation Review: The Environmental Permitting (England and Wales) Regulations 2016 (PIR No: RPC-DEFRA-5005(2))' (Defra, 26 May 2023)

> *"There is a perception that [...] "over 50% of permitted sites don't have a compliance check from one year to the next", meaning criminal waste enterprises are being legitimised by claiming exemptions. In the area of waste, respondents noted the risk that exemption can be used to cover illegal activities."* [580]

We recognise the challenges associated with assessing the implementation of a piece of statute as wide ranging as the EPR 2016. However, it is unexpected that the PIR overlooks how the inspection provisions are working in practice, especially considering that (as the PIR itself explains) a key purpose of the EPR 2016's exemptions regime is to "allow regulators to monitor the situation, and to carry out inspections where appropriate."[581]

580 *Ibid*, 74
581 *Ibid*, 15

Environment Agency – Bathing Water

1. Introduction

The Bathing Water Regulations 2013[582] were introduced to implement in England the EU's Directive 2006/7/EC concerning the management of bathing water ('the Bathing Water Directive').

In common with most EU-derived environmental law, the relevant provisions of the regulations became retained EU Law by virtue of the EU Withdrawal Act 2018, and then assimilated law by virtue of the Retained EU Law (Revocation and Reform) Act 2023.

The purpose of the bathing water regime is "to preserve, protect and improve the quality of the environment and to protect human health by complementing Directive 2000/60/EC" (the Water Framework Directive). The Bathing Water Regulations 2013 provide for the identification of a list of bathing waters and establish a common framework for their monitoring. The identified bathing waters are subject to regular testing for indicators of the main pollutants that may affect human health.

2. Legislation

As far as England is concerned, the relevant Minister is the Secretary of State for Environment, Food & Rural Affairs, and the appropriate agency is the EA. These have primary responsibility for implementing the regulations.

The Bathing Water Regulations 2013 require the Secretary of State to identify, and maintain, a list of surface waters in England at which the Secretary of State "expects a large number of people to bathe."[583] The bathing water season is set under regulation 4.

The Secretary of State and the EA have general duties to ensure that by the end of each bathing water season all bathing waters are classified as at least of 'sufficient' quality, and to take steps to increase the numbers of such waters that are of 'good' or 'excellent' quality.[584]

The EA must establish a bathing water profile for every bathing water, and keep the profile under review.[585] They also have to establish a monitoring programme for every bathing water, which covers the following:[586]

- Intestinal enterococci and Escherichia coli;
- Cyanobacteria;
- Macro-algae and marine phytoplankton;
- Visual inspections for waste, including tarry residues, glass, plastic or rubber.

The EA must carry out bathing water quality assessments.[587] They have to classify each bathing water as 'poor,' 'sufficient,' 'good' or 'excellent' following prescribed criteria set out

582 The Bathing Water Regulations 2013
583 *Ibid*, reg 3
584 *Ibid*, reg 5(1)(a)-(c))
585 *Ibid*, reg 7(1)(a) and (b). The contents of each bathing water profile are prescribed (sch 3)
586 *Ibid*, sch 4, parts 1-4
587 *Ibid*, reg 10

in the Bathing Water Regulations 2013.[588] The frequency for the reviews then depends on the assessment results.[589]

The EA has specific duties when pollution incidents occur affecting bathing waters,[590] and must take additional measures at 'poor' bathing waters,[591] including issuing permanent advice against bathing where that 'poor' status continues for five years.

The EA must provide the Secretary of State and LAs with information on the quality of bathing waters.[592] The EA has public information responsibilities where there are short term pollution incidents.[593] The Secretary of State and the EA must encourage public participation in the exercise of their functions under the Bathing Water Regulations 2013.[594] The EA must disseminate information about the bathing water and its quality.[595] Under its obligation to maintain a bathing water profile, the EA maintains a website ('Swimfo'), along with additional information available to bathers.

The Secretary of State must publish annual reports on bathing waters[596] and must also carry out five yearly reviews on the Bathing Water Regulations 2013 as they apply to England and publish the results.[597]

3. Monitoring or Inspection

The monitoring which the EA must undertake in order to discharge its functions under the Bathing Water Regulations 2013, as set out above, is prescribed in detail and covers:[598]

- Monitoring point;
- Monitoring calendar;
- Frequency of monitoring;
- Sampling equipment;
- Storage and transport of samples before analysis;
- Reference methods of analysis.

Details of actions to be taken on Cyanobacteria (Part 2), Macro-Algae and Marine Phytoplankton (Part 3) and Wastes (Part 4) are also spelled out.[599]

The EA has commented that it is required to undertake visual inspections in accordance with the Regulations, which it records alongside environmental observations. This is a

588 *Ibid*, reg 11 and sch 5
589 *Ibid*, sch 3, para 2
590 *Ibid*, reg 12
591 *Ibid*, reg 13
592 *Ibid*, reg 5(3)(a) and (b)
593 *Ibid*, reg 14 and 15
594 *Ibid*, reg 6(1)(a)
595 *Ibid*, reg 8(2)-(4)
596 *Ibid*. reg 15A
597 *Ibid*, reg 20
598 *Ibid*, sch 4
599 *Ibid*

monitoring and sampling activity rather than, for example, a conventional inspection of compliance against an environmental permit.

Monitoring and sampling is carried out by EA staff in their Field Monitoring Teams. The EA does not regard them as 'inspectors' or performing inspection regime work. The EA does have some remote monitoring devices and technology which it uses for investigations,[600] but states that these are not used for statutory sampling or reporting under this regime.

4. Findings

As part of our preparation of reports on bathing waters in England and in Northern Ireland, we commissioned external contractors Stantec and the Centre for Research into Environment and Health (CREH) to conduct detailed research and to produce a report 'Assessment of the Implementation of Environmental Law in Relation to Bathing Waters'[601] ('the Bathing Water Technical Report') dated February 2024 and published along with our own bathing water report[602] in November 2024.

Our report and the supporting Bathing Water Technical Report noted[603] that the Bathing Water Regulations set out provisions, functions and duties on the main authorities regarding -

- Identification of bathing waters – how bathing waters are identified.
- Sampling and monitoring – sampling methods, locations, frequency, storage, transport and laboratory parameters to be analysed.
- Assessment and classification of identified sites – determination of classification and ability to disregard samples during 'abnormal situations,' or periods of 'short-term pollution.'
- Minimum and targets standards – outlining bathing water standards.
- Communication of information and risk – provision of information through bathing water profiles, signage, the internet, and other appropriate media.
- Bathing water management measures – management responsibilities in response to specific situations such as 'pollution incidents,' 'abnormal situations' and 'short-term pollution.'

Both the Bathing Water Technical Report and the OEP's own report make recommendations about how the Bathing Water regime could be improved and enhanced. However, the procedural aspects of it, including its monitoring, classification and reporting elements, appear to be broadly working in compliance with the regulations.

The Bathing Water Technical Report states[604] that in 2023, England had identified 424 bathing waters, of which 407 were coastal and 17 were inland. The report found that

600 E.g. Sondes. These are devices that enable the EA to test the temperature, oxygen levels, and 'cloudiness' (turbidity) of water, giving them vital information on its quality

601 Stantec/CREH, 'Assessment of the Implementation of Environmental Law in Relation to Bathing Waters' February 2023, Project No. 330202402 (OEP November 2024)

602 OEP, 'A review of the implementation of the Bathing Water Regulations in England' (November 2024)

603 *Ibid*, iv

604 *Ibid*, iv

"the main authorities in England and Northern Ireland are generally considered to be undertaking their functions, and taking appropriate measures to fulfil their duties, as defined and required by the Regulations."[605]

Specifically on 'inspections,' the Bathing Water Technical Report states: "aside from 2020 when COVID-19 prevented the safe sampling and monitoring of bathing waters, the EA appears to have fully undertaken monitoring and microbiological sampling of identified bathing waters in accordance with the Regulations."[606]

Our report came to broadly similar conclusions. It was based on the Bathing Water Technical Report and other information. We had concerns and recommendations about aspects of the interpretation and application of the Bathing Water Regulations, but found that the main 'machinery' of the Regulations (which includes the EA's discharge of its monitoring functions under them) was working.

Thus the Foreword to our report stated: "It is fair to say that the regulations have led to significant improvements in bathing water quality over around three decades, although there has been some recent stagnation and decline. And important elements of the regulations, such as they are, are being implemented: in particular, our assessment is that the monitoring, classification and reporting obligations of the regulations are being complied with. Nevertheless, the lack of overall improvement in water quality observed in recent years, combined with an increase in the number of bathing water sites failing to achieve sufficient standards, is a cause for concern and has been widely reported."[607]

In the Recommendations of our report, we addressed the application, interpretation, and development (in any forthcoming review by Defra) of the Bathing Water regime in England, whilst acknowledging that for the application of the current Regulations, the monitoring and implementation machinery is working.

So for example, the report states -"Recommendation 7. In any review of the Bathing Water Regulations, we recommend that Defra and the EA consider the scope and options to update the monitoring and sampling regime. We recommend that this should include considering the potential to: (a) take a more flexible approach to determining the most representative sampling locations; (b) increase the number of sampling points on long stretches of identified areas; (c) develop proposals for the consistent monitoring of and response to cyanobacteria blooms; and (d) provide increased transparency and explanation of monitoring decisions that people understand what is being done, when, how and why."[608]

We had initially assumed that the EA's work under the bathing water regime in England would simply be funded from direct government grant-in-aid, and not through any kind of cost recovery. However, the EA has noted that over the last decade, the proportion of the EA's work on bathing waters funded by grant-in-aid has significantly decreased. To make up this shortfall, the EA has told us that it relies on income from water discharge activity permits issued to water companies and other dischargers.

605 *Ibid*, v
606 *Ibid*, 34
607 OEP, 'A review of the implementation of the Bathing Water Regulations in England' (November 2024) 4
608 *Ibid*, 16

5. Analysis

This case study stands in contrast to most of the others in this report. It reflects a fairly typical transposition in domestic law of a European Directive, which at the time tended to contain prescriptive and mandatory outcomes.

There is limited discretion in the Bathing Water Regulations as to how the EA should set about its monitoring duties, how many samples it should take at each bathing water, how it should arrange for the samples taken to be transported and analysed; all of that is spelled out.

It might be thought therefore that there would be less of an element of 'risk-based regulation', and limited scope for choice or discretion as to the frequency of 'inspections', and no lack of clarity in the Regulations as to what is expected or required. However, we note that the EA has confirmed that not all sites are sampled at the previous frequency of 20 samples, but that using a risk-based approach some sites are sampled at a frequency of 10 or 15 samples.

In that context, it is to be noted that the EA has broadly met all the requirements of the Regulations as regards monitoring, classification and reporting.

Our own bathing water report for England discusses a specific concern around the EA having in the past reduced the number of samples taken at selected sites to levels of five samples per site per year, which appeared to be at odds with levels recommended by the WHO.[609] It should be noted, however, that these reduced sampling levels still met the requirements of the Bathing Water Regulations.

The EA also told us that its previous minimum figure of five samples was increased in 2022, leading to the present levels of 10-20 samples for each site.

It may not be necessary, or even desirable, to have this level of prescription across the board in all other environmental law regimes, but it is worth noting that where the requirements of environmental laws are very clear, they may well be easier to follow.

Funding

The EA has obligations to discharge under the Bathing Water Regulations. We note that in order to meet these obligations, the EA has stated that it is obliged to supplement declining grant-in-aid funding with funds drawn from water discharge activity permit income.

Transparency

The EA has noted that there is no separate requirement in the Bathing Water Regulations for it to maintain a public register.

609 OEP, 'A review of the implementation of the Bathing Water Regulations in England' (November 2024), para 5.1.3, 55

Fish Health Inspectorate – Aquaculture Production Businesses

1. Introduction

Aquaculture (the farming of aquatic organisms) is the world's fastest growing food supply sector.[610] In 2020, the English aquaculture sector produced around 8,000 metric tonnes of seafood, with a value of approximately £26 million.[611] In the same year, the English Aquaculture Strategy, which was welcomed by the then-government, expressed an ambition for production to increase ten-fold by 2040,[612] whilst stressing that "aquaculture production should be environmentally … sustainable" and that "aquaculture operations [should] both establish and follow good practice … in terms of … environmental stewardship."[613]

In order to achieve such ambitions, it is important that negative environmental impacts of the aquaculture industry, which can be wide-ranging,[614] are managed through appropriate regulation. For example, disease outbreaks within the sector have the potential, in certain cases, to cause harm should they spread into the wild environment. This case study therefore explores the regulatory framework which helps to limit the occurrence and extent of disease outbreaks.

2. Legislation

Under the Aquatic Animal Health (England and Wales) Regulations 2009 (the '2009 Regulations') a person must hold an authorisation from the Secretary of State in order to operate an Aquaculture Production Business (**"APB"**) in England. [615] Fish, shellfish and crustacean farms are APBs, as are many undertakings which import aquatic animal species.[616]

The 2009 Regulations are domestic law made to implement European Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof[617] (the '2006 Directive'). Their aim in requiring APBs to be authorised is to prevent the introduction and spread of certain infectious aquatic diseases.[618] Such diseases, if allowed to spread, can have widespread economic and environmental impacts.[619]

610 Seafish, 'Value and importance of aquaculture' (Seafish.org, undated) <www.seafish.org/insight-and-research/aquaculture-data-and-insight/value-and-importance-of-aquaculture/> accessed 17 January 2025

611 Tim Huntington and Rod Cappell, 'English Aquaculture Strategy. Final Report' (Poseidon Aquatic Resources Management Ltd for the Seafish Industry Authority, 2020) 1

612 *Ibid*, i

613 *Ibid*, 20

614 "… several … environmental effects require appropriate regulation … These include localised pollution of the sea bed … causing changes in local biodiversity; release of dissolved nutrients … that have the potential to stimulate primary production; release of dissolved and particulate-bound medicines …that have the potential to affect local biodiversity and; escapes of fish … which can have both ecological and genetic impacts on wild populations." Kenneth Black and Adam Hughes, 'Future of the Sea: Trends in Aquaculture' (Foresight, Government Office for Science, July 2017) 7

615 Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463 (the 2009 Regulations), reg 12(1)

616 APBs are "any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to the rearing, keeping or cultivation of aquaculture animals". Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof … [2006] OJ L328/14 (the 2006 Directive), art 3(1)(c)

617 The authorisation system outlined in the 2006 Directive is maintained under subsequent European legislation, such as Regulation (EU) 2016/429 of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health [2016] *OJ* L 84/1

618 Defra and Cefas 'Guidance: Fish, shellfish or crustacean farm authorisation' (gov.uk, updated 17 August 2023) <www.gov.uk/guidance/fish-shellfish-or-crustacean-farm-authorisation> accessed 17 January 2025

619 The 2006 Directive lists "significant economic impact" and "detrimental environmental impact" as criteria for the listing of diseases (Annex IV). The Fish Health Inspectorate also highlights the link between the control of disease and the environment: "By controlling serious diseases of fish and shellfish in England and Wales, we facilitate safe international trade, benefit people, the economy and the environment and help protect a valuable natural resource." (gov.uk, undated) <www.gov.uk/government/groups/fish-health-inspectorate> accessed 17 January 2025

The FHI acts on behalf of the Secretary of State in the delivery of the 2009 Regulations,[620] including through the implementation and enforcement of the APB authorisation regime. It grants authorisations to APBs, subject to certain conditions relating to record keeping, hygiene practice, compliance with its surveillance regime, and other conditions that it considers appropriate.[621]

APBs are typically subject to a wide range of further legislative controls, ranging from animal welfare to alien species controls, and from water abstraction to the use of medicated feedstuffs. The statutory framework governing aquatic animal disease control alone draws on multiple pieces of legislation.[622] For the purposes of this case study, we are only exploring inspections whose purpose includes checking compliance with the authorisation regime under the 2009 Regulations, although as we shall discuss further below, it can be challenging to discuss the compliance measures for these various regimes in isolation.

3. Monitoring or inspection

Under the 2009 Regulations, the FHI must maintain a publicly-available record of authorised APBs.[623] It is also provided with enforcement powers[624] and the ability to suspend or revoke authorisations where authorisation conditions or regulatory requirements are not being complied with.[625] However, the 2009 Regulations do not impose any express duty on the FHI (or any authority) to carry out inspections to check compliance with the authorisations in the first place.

This duty is instead found in EU Regulation 2017/625 (the 'Official Controls Regulation'):[626]

> "*Competent authorities shall perform official controls on all operators regularly, on a risk basis and with appropriate frequency…* "[627]

Such official controls are to be performed "for the verification of compliance with the rules in the areas of … animal health requirements",[628] which encompasses APB authorisations amongst many other regulatory regimes.

The Official Controls Regulation provides a range of detailed rules regarding how and when such controls should be performed. They should be performed in accordance with prescribed techniques (including through 'inspection'),[629] without prior notice where possible,[630] and taking account of specific risks (such as to the environment).[631] Information

620 Defra and Cefas, 'Corporate Report: Cefas framework document' (gov.uk, updated 25 January 2023) <www.gov.uk/government/publications/cefas-framework-document/cefas-framework-document> accessed 17 January 2025

621 2009 Regulations, reg 6

622 E.g. Commission Decision 2008/896/EC of 20 November 2008 on guidelines for the purpose of the risk-based animal health surveillance schemes … [2008] *OJ* L 322/30; Commission Decision 2009/177/EC of 31 October 2008 implementing Council Directive 2006/88/EC … [2009] *OJ* L 63/15; Commission Implementing Decision (EU) 2015/1554 of 11 September 2015 laying down rules for the application of Directive 2006/88/EC … [2015] *OJ*L 247/1

623 2009 Regulations, reg 13. This has been implemented in the form outlined in the (since revoked) Commission Decision 2008/392/EC of 30 April 2008 implementing Council Directive 2006/88/EC … [2008] *OJ* L 138/12

624 *Ibid*, pt 5

625 *Ibid*, regs 10 and 11

626 Regulation (EU) 2017/625 of 15 March 2017 on official controls … [2017] *OJ* L 95/1 (the Official Controls Regulation). This will have become part of the law in England by virtue of the Retained EU Law (Revocation and Reform) Act 2023

627 Official Controls Regulation (EU) 2017/625, art 9(1)

628 *Ibid*, art 1(2)

629 *Ibid*, art 14

630 *Ibid*, art 9(4)

631 *Ibid*, art 9(1)

on their organisation and performance should be published annually online.[632] They should be documented in writing,[633] and details of how many have been carried out and their results must be published in a "regular and timely" way.[634]

While the Official Controls Regulation does not outline specific frequencies for the performance of official controls, the 2006 Directive does, requiring "regular inspections, visits, audits"[635] and providing recommended frequencies ranging from every 1 to 4 years depending on the level of risk. [636]

The FHI is under no statutory obligation to observe the recommended frequencies in the 2006 Directive, although a separate statutory duty to implement a risk-based animal health surveillance scheme[637] (which the FHI also implements on behalf of the Secretary of State), includes a requirement to "have regard" to them[638] (alongside the need to check APBs' records held as part of their authorisation conditions).[639]

As such, notwithstanding the absence of an inspection duty in the 2009 Regulations, there are legislative provisions in force in English law governing inspections of APBs and their compliance with authorisations granted under the 2009 Regulations.

In addition to these factors, the Centre for Environment, Fisheries and Aquaculture Science's (**"Cefas"**) annually-reviewed Memorandum of Understanding with Defra provides a further formal, if non-statutory, steer as to the frequency with which such inspections should be conducted, specifying that "inspections on all APBs are to be undertaken to review authorisation status and for compliance with statutory requirements according to risk ranking."[640]

In light of these statutory and contractual obligations, the FHI states that it conducts "a programme of routine inspections to monitor … industry compliance with the conditions of authorisation and biosecurity requirements".[641]

4. Findings

In response to our information request, the FHI provided recent information about its inspection regime in relation to authorised APBs in England.

The majority of the FHI's regulation of authorised APBs takes place through on-site inspections. The FHI's inspections of authorised APBs can be both routine (planned at the start of the calendar year) or ad hoc. Inspections to check ongoing compliance with authorisations fall under the routine inspections programme.[642]

632 *Ibid*, art 11(1)
633 *Ibid*, art 13
634 *Ibid*, art 11(1)
635 2006 Directive, art 7(2)
636 *Ibid*, pt B of annex III
637 Commission Decision 2008/896/EC of 20 November 2008 on guidelines for the purpose of the risk-based animal health surveillance schemes … [2008] *OJ* L 322/30, art 1(1)
638 *Ibid*, art 1(2)(b) (by reference to para 4 of Annex I)
639 *Ibid*, para 2.1 of Annex I
640 This extract from the most recent memorandum of understanding between Defra and Cefas was provided in the FHI's response to the OEP, dated 3 September 2024
641 Fish Health Inspectorate, 'Fish Health Inspectorate' (gov.uk, undated) <www.gov.uk/government/groups/fish-health-inspectorate> accessed 17 January 2025
642 *Ad hoc* authorisation inspections are conducted in connection with authorisation applications, deauthorisations or (on rare occasions) in connection with enforcement activities)

In 2023, 594 APBs held authorisations under the 2009 Regulations.[643] Of these authorised APBs, 420 (71%) fell into the FHI's routine inspection regime. The activities of the remaining 174 (29%) were deemed by the FHI to pose only a "nominal risk" of introducing relevant diseases, and were not subject to routine inspections.

In total, the FHI conducted 792 on-site inspections in 2023, of which 421 (53%) incorporated an APB authorisation compliance inspection. Subject to any repeat inspections, this means that 71% of all authorised APBs may have received authorisation compliance inspections in 2023, equating almost exactly to the proportion of APBs falling within the routine inspections programme.

The FHI conducted a wide range of further activities during its visits to APBs, including particularly disease surveillance inspections. As such, authorisation compliance inspections will often have occurred alongside inspections relating to other aspects of the FHI's remit.

Alongside its on-site inspections, the FHI highlighted that it operates an online platform, Fish Health Inspectorate Online (FHI Online), through which APBs can self-record various regulated activities. While this system does not replace inspections, the FHI reported that the system facilitates shorter inspections (since inspectors need to collect fewer records on site), and that it improves compliance with statutory obligations.

5. Analysis

5.1 Frequency of inspections

As noted above, the number of authorisation compliance inspections reported suggests that the 420 APBs subject to the FHI's regular inspection programme are on average having their authorisation compliance checked through on-site inspection at least once a year. This is a rate of inspection equal to (or in some cases above) the 2006 Directive's recommendation for even the highest risk establishments in the context of animal health and official controls inspections.

We understand from the FHI that the remaining 174 (29%) of APBs trade in species which are not susceptible to the particular diseases managed by the regime, meaning that there is no rationale for them to undergo routine inspections. As such they fall outside the routine inspection programme. The FHI has explained that such APBs are authorised to allow conditions to be applied, and to "maintain visibility and contact with this sector of the industry".

5.2 Funding

The FHI highlighted a funding-related challenge it faces in ensuring compliance with the APB regime. This relates to "sustained operational budget reductions". These "put pressure on the FHI's capability to fulfil statutory obligations for aquatic animal health surveillance and inspections…". For context, for the FY 2024/2025, the FHI allocated £605,472 to authorisation compliance and disease surveillance activities. While the FHI was not able to provide this specific figure for previous years, it can be placed in the wider context of a resource departmental expenditure limit for the implementation of the UK fish health

643 The number of APBs increased during the year, with a total of 121 APBs being newly authorised, against 40 being deauthorised

regime in England and Wales which fell from £1,862,000 in 2020/2021 to £1,454,301 in 2023/2024.[644]

5.3 In-person vs remote inspections

Deployment of new technology has enhanced and supplemented the FHI's inspections of authorised APBs. For example, in 2016, FHI inspectors started to collect compliance inspection data electronically, facilitating real-time submission of inspection data to relevant databases, and improving in-field access to information such as conditions of authorisation.[645]

Three years later, it was reported that the FHI's use of the Starfish Database supported the scheduling of inspections and audit of data collected:

> *"All inspection, sampling and disease diagnostic data are recorded on the Starfish database. This system contains a scheduling tool that identifies all sites requiring particular types of inspection and allows senior inspectors to create a schedule of visits for any given period. … Visit data is collected electronically using portable personal computers and automatically submitted to the Starfish database through a wireless connection. This allows all work carried out to be audited."*[646]

Most recently, as outlined above, the FHI has reported to us that its FHI Online platform has enabled inspections to be shorter.

Despite these developments, it is our understanding that, with the exception of the period of the COVID-19 lockdowns (during which the FHI "endeavoured" to remotely check APB's records and "complete aspects of compliance where feasible"),[647] the deployment of new technologies has not led to APB authorisation compliance inspections taking place remotely.[648] The FHI has stated to us that it is not possible to check compliance with all authorisation conditions remotely, and that FHI Online will "never fully replace in person, on-site authorisation compliance inspections".

5.4 Legislative complexity

The FHI highlighted to us the challenge of interpreting the complex legislation governing its activities, and noted that it would be "useful" for existing assimilated law (EU law that remains in force in England) to be rationalised and consolidated.

Notably, at the EU level, efforts have been made address the complexity of the legislative framework governing animal health (including APB authorisations) through consolidating

644 These figures exclude post-EU exit border control function funding

645 Fish Health Inspectorate 'Transparency Data: FHI Annual Report – 2016' (gov.uk, updated 2 March 2017) <www.gov.uk/government/publications/fish-health-inspectorate-reports-2016/fhi-annual-report-2016> accessed 17 January 2025

646 FSA and others, *Multi-Annual National Control Plan for the United Kingdom, April 2019 to March 2023* (FSA, December 2019) 85

647 Cefas, 'Press Release: The FHI Remains in Operation – COVID-19' (gov.uk, updated 14 May 2020) <www.gov.uk/government/news/the-fhi-remains-in-operation-COVID-19> accessed 17 January 2025

648 FHI Online does not currently accept submission of the full range of records required as conditions of APB Authorisations. It is therefore unsurprising that to-date the system has not reduced the need for on-site inspections, although we note that the FHI has expressed an intention to expand the platform to cover all record-keeping requirements under the 2019 Regulations (Cefas, 'FHI Online: About' (cefas.co.uk) <https://fhionline.cefas.co.uk/about> accessed 17 January 2015

legislation.[649] However, this came into force in the bloc after Brexit. The English regime, in contrast, remains based upon the previous, unconsolidated framework, and is now further complicated by an additional layer of post-Brexit amending legislation.[650]

While not necessarily something which would have been resolved through the EU consolidation mentioned above, a particular aspect of legislative complexity that we have noted is the absence of easily interpreted statutory provisions regarding whether, when or how authorisation compliance inspections of APBs should take place. The need to refer to the Official Controls Regulation, and to cross reference between various provisions in order to establish if and how it applies to the APB authorisation regime, obscures the FHI's inspection responsibilities.

While there is inevitably a limit to how simple law can be when governing highly technical areas, we note the general principle that law should be "accessible and so far as possible intelligible, clear and predictable".[651] In addition it should be "certain, so that it can be easily enforced and so that people can know where they stand."[652] We would query whether the law governing APB authorisation compliance inspections satisfies these principles.

5.5 Transparency

The FHI's Service Charter provides operators with clear information about how inspections are arranged, and what to inspect both during and after inspections.[653] There is, however, less information published regarding the frequency with which APB operators should expect to receive inspections, or what inspections have been carried out in practice.

The level of transparency regarding inspections actually conducted appears to have been somewhat irregular in recent years. Information regarding the FHI's authorisation compliance inspection programme is legally required to be published online by 31 August every year in annual reports on the implementation of the multi-annual national control plan (**"MANCP"**)[654] (for which Defra is currently responsible).[655] These reports contain both raw figures (regarding, for example, the number of inspections carried out) and associated discussion and analysis. They expressly address whether the relevant year's inspection programme has fulfilled statutory requirements.[656] As such they provide a meaningful insight into the inspection programme as implemented. However, after 2019 no annual

649 E.g. Through the introduction of Regulation (EU) 2016/429 of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health [2016] OJ L 84/1, which supersedes the 2006 Directive (amongst others) and which was designed to establish "a single, simplified, transparent and clear regulatory framework that sets out systematically the objectives, scope and principles of regulatory intervention" (European Commission, 'Proposal for a Regulation of the European Parliament and of the Council on Animal Health' (COM/2013/260/FINAL) (EC 6 May 2013) 3

650 E.g. The Official Controls (Animal, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020, SI 2020/1481; and The Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020

651 Lord Bingham, *The Rule of Law* (Penguin Books 2011) 37

652 Lord Mance. 'Should the law be certain?' (*The Oxford Shrieval lecture*, 11 October 2011) <https://jcpc.uk/uploads/speech_111011_342362219c.pdf> accessed 17 January 2025

653 Cefas 'Guidance: Fish Health Inspectorate: Service Charter' (gov.uk, updated 14 Jun 2024) <www.gov.uk/government/publications/fish-health-inspectorate-service-charter/fish-health-inspectorate-service-charter> accessed 17 January 2025

654 Official Controls Regulation, article 113(1)

655 FSA and others, 'Multi-Annual National Control Plan for the United Kingdom, April 2019 to March 2023' (FSA, December 2019), Appendix J

656 Defra and others, 'Annual Report for 2022 on Official Controls performed in Great Britain under the OCR Multi-Annual National Control Plan' (gov.uk, last updated 18 June 2025) 67 <https://www.gov.uk/government/publications/multi-annual-national-control-plan-mancp-annual-reports> accessed 30 June 2025

reports ppear to have been published online until May 2025 (as of June 2025, the latest report available relates to 2022[657]).

These reports, historically, have not been the only source of data regarding the FHI's activities. The FHI's annual reports and quarterly reports historically provided data regarding compliance activities conducted and their outcomes (e.g. with most recent quarterly report stating that "industry compliance with conditions of authorisation remains high, with just one breach in authorisation conditions reported").[658] Neither annual nor quarterly reports appear to have been made publicly available since 2019.

Cefas's annual report of 2023/2024 does contain high-level FHI authorisation compliance inspection figures,[659] but these appear in the context of a case study, and have not featured in other recent Cefas annual reports.

As such, without approaching the FHI directly, recent inspection figures by which the implementation of compliance measures in respect of the statutory authorisation regime can be measured, are not currently easily or consistently available.

657 Defra, 'Multi-Annual National Control Plan (MANCP): Annual Reports' (gov.uk, last updated 18 June 2025) <https://www.gov.uk/government/publications/multi-annual-national-control-plan-mancp-annual-reports> accessed 30 June 2025. Unfortunately, due to the limited time between publication of the latest MANCP documents and this report's publication, it has not been possible to incorporate detailed analysis of them into this case study.

658 Cefas, 'Transparency Data: FHI Quarterly Report – 1 July to 30 September 2019' (gov.uk, updated 15 November 2019) <www.gov.uk/government/publications/fish-health-inspectorate-reports-2019/fhi-quarterly-report-1-july-to-30-september-2019> accessed 17 January 2025

659 Cefas, 'Annual Report and Accounts 2023-24' (HM Stationery Office 2024, HC 38) 27

Marine Management Organisation – Marine Licences

1. Introduction

It is generally accepted that the marine environment is under severe threat. In 2023, a major report on the condition of the North-East Atlantic (in which area the UK sits) stated that:

> *"Collective trends point to declining biodiversity and continued habitat degradation … Two things are clear: 1) additional measures are required in order to change a trajectory of nature decline to one of nature recovery, and 2) the existing measures need to be more effective."*[660]

In this context, it is important that effective regulatory regimes are in place to protect the marine environment. The marine licensing regime is one mechanism by which the UK government seeks to provide such regulatory protection.

2. Legislation

The marine licensing regime is outlined in Part 4 of the Marine and Coastal Access Act 2009 (**"MCAA 2009"**), as supplemented by secondary legislation.[661] In order to protect the environment[662] (alongside other objectives),[663] the regime regulates a range of marine activities by making it an offence to carry them out except in accordance with a marine licence granted by the 'relevant licensing authority'.[664] In English waters and Northern Irish offshore waters,[665] the MMO is responsible for granting, administering and enforcing these marine licences.[666]

Activities for which a marine licence is required include:[667]

- depositing, scuttling, or incinerating any substance or object;
- constructing, altering or improving any marine works;
- removing substance or object; and
- dredging.

660 OSPAR Commission, 'Quality Status Report 2023' (ospar.org, 2023) <https://oap.ospar.org/en/ospar-assessments/quality-status-reports/qsr-2023/> accessed 16 January 2025

661 E.g. Marine and Coastal Access Act 2009 (Commencement No 5, Consequential and Transitional Provisions) Order 2011, SI 2011/556; Conservation of Habitats and Species (Amendment) Regulations 2011, SI 2011/625; and Marine Licensing (Delegation of Functions) Order 2011, SI 2011/627)

662 E.g. In determining whether to grant a marine licence and what conditions (if any) to attach, the MMO must have regard to the need to protect the environment (MCAA 2009, s 69(1)(a)). It may also vary, suspend or revoke an existing licence on the basis of "a change in circumstances" or "increased scientific knowledge" relating to the environment (MCAA 2009, s 72(3)). Furthermore, various of the MMO's powers to enforce the regime are linked to environmental harm: the MMO may serve a stop notice prohibiting a licensable activity if it satisfied that the activity is causing or creating (or is likely to cause or create) an imminent risk of "serious harm to the environment" (MCAA 2009, s 102(a))

663 E.g. MCAA 2009, s 69(1)

664 *Ibid*, s 65

665 For certain activities its licensing responsibilities apply elsewhere in the world. See MMO, 'Guidance: Marine Licensing – Definitions' (gov.uk, 30 May 2019) <www.gov.uk/guidance/marine-licensing-definitions> accessed 16 January 2025

666 Under MCAA 2009, ss113 and 115, the Secretary of State is the licensing authority, but their functions are delegated to the MMO through the Marine Licensing (Delegation of Functions) Order 2011 SI 2011/627, in accordance with MCAA 2009, s 98

667 MCAA 2009, s 66

When granting licences for such activities, the MMO may impose conditions.[668] Failure to comply with the conditions of a marine licence is an offence.[669]

3. Monitoring or inspection

It may be inferred from the MMO's general objective that compliance assurance activities will form part of its role: it must exercise its functions so as to "manage, regulate and control" the activities of persons in its area.[670]

Its statutory powers enable it to conduct inspections. For example, alongside open-ended powers to take "any action" or "do anything" in pursuit of its general objective,[671] the MMO's Marine Enforcement Officers (**"MEOS"**) are granted powers of "entry and inspection" specifically for the purposes of enforcing the marine licensing provisions of the MCAA 2009.[672]

However, despite the MMO's governance framework stating that its statutory duties and functions include "marine licensing (including compliance monitoring and enforcement)",[673] we located no express statutory duty requiring the MMO to conduct inspections to check marine licence compliance, or governing their form.[674]

The only explicit statutory references to the MMO conducting such activities are found in secondary legislation. For example, The Public Bodies (Marine Management Organisation) (Fees) Order 2014 empowers the MMO to charge licence holders for 'monitoring'[675] which can be "for the purposes of determining whether the holder of that licence is complying with the conditions attached to that licence…".[676]

Notwithstanding the absence of an express duty, the MMO confirms in its Compliance and Enforcement Strategy that it will conduct marine licence compliance activities:

> *"The MMO will undertake monitoring through desk based review of information submitted by the licence holder or site based inspection to measure the level of compliance with the terms and/or conditions set by MMO."*[677]

The frequency and form of compliance checking for each licence is determined by factors such as the complexity of the activity and the environmental risk:

> *"Complex marine licensable activities such as large-scale projects, those in or near designated sites, and those with greater environmental risk, or use novel technology or have a poor record of compliance are likely to be monitored more closely and more often."*[678]

668 *Ibid*, s 71
669 *Ibid*, s 85(1)(b)
670 *Ibid*, s 2(1)
671 *Ibid*, s 2(2) and s 31(1)
672 See MCAA 2009 s 236(1)(a), which refers to "Common Enforcement Powers", which includes inspection powers, e.g. under s 247
673 Defra and MMO, 'Corporate Report: MMO Framework Document' (gov.uk, 9 June 2022) <www.gov.uk/government/publications/mmo-framework-document/mmo-framework-document> accessed 16 January 2025
674 MCAA 2009, s 58 does however require the MMO to act in accordance with appropriate marine policy documents such as marine plans when taking authorisation or enforcement decisions.
675 Public Bodies (Marine Management Organisation) (Fees) Order 2014, art 4
676 *Ibid*, art 2
677 MMO, 'Statutory Guidance: Compliance and Enforcement Strategy' (gov.uk, updated 2 June 2020) <www.gov.uk/government/publications/compliance-and-enforcement-strategy/compliance-and-enforcement-strategy> accessed 16 January 2025
678 MMO, 'Guidance: Marine Licensing Monitoring Policy' (gov.uk, 3 May 2019) <www.gov.uk/government/publications/marine-licensing-monitoring-policy/marine-licensing-monitoring-policy> accessed 16 January 2025

For charging purposes licences are banded, with certain levels of compliance activity and monitoring charges[679] associated with each band. While fee bands are not explicitly described as being determined by 'risk',[680] they provide the framework for levels of compliance activity (which, as outlined above, is described as risk-based):

Table N: Band monitoring and charges

Band	Monitoring[681]	Monitoring Charges[682]
1	These are "*usually … monitored via administrative monitoring once, immediately after issue*"	None
2	"*… we will:* • *review monitoring information and confirm the condition(s) has been met though a discharge letter* • *aim to carry out a monitoring inspection if appropriate[683] and issue a report to the licence holder of the results*"	£94 per hour, capped at £750 for all monitoring activities for the duration of the licence
3	"*… we will:* • *review monitoring information and confirm the condition(s) has been met though a discharge letter* • *aim to carry out two monitoring inspections a year if appropriate and issue a report of the results to the licence holder …*"	£94 per hour with no cap for monitoring activities

As well as the above publicly-stated "aims" for inspection frequencies, the MMO also generates internal monitoring targets against which it measures performance. For example, in both the 2020/21 and 2021/22 financial years, its annual reports noted that it exceeded targets,[684] and its 2024/25 key performance indicators refer to each MEO conducting eight marine licence inspections annually.

Marine licences may be granted with self-survey or self-monitoring conditions.[685] While these activities may be described as inspections,[686] we are not aware of such conditions explicitly being included for the purposes of compliance assurance.

679 These are distinct from application charges

680 At least not by the MMO. Natural Resources Wales, which also operates three fee bands, states explicitly that band 1 licences are 'low risk' (Natural Resources Wales, 'Marine Licence Fees' (naturalresouces.wales, 14 November 2024) <https://naturalresources.wales/permits-and-permissions/marine-licensing/marine-licensing-fees-and-charges/?lang=en> accessed 16 January 2025)

681 Column data from: MMO, 'Guidance: Marine Licensing Monitoring Policy' (gov.uk, 3 May 2019) <www.gov.uk/government/publications/marine-licensing-monitoring-policy/marine-licensing-monitoring-policy> accessed 16 January 2025

682 Column data from: MMO, 'Guidance, Marine Licence Fees' (gov.uk, updated 29 November 2024) <www.gov.uk/government/publications/marine-licensing-fees/marine-licensing-fees> accessed 16 January 2025

683 The "if appropriate" caveat is not included in the band 2 and band 3 inspection frequencies in more recent guidance: MMO, 'Guidance, Marine Licence Fees' (updated 29 November 2024) <www.gov.uk/government/publications/marine-licensing-fees/marine-licensing-fees> accessed 16 January 2025

684 MMO, 'Annual Report and Accounts 2020/21' (HM Stationery Office 2021, HC 428) 25; and Marine Management Organisation, 'Annual Report and Accounts 2021/22' (HM Stationery Office 2022, HC 752) 35

685 As of 2016, the MMO stated that 465 of 700 Marine Licences included "some form of requirement for survey and monitoring" (MMO, 'Marine Licence Review. A report produced for the Marine Management Organisation, MMO Project No: 1126' (MMO 2017) 46

686 *Ibid*, 40

A final point to note regarding monitoring and inspection is that while the MMO is required to publish a range of information regarding marine licences as part of a public register, there is no clear requirement on it to include information relating to inspections conducted in respect of those licences.[687]

4. Findings

In response to our information request, the MMO provided detail of its inspection regime for the FY 2023/24 in relation to post-consent (i.e. in-force) marine licences.

At the beginning of the financial year there were 1,155 licences in force, and at the end there were 1,147 licences. We received a banding breakdown for the figure at the start of the year. At that point, 53% (609 of 1,155) of licences were Band 1, 22% (250 of 1,155) were Band 2, and 26% (296 of 1,155) were Band 3.

The MMO broke its marine licensing compliance assurance activities down to us as follows:

Table O: Compliance assurance activities

Site-based inspections:	The MMO stated that "there is a current expectation that all marine licence inspections have … are carried out physically as the default" and "the current [Standard Operating Procedure (**"SOP"**)] is based around the assumption of physical inspection…". The SOP outlines how MEOs should plan, conduct and record the outcomes of marine licence compliance inspections.
Desk-based inspections:	These take place "where a site inspection is not reasonably practical", such as for "offshore installations where attending the site is logistically difficult meaning that cost/time constraints make physical attendance prohibitive." They are conducted to as "high a standard as the site-based inspections but are delivered via Microsoft Teams".
Administrative Checks:	These desk-based checks relate to Band 1 licences. They principally take two forms. The first type take place following applications and are completed by the MMO's Business Support Team. They "in most cases" occur once, immediately after issue of the licence (which is an automated process).[688] A second layer of Band 1 administrative checks appear to be conducted by "coastal officers". These checks consist of a review of the licence. Officers "generally" conduct them before licences are closed, and they may lead to officers requesting more information or either conducting site visits, if there are suspicions that licence breaches or offences have been committed.
Unlicenced Activity Inspections	Site-based inspections may occur in respect of unlicenced activity (either conducted without any licence or in excess of the remit of a Band 1 Licence).

687 MCAA 2009, s 101, read alongside The Marine Licensing (Register of Licensing Information) Regulations 2011

688 Regarding the automation of licensing for 'low risk' activities, see: MMO, 'Digital tools to help make marine licensing more efficient' (Marine Developments Blog, 12 July 2017) <https://marinedevelopments.blog.gov.uk/2017/07/12/digital-tools-to-help-make-marine-licensing-more-efficient/> accessed 16 January 2025

75 site-based inspections took place, of which 50 (67%) took place in respect of the Band 3 licences and 22 (29%) took place in respect of Band 2 licences. Of the remaining three, one took place in respect of a Band 1 licence, one took place in respect of an 'exemption', and one was not classified.

42 desk-based inspections took place in the year, of which 31 (74%) took place in respect of Band 3 licences and 10 (24%) took place in respect of Band 2 licences. One took place in respect of a Band 1 licence.

We were not provided with data regarding the number of administrative checks or unlicenced activity inspections.

In total, considering the 75 site-based inspections, 42 desk-based inspections, and a further eight for which it was not specified whether they were site- or desk-based, the MMO conducted 125 marine licence compliance inspections in the FY 2023/2024. On the assumption that there were no repeat visits, this means that approximately 10% of marine licences received some form of compliance inspection during the year (in addition to any Band 1 licences which received administrative checks).

The MMO explained that its inspection activities are supported by remote activities designed to assess compliance with licence conditions – both prior to inspection (for example through using MMO systems to assess tracking data), and post (for example through confirmation of evidence provided by licence holders during inspections).

While not detailed in its response to us, we also note that alongside administrative checks and inspections, the MMO "reviews information/evidence submitted by the licence holder to discharge/or demonstrate compliance with a condition".[689] It is our understanding that such activities are remote and reactive (conducted in response to submissions from licence-holders) but where they occur they nevertheless form an additional layer of scrutiny of licence holders' compliance.

5. Analysis

5.1 Frequency of inspections

As outlined above, approximately 10% of marine licences received a compliance inspection in the FY 2023/24. Comparison of the figures provided in respect of the FY 2023/24 with those cited in MMO annual reports, indicates that this represents a significant fall in the number of inspections occurring since a peak in 2021/22:

689 MMO, 'Guidance: Marine Licensing Monitoring Policy' (gov.uk, 3 May 2019) <www.gov.uk/government/publications/marine-licensing-monitoring-policy/marine-licensing-monitoring-policy> accessed 16 January 2025

Table P: Inspections conducted 2019/2020 – 2023/2024

	2023/2024	2022/2023	2021/2022	2020/2021	2019/2020
Marine Licence Inspections	125	164[690]	223[691]	Consistent with 2021/2022[692]	Below 2020/2021[693]

While various factors may influence inspection rates (some are considered further below), the MMO has highlighted that the peak in 2021/2022 was unusual, stating that it was largely due to COVID-19 restrictions which limited MEOs' ability to conduct many of their normal activities, and allowed greater capacity to undertake desk-based marine licensing inspections. In any event, it is notable that for all of these years the rate of inspection is lower than one may expect on the basis of the MMO's publicly-stated "aim" inspection frequencies outlined above. For example, if Band 3 licences were inspected biannually in accordance with the MMO's aims,[694] almost 600 compliance inspections would occur annually for this band alone. 81 were reported in 2023/24.

5.2 Use of risk-based inspections

Where inspections do take place, they are heavily targeted at certain licence bands.

For the FY 2023/24, inspection targets were set in respect of licence bands 2 and 3 only. The MMO told us that "teams were therefore excluding Band 1 licences from their inspection planning". As a result, 69% of compliance inspections conducted were in relation to Band 3 licences and 26% were in relation to Band 2 licences. Only 2% of inspections were in relation to Band 1 licences. A remaining 3% were in relation to either exemptions or unspecified bands.[695]

As illustrated in Figure G below, which captures the maximum number of marine licences which may have received inspections (and, accordingly, the minimum number which received none) the result of this targeting is that over 99% of Band 1 licences received no post-consent compliance inspection in FY 2023/24:

690 MMO, 'Annual Report and Accounts 2022/23' (HM Stationery Office 2023, HC 12) 32

691 MMO, 'Annual Report and Accounts 2021/22' (HM Stationery Office 2023, HC 752) 35

692 Inspection levels were "consistent" between 2020/2021 and 2021/2022 (Marine Management Organisation, 'Annual Report and Accounts' 2021/22 (HM Stationery Office 2022, HC 752) 35)

693 Inspection levels "increased" in 2020/21 (Marine Management Organisation, 'Annual Report and Accounts 2020/21' (HM Stationery Office 2021, HC 428) 25)

694 While the MMO's marine licensing monitoring policy (MMO, 'Guidance: Marine Licensing Monitoring Policy' (gov.uk, 3 May 2019) <www.gov.uk/government/publications/marine-licensing-monitoring-policy/marine-licensing-monitoring-policy> accessed 16 January 2025) states that biannual inspections are conducted "if appropriate", the more recently updated guidance on marine licence fees does not include this caveat (MMO, 'Guidance, Marine Licence Fees' (gov.uk, updated 29 November 2024) <www.gov.uk/government/publications/marine-licensing-fees/marine-licensing-fees> accessed 16 January 2025

695 86 inspections were in relation to Band 3 Licences and 33 to Band 2 Licences. 2 were in relation to Band 1 Licences, and a remaining 4 (3%) were in relation to either exemptions or unspecified bands

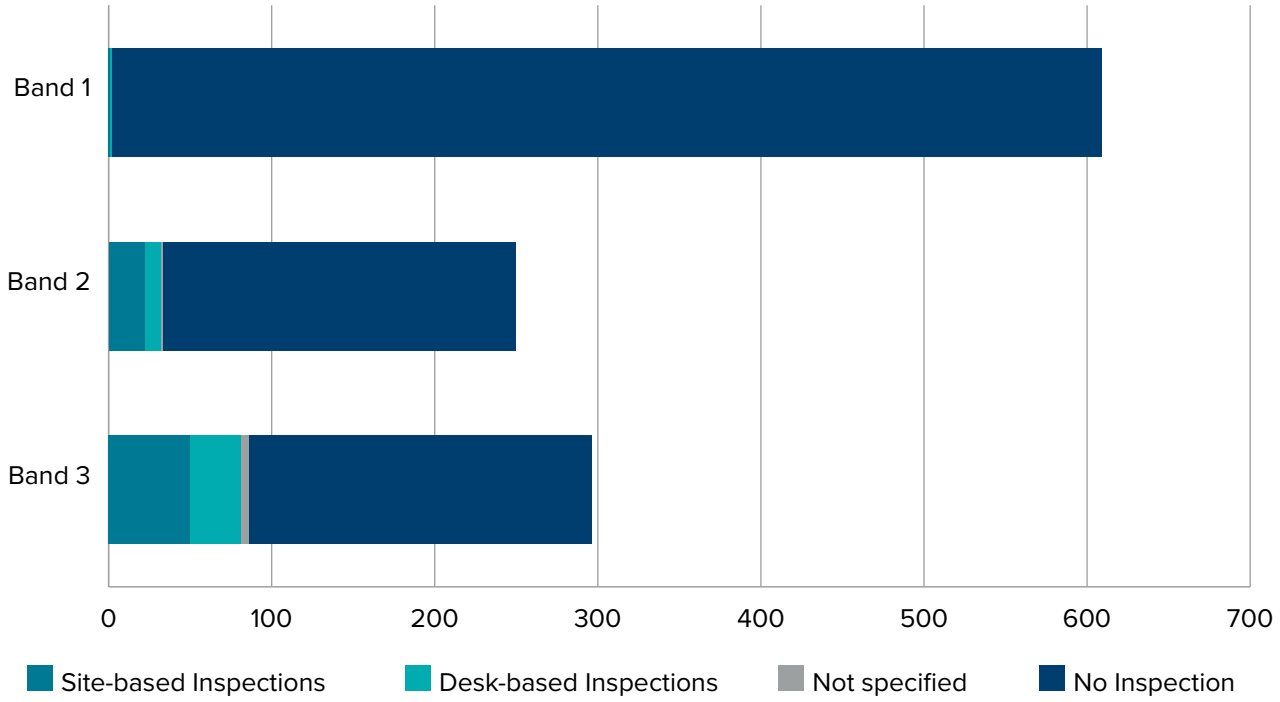

Figure G. Marine licences receiving/not receiving inspection

This outcome, in which a set of regulated activities/entities regarded as low or nominal risk receives almost no inspections at all, mirrors our findings in other case studies.

Compliance outcomes have indicated that this approach may be problematic. The MMO notes, for instance, the "increased occurrence" of investigations it is initiating in relation to unlicenced works being carried out by nominally low-risk Band 1 licensees. This, and other intelligence it has received, indicates that targeting its inspections at high band licences, on the "assumption" that they held "inherently more risk", may have led to the wrong licences being targeted:

> *"... teams were exerting effort to inspect [Band 3] licences which, with hindsight, pose a lower risk."*

> *"... there is recognition that these works [under Band 1 licences] are likely to incur a higher risk, in contrast to a Band 3 licence, which ... tend to be held by experienced marine operators, whom often employ compliance officers."*

Consequently, marine licence inspection key performance indicators for 2024/25 will no longer be determined by band,[696] which the MMO anticipates will encourage more inspections of Band 1 licences. In addition, the MMO reports a drive to conduct ad-hoc inspections of "any" licence.

It should not be read from this outcome that risk-based approaches to targeting inspections are inherently unsound. However, it does highlight potential issues associated with minimising scrutiny of activities deemed low risk, especially where processes by which the risk is assessed may themselves be flawed.

696 This forms part of a wider reform of the MMO's inspections framework, which also includes the introduction of a "Prioritisation of Risk in the Marine Environment" system, which will help "coastal teams to prioritise efforts to minimise the overall risk". [MMO response to OEP]

5.3 Staffing

Issues around staffing appear to have contributed to the low levels of inspection in the FY 2024/24. The MMO highlighted that it suffered a "significant turnover" of warranted MEOs, leading to a "reduced competent workforce to undertake the necessary inspections."

This shortage may have been exacerbated by challenges in training new MEOs. Doing this is easier said than done. The range of licensable activities prescribed by the MCAA 2009 is wide, and to regulate these, MEOs must hold specific technical knowledge. The MMO has highlighted to us, for example, that licensed development works are complex in nature and "difficult for someone without technical knowledge to interpret". However, "whilst the MMO offer training to offices on how to conduct an inspection, there is a lack of specific training to the variety of works which can be undertaken."

Ensuring that MEOs have been both available in sufficient numbers and with sufficient training appears to have been made still more difficult by fact that the MEO role extends beyond the (already extensive) marine licensing regime, encompassing multiple regulatory regimes and activities.[697] The MMO has noted that in recent years it has been required to deliver a variety of policy initiatives, with the result that MEOs have been often called upon by different teams to provide assistance, and other work not being prioritised or delegated sufficiently. It has therefore not always been clear to MEOs what their defined roles and responsibilities were.

The MMO states that steps have since been taken to refocus MEOs' roles towards areas such as fisheries and marine licence inspections, mitigating the risk of it failing to meet its statutory responsibilities.

5.4 Licensee cooperation

It is not only availability of MMO personnel that has been cited as an obstacle to conducting inspections. Coordinating with licensee personnel is also a challenge.

The MMO explained to us that "it is important that when a [MEO] is undertaking an inspection, they are accompanied by an appropriate person appointed by the licensee, who would be able to answer any questions that the officer may have, to enable them to assess compliance." However, it is not always straightforward to find a "mutually convenient" time for an inspection to occur, with relevant licensee personnel not always based on-site (indeed, they may even be based abroad), leading to delays in scheduling inspections.

We have not considered individual cases for this report and cannot comment on whether the MMO is striking the right balance in making allowances for licensees' availability. We note that this issue is representative of the competing considerations that the MMO (and other regulators) must manage when conducting compliance assurance activities.

In this instance, we recognise that maintaining a constructive and positive working relationship with licensees undoubtedly has a role in the MMO's effective regulation. We also note that the MMO is expected to regulate in a proportionate way, factoring in

697 E.g. "Our role encompasses many tasks from enforcement, investigations, marine licensing, education and grants through to the collection and assurance of fisheries data." (MMO, 'The work of an MMO marine officer' (*Marine Developments Blog*, 23 February 2017) <https://marinedevelopments.blog.gov.uk/2017/02/23/the-work-of-an-mmo-marine-officer/> accessed 16 January 2025

"business … capacity".[698] However, there must always be a point at which the risk associated with delaying an inspection outweighs the convenience or perceived capacity of a licensee.

5.5 Funding

As outlined above, the MMO is empowered under statute to charge for marine licence monitoring. The charging rates (and for band 2 licences, caps) are prescribed in law.[699]

As such, for a band 2 licence, the MMO is currently limited to charging £750 for all monitoring it carries out for the duration of the licence. This equates to approximately 8 hours of charged work.[700] Neither the charging rate, nor the cap, appear to have increased to accommodate inflation or any other changed circumstances since 2014.

It is self-evident, considering the vast geographical scope of the MMO's jurisdiction (see Figure H below), the logistical challenges of attending offshore sites, and the range of activities that must be carried out in connection with a compliance inspection, that in cases where fee caps apply, the costs and time associated with many (if not most) inspections will exceed them.

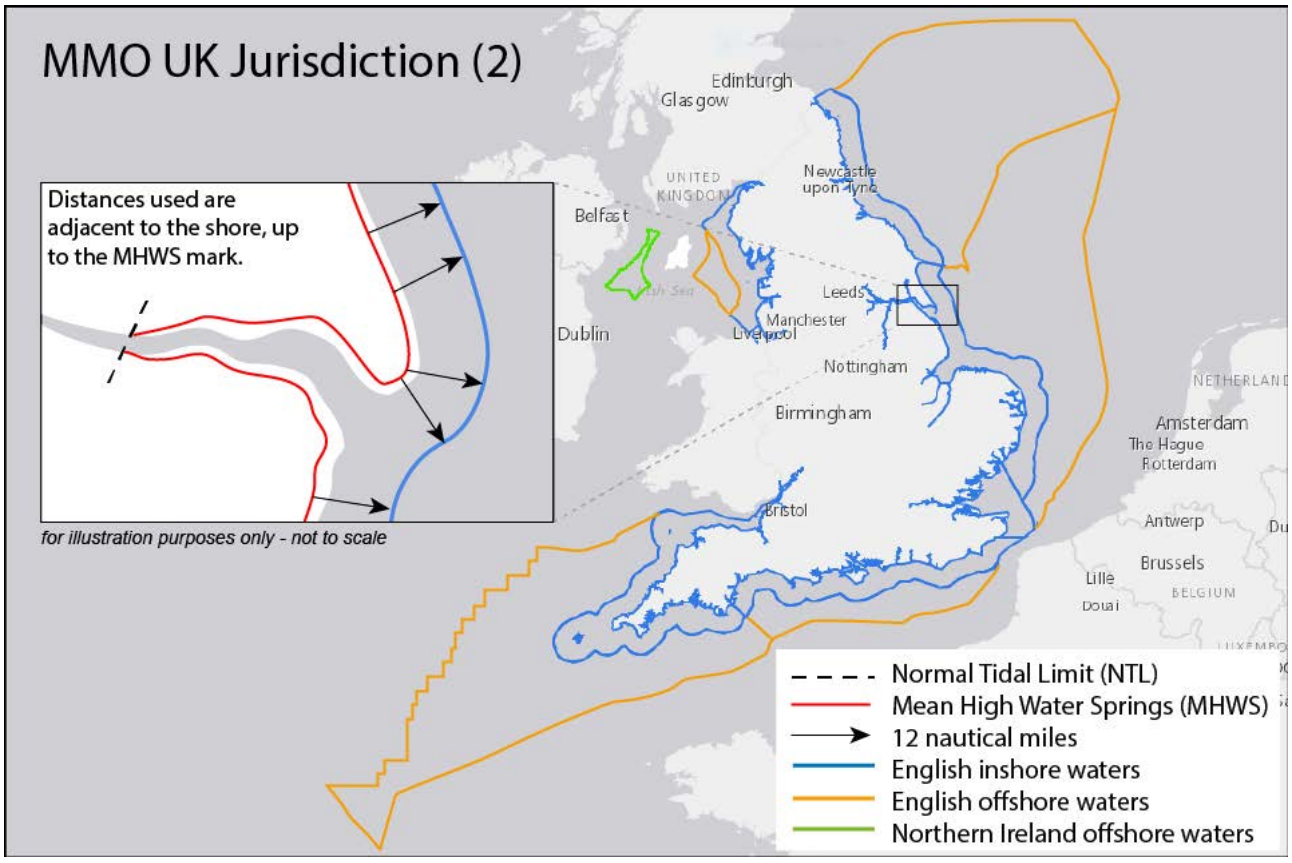

Figure H. The MMO's UK jurisdiction[701]

698 Department for Business Innovation & Skills, *Regulators' Code* (BIS April 2014) para 1.1. The MMO must "have regard" to the Regulators Code, under Legislative and Regulatory Reform Act 2006, s 24(2)

699 Public Bodies (Marine Management Organisation) (Fees) Order 2014, sch 1. While s 232 of the Levelling-up and Regeneration Act 2023 will revoke this order and give new powers to the Secretary of State to update fees, as of January 2025 it remains in force

700 Charged at £94 per hour (Public Bodies (Marine Management Organisation) (Fees) Order 2014, sch 1

701 Figure source: MMO, 'Guidance: Marine Licensing – Definitions' (gov.uk, 20 May 2019) <www.gov.uk/guidance/marine-licensing-definitions> accessed 16 January 2025

This problem is even more acute for Band 1 licences, for which the MMO cannot recover monitoring costs through charges. The MMO has acknowledged that in FY 2023/24 the ability to recover costs influenced which licences were inspected, a fact which sits uncomfortably within a supposedly 'risk-based' inspection system: "Teams were … excluding Band 1 licences from their inspection planning and being driven by the licences where costs could be recovered." As outlined in the discussion of 'risk-based inspection' above, the MMO has reported a changed approach to inspection KPIs in the FY 2024/25 which it hopes will lead to more Band 1 inspections, and a drive to conduct more ad hoc inspections of "any" licence, which it describes as being better aligned to the strategic risk-based approach it follows, whilst still allowing for recovery of costs when appropriate.

5.6 Use of Technology

The MMO highlights in its annual reports that it is making its inspections more efficient through use of technology:

> *"Digitisation [of] our inspection processes, moving away from notebooks to maximising the use of mobile devices and digital technology to make inspections more efficient, consistent, and secure."*[702]

> *"[We have] expanded digitisation of our inspection processes, exploiting the use of mobile devices and digital technology to maximise efficiency."*[703]

While these examples relate to fisheries-related inspections (marine licence inspections are not yet conducted digitally), new technologies do feature in the marine licensing regime. We understand that the MMO has, for example, recently initiated a programme to "transform the end to end service, including replacing the current case management system which will make better data available to assist the inspection regime".

In addition, in some circumstances the MMO uses desk-based inspections as a more practical and cost-effective alternative to on-site inspections. For example, they are used "where attending the site is logistically difficult meaning that cost/time constraints make physical attendance prohibitive".

The data provided to us by the MMO shows that in the FY 2023/24, 42 marine licence inspections were recorded as being desk-based, representing 34% of all inspections (and 36% when excluding those for which it is not specified whether they were site- or desk-based).

702 MMO, 'Annual Report and Accounts, 2021/22' (HM Stationery Office 2022, HC 752) 43
703 MMO, Annual Report and Accounts, 2022/23 (HM Stationery Office 2023, HC 12) 38

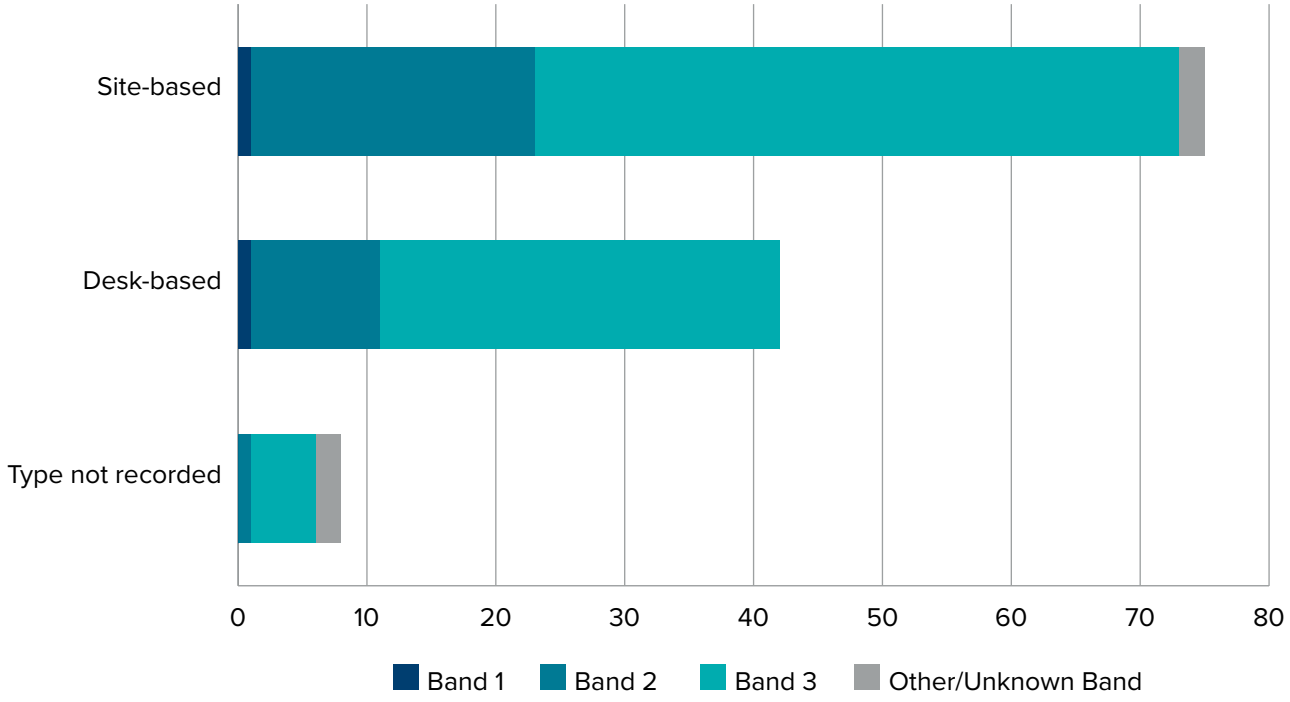

Figure I. Site-based vs desk-based post-consent inspections

We have not assessed whether there is meaningful scope for desk-based inspections to be utilised more widely, or whether it would be appropriate to do so. For the time being at least, while the MMO describes them as conducted to as high a standard as the site-based inspections, it expressed to us a clear continuing preference for having boots on the ground where possible:

> *"[Desk-based inspections] were largely conceived of during the Covid pandemic as a means of continuing a level of assurance. There is a current expectation that all marine licence inspections have now returned to the previous model and are carried out physically…".*

5.7 Lack of PIR or other legislative scrutiny in respect of compliance duties

No PIR has been conducted in respect of the MCAA 2009, nor any of the secondary legislation designed to govern the marine licensing regime.[704] There is no statutory requirement to conduct one. As such, we are aware of no formal assessment having taken place in England of whether the statutory framework governing compliance assurance for marine licensing, such as it is, is working as well as it ought to.[705]

704 There have been post-implementation reviews of legislation relevant to the licensing regime, such as Defra, 'Post-Implementation Review: Defra Environmental Impact Assessment Regulations' (Defra 2022). However, these do not assess the implementation of marine licensing itself

705 This is not to say that there has been no scrutiny of or revision to the regime. For example:
In 2016, the MMO conducted an in-depth review of marine licence conditions (MMO, *Marine Licence Review.* 'A report produced for the Marine Management Organisation, MMO Project No: 1126' (MMO 2017)
In 2018-2019, Defra consulted on marine licence exemptions, which led to changes to licensable activities (Defra 'Consultation Outcome: Summary of responses and government response' (gov.uk, updated 22 March 2019) <www.gov.uk/government/consultations/marine-licensing-proposed-changes-to-exemptions/outcome/summary-of-responses-and-government-response> accessed 16 January 2025
Outside of England, there has also been scrutiny – for example, the Welsh Government commissioned an 'end-to-end' review of the marine licensing process: Matt Bassford and others, *End-to-end review of the Marine Licensing Process: Summary report* (ICF 2022)

The MMO's framework document highlights that there is internal scrutiny of the MMO's activities: "Officials of the Marine and Fisheries ALB Governance and Relationship Management team in the sponsor department will liaise regularly with MMO officials to review performance against plans, achievement against targets".[706] The framework document also outlines various reporting and audit requirements. However, there is no specific requirement for such scrutiny to focus on implementation of compliance assurance measures. Indeed, it is striking that, according to the MMO's own annual reports, it was not until 2020/21 that the MMO itself monitored licensing inspections: "inspections of marine licences have been monitored for the first time this year."[707]

The above perhaps provides context for the results of a 2023 GIAA audit of the MMO,[708] which "highlighted significant weaknesses in the framework of governance for Marine Licence inspections, such that it could be inadequate and ineffective, and provided recommendations to improve ways of working." It is plausible that such issues may have been identified earlier, had a PIR into the statutory regime implemented by the MMO been conducted.

The MMO is implementing substantial changes to various aspects of its inspections framework in response to the GIAA's audit.[709] This underlines the constructive impact that appropriate scrutiny (whether in the form of audit or post-implementation legislative scrutiny) into regulators' compliance activities can have.

706 Defra and MMO, 'Corporate Report: MMO Framework Document' (gov.uk. 9 June 2022) <www.gov.uk/government/publications/mmo-framework-document/mmo-framework-document> accessed 16 January 2025

707 MMO, 'Annual Report and Accounts 2020/21' (HM Stationery Office 2021, HC 428) 25. This is not to say that marine licensing compliance has been a neglected area – we note for example references to the MMO's adoption of a "Compliance Strategy for Marine Licensing" in MMO, 'Annual Report and Accounts' 2019/20 (HM Stationery Office 2020, HC 1056) 19

708 We have not been supplied with a copy of this audit, and have therefore relied on the MMO's comments on it

709 Actions being taken following the GIAA audit are: Development of a standard operating procedure for inspections, to eliminate inconsistent approaches; Creating a formalised quality assurance mechanism for inspections; Creating a roles a responsibilities matrix to formalise roles and responsibilities for aspects of the licensing and inspection procedure; Implementing a national risk based approach to ensure that resources target higher risk activities; and updating IT systems used by MEOs in connection with marine licensing

Animal & Plant Health Agency – Invasive Non-Native Species

1. Introduction

Alien species are animals, plants, fungi or microorganisms which have been introduced to a place outside their natural range.[710] In some cases, alien species can become invasive, threatening or seriously adversely impacting biodiversity and related ecosystem services (meaning the direct and indirect contributions of ecosystems to human wellbeing) in their new environment.[711]

Alien species are also known as non-native species and non-indigenous species.[712] Non-native species is the most commonly used term in the UK, and that is reflected in the title of this case study. However, the following discussion will primarily refer to invasive alien species (**"IAS"**), rather than invasive non-native species (**"INNS"**), to reflect the terminology used in the relevant legislation.

In 2024 Defra described the impact of IAS on domestic biodiversity as "severe" and cited analysis estimating that it costs the GB economy £1.9 billion per year.[713] The government has set a target of reducing the number of establishments of such species by at least 50%, compared to levels seen in 2000.[714] Effective regulatory regimes are key to achieving such goals, and managing the threats posed by IAS more generally. This case study considers compliance inspections under one relevant regime.

2. Legislation

The regulation of IAS in England is governed by a range of interrelated laws.[715] These laws tend to focus on regulating specific activities related to IAS. For example, the Wildlife and Countryside Act 1981 governs the sale and release of certain species.[716]

This case study focuses on the regulation of import activities such as the keeping and breeding of certain IAS for the purposes of research, ex-situ conservation or the production and use of products for the advancement of human health.

These activities are primarily governed in England by the Invasive Alien Species (Enforcement and Permitting) Order 2019 (**"IAS Order"**),[717] which implements and provides an enforcement regime for Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species,[718] as assimilated into domestic law (**"Assimilated IAS Regulation"**). The IAS Order defines IAS by reference to a

710 Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species [2014] OJ L 317/35, Art 3

711 *Ibid*

712 Defra, Welsh Government and Scottish Government, 'The Great Britain Invasive Non-Native Species Strategy 2023 to 2030' (Defra 2023) 51

713 Defra, 'The Invasive Alien Species (Enforcement and Permitting Order 2019 – Post-Implementation Review' (Defra, December 2024) 5

714 HM Government, 'Environmental Improvement Plan 2023' (Defra, 2023) 232

715 Also layered over the statutory framework are non-statutory plans and strategies such as the *GB Invasive Non-Native Species Strategy*, which aims to provide "a strategic framework within which the actions of government departments, their related bodies and key stakeholders can be better co-ordinated." (GB Non-Native Species Secretariat, 'GB Strategy' (NNSS, undated) <www.nonnativespecies.org/about/gb-strategy> accessed 28 May 2025

716 See, for example, Wildlife and Countryside Act 1981 s 14, which prohibits the introduction into the wild of a range of both native and alien species

717 Invasive Alien Species (Enforcement and Permitting) Order 2019/1213

718 Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species [2014] OJ L 317/35

specific 'list of species of special concern',[719] and it should be assumed for the rest of this case study that references to IAS are to the animals, plants, fungi or micro-organisms on this list.

The IAS Order creates a range of offences relating to IAS.[720] For example, it makes it an offence to keep or breed IAS.[721] However, under regulation 35, a person may obtain a permit to use specific IAS for research, ex-situ conservation, scientific or medicinal purposes, or certain other uses (an **"IAS Permit"**).[722]

IAS Permits are issued subject to a range of conditions (for example, relating to the how any risk of escape is managed).[723] Should it be found that there is non-compliance with permit conditions (which will, or is deemed likely to, result in adverse impacts on biodiversity or related ecosystem services), a permit may be suspended or revoked.[724]

In England, APHA acts as the competent authority in respect of permitting,[725] and is empowered to issue and regulate IAS Permits.

Within APHA, the GB Non-Native Species Secretariat (**"NNSS"**) is responsible for coordinating the approach to non-native species. Within the NNSS, the Non-Native Species Inspectorate (**"NNSI"**) is particularly concerned with the implementation of IAS legislation. It aims to ensure that such legislation is understood by stakeholders and enforced where necessary.[726] The NNSI carries out inspections to identify possible threats (of plants or animals entering and spreading across the country) or legislative non-compliance.[727]

3. Monitoring or Inspection

Article 8(8) of the Assimilated IAS Regulation requires "that inspections are carried out" to ensure permit compliance. This requirement is reflected in Article 35(11) of the IAS Order, which creates the following inspection duty:

> *"A permitting authority must undertake such inspections as it considers appropriate of establishments to which a permit issued under paragraph (1) relates in order to ensure that the conditions of that permit are being complied with."*

The IAS Order provides no further indication as to how, and with what frequency, it expects these inspections to be conducted in practice. Nor does it provide for charging to meet the cost of issuing or regulating IAS Permits (for example through subsistence charging).

719 IAS Order, art 2(1), which refers to the annex of Commission Implementing Regulation (EU) 2016/1141

720 *Ibid,* part 2

721 *Ibid*, reg 3(1)

722 *Ibid,* reg 35

723 *Ibid,* reg 35(2) and 35(5). Article 35(2) cross-refers to conditions at Article 8 of the Assimilated IAS Regulation

724 *Ibid,* art 35(6)(a)(i). Other issues outlined at Article 35(6), such as species escaping, can also lead to suspension of revocation of permits

725 Secretary of State, Scottish and Welsh Ministers, 'Review of Implementation of the Retained EU Invasive Alien Species Regulation (EU 1143/2014) In Great Britain 2015-2020' (GB Non-Native Species Secretariat, 2021) <https://www.nonnativespecies.org/assets/21_03_01-Post-implementation-review.docx> accessed 28 May 2025

726 GB Non-Native Species Secretariat, 'Inspectorate' (NNSS, undated) <www.nonnativespecies.org/about/inspectorate> accessed 28 May 2025

727 APHA, 'APHA protecting our borders from non-native species' (APHA Science Blog, 23 May 2024) <https://aphascience.blog.gov.uk/2024/05/23/non-native-species> last accessed 11 June 2025

3.1 Guidance

There appears to be little published guidance regarding the duty. It was noted in the IAS Order's explanatory memorandum that guidance regarding the IAS Order would be made available to the general public and enforcement bodies in the form of 'Frequently Asked Questions',[728] however it is unclear whether guidance was published in this form, and if so whether it provided detail on inspections. Defra's general guidance on the rules relating to IAS makes no reference to inspections.[729]

APHA/the NNSI itself publishes little explicit indication as to how it interprets the duty. Permit application forms, for example, require applicants to confirm that "reasonable requests for access will be granted to an inspector … to check that conditions attached to the permit are being met", but no further detail (such as the likely frequency or form of these inspections) is provided.[730] APHA's Regulatory and Compliance Policy indicates that as a general principle, its activities (including inspections) are risk-based.[731]

The most specific published indication we have located regarding how the IAS Order's inspection duty was expected to be implemented is found in calculations of its cost to business. For the purposes of these calculations, Defra officials assumed that APHA would conduct "12 inspections each year, made up of 10 routine inspections relating to permitting and 2 to allow for reactive inspections based on intelligence suggesting illegal activity" and that each inspection would take 1.5 hours.[732]

3.2 Reporting on inspections

While the Assimilated IAS Regulation requires certain information relating to issued IAS Permits to be published online "without delay", this duty does not cover information relating to inspections of those permits.[733]

Under its reporting provisions however, the Secretary of State is required to publish information relating to IAS Permit inspections by 1 June 2019 and on a six-yearly basis thereafter.[734]

In addition to this, there are several other more general statutory reporting requirements of potential relevance. The IAS Order imposes a statutory duty on the permitting authority to publish information online relating to IAS Permits,[735] and a duty on the Secretary of State to publish PIRs.[736] The Assimilated IAS Regulation also requires publication of a report on its application.[737] While these duties do not explicitly require reporting on IAS Permit inspections, their reports could in some cases cover them.

728 Defra, 'Explanatory Memorandum to The Invasive Alien Species (Enforcement and Permitting) Order 2019, 2019 No.527

729 E.g. Defra, 'Guidance: Invasive non-native (alien) animal species: rules in England and Wales' (www.gov.uk, updated 31 January 2025) <www.legislation.gov.uk/uksi/2019/527/pdfs/uksiem_20190527_en.pdf> Accessed 29 May 2025

730 APHA, 'Form: Invasive alien species (non-native animals and plants): permit application' (www.gov.uk, updated 31 January 2025) <www.gov.uk/government/publications/invasive-alien-species-permit-application#:~:text=Permitting)%20Order%202019.-,For%20a%20permit%20to%20use%20listed%20invasive%20non%2Dnative%20animals,7%20of%20these%20application%20forms> accessed 28 May 2025

731 APHA, 'Regulatory & Compliance Policy' (gov.uk, 06 November 2017) paras 1.8 and 2.1 <https://www.gov.uk/government/publications/ahvla-regulatory-and-compliance-policy> accessed 11 June 2025

732 Defra, 'The Invasive Alien Species (Enforcement and Permitting) Order 2019 – Post Implementation Review' (gov.uk, December 2024) 24 <www.legislation.gov.uk/ukia/2024/170/pdfs/ukia_20240170_en.pdf> accessed 28 May 2025

733 Assimilated IAS Regulation, art 8(7)

734 *Ibid*, art 24(1)(h)

735 IAS Order, art 35(9)-(10)

736 *Ibid*, art 43

737 Assimilated IAS Regulation, art 25(1)

4. Findings

APHA provided us with information regarding its implementation of the IAS permitting regime in the FY 2023/24, including inspections. This has been supplemented by findings from further OEP research.

4.1 The number of IAS Permits in England

APHA publishes details of all IAS Permits it has issued.[738] As Figure J shows, IAS Permits issued between 2016-2019 (under the EU predecessor of the Assimilated IAS Regulation) were relatively few. The number issued in England has risen significantly since the domestic IAS Order, with its full suite of governance and enforcement provisions, has come into force.

In total, by the end of 2024, 218 IAS Permits had been issued in England. For a further nine IAS Permits issued in 2024, the location in which they were issued was not provided. The vast majority of IAS Permits are issued in England, and as such these permits are tentatively included in Figure J:

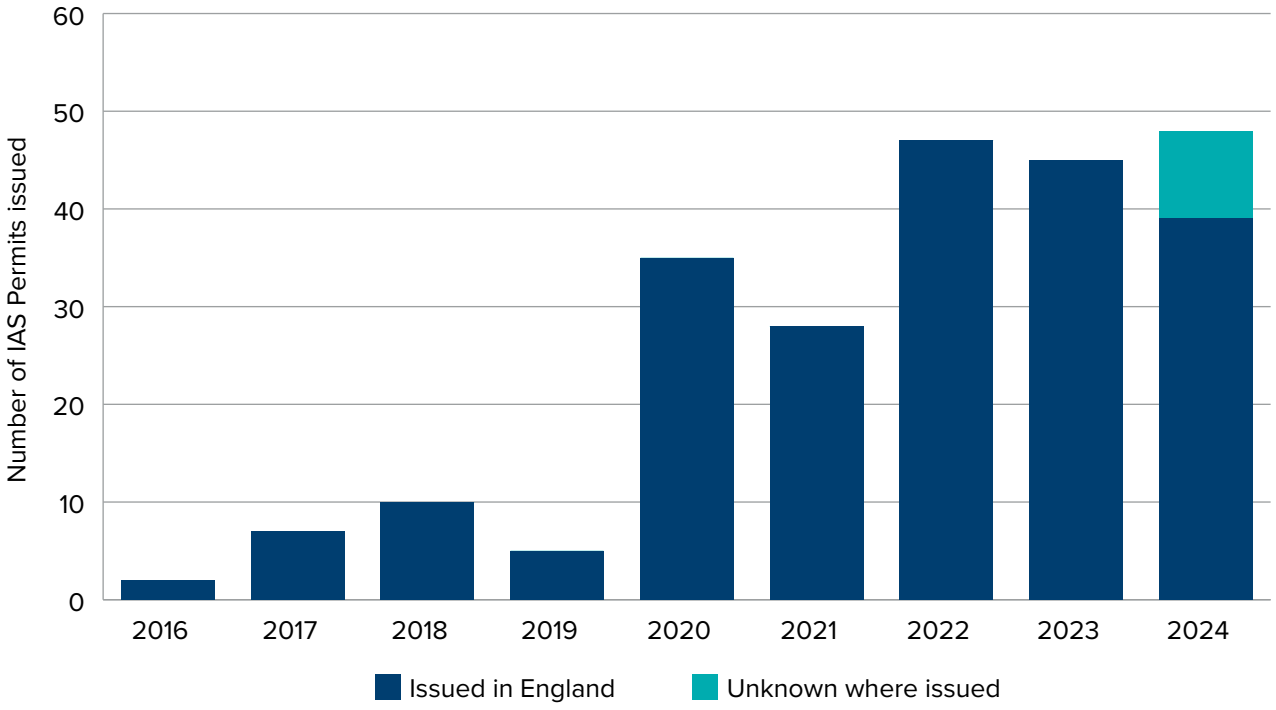

Figure J. IAS Permits issued in England, 2016-2024

Not all IAS Permits issued remain in force. The manner in which data is published does not enable us to calculate precisely how many were in force in the FY 2023/24. As of May 2025, 108 of the 218 IAS Permits known to have been issued in England up to the end of 2024 were described as 'active', with the remainder having either expired or been cancelled.[739]

738 GB Non-Native Species Secretariat, 'Permits' (nonnativespecies.org, undated) <www.nonnativespecies.org/legislation/permits> accessed 29 May 2025

739 For the further nine IAS Permits whose location of issue is not known, no information is provided as to whether or not they are active

4.2 Inspections

In 2021, the Secretary of State, Scottish and Welsh Ministers acting jointly published a review of the implementation of the Assimilated IAS Regulation in the UK.[740] It noted that there had been "no inspections of permitted facilities to date, but the GB administrations have commissioned the GB Non-Native Species Secretariat to scope the establishment of an inspectorate to help with this in future."[741]

APHA confirmed in July 2024 that for the FY 2023/24, there remained no inspection regime in place relating to the checking of IAS Permit compliance. As such, no IAS Permit compliance inspections were conducted (although some inspections of permitted entities may have occurred in connection with other aspects of its regulatory work, with the NNSI conducting 1,378 inspections across its wider regulatory remit).

However, APHA stated that an "inspection regime specific to permitted premises" had since been agreed internally, and it would be aiming to inspect 25% of permitted premises from and including the FY 2024/25. It subsequently confirmed that, as of the end of January 2025, 24 inspections had taken place.

5. Analysis

APHA/the NNSI has historically faced, and continues in some areas to face, particular challenges in implementing the IAS Permit regime under the IAS Order. Many of these challenges have implications for its ability to conduct inspections, and provide context for what, at face value, is an unexpected finding regarding the lack of IAS Permit inspections until the FY 2024/25, despite the IAS Order being in place since 2019 (and the Assimilated IAS Regulation/its EU predecessor since 2014).

5.1 Resourcing

We observed in our 2024 report, Progress in Improving the Natural Environment in England 2022/2023, that the government was largely off track to meet its EIP 2023 target to reduce the introduction and establishment of INNS. We noted that a "key issue hampering delivery is the low level of resourcing", and that funding increases recommended by the House of Commons Environmental Audit Committee had not been forthcoming to date.[742] In January 2025, our assessment was that, although there had been an increase in the budget for the NNSI, overall resourcing underpinning efforts to achieve the IEP23 target remained inadequate.[743]

We are not alone in identifying resourcing as a challenge for APHA/the NNSI and its efforts to tackle IAS. It has been raised by various organisations over recent years:

740 Secretary of State, Scottish and Welsh Ministers, 'Review of Implementation of the Retained EU Invasive Alien Species Regulation (EU 1143/2014) In Great Britain 2015-2020' (GB Non-Native Species Secretariat, 2021) <www.nonnativespecies.org/assets/21_03_01-Post-implementation-review.docx> accessed 28 May 2025

741 *Ibid*, 8

742 OEP, *Progress in improving the natural environment in England 2022/2023* (OEP, January 2024) 134

743 OEP, *Progress in improving the natural environment in England 2023/2024* (OEP, January 2025) 162 and 168

2019 The House of Commons Environmental Audit Committee heard evidence that there was not "a great deal of funding for invasive species control". It recommended that funding of the NNSS be increased to at least £3 million a year.[744] While the NNSI did not yet exist at this point, the Environmental Audit Committee did recommend its establishment.

2021 An independent review of The Great Britain Invasive Non-native Species Strategy (2015) commissioned by Defra noted that "the lack of funding was mentioned in relation to every aspect of the Strategy", including in respect of the enforcement of legislation specifically.[745]

2024 Wildlife and Countryside Link called not only for the Environmental Audit Committee's 2019 funding recommendation for the NNSS to be implemented, but also for an additional £3 million in funding for the NNSI specifically.[746]

In the same year, Defra stated in its PIR of the IAS Order that "additional processes and resourcing may need putting in place to ensure full operationalisation of the Order". It noted specifically that there was a backlog of IAS Permit applications caused in part by resourcing issues within APHA.[747]

APHA informed us in February 2025 that, treating the NNSI as part of the NNSS, additional funding of £1.46 million has been received in the FY 2024/25, bringing overall funding of the NNSS to £2.16 million (or 72% of the EAC's recommendation, not accounting for inflation since 2019).[748] Given that APHA does not raise funds for IAS Permit inspections through charging, we understand that such inspections will be funded out of this general pot.

Considering the funding levels discussed above, and the fact that the NNSI remains a relatively new entity, it is unsurprising that although it is growing, it remains small. In 2024, the NNSS provided figures showing staffing levels since the NNSI was first scoped in 2020.[749] These are provided in Figure K.

744 House of Commons Environmental Audit Committee, 'Invasive Species' First Report of Session 2019 (15 October 2019) (HC 88) Paras 96-109

745 APEM, *The Great Britain Invasive Non-native Species Strategy (2015) Review* (for Defra) (APEM, 22 December 2021) 377

746 Wildlife and Countryside Link, 'Summary of cost saving calculations with £6 million annual investment into invasive non-native species' (wcl.org.uk, May 2024) <www.wcl.org.uk/assets/uploads/0/Summary_of_INNS_cost_saving_calculations_2024.pdf> accessed 29 May 2025

747 Defra, 'The Invasive Alien Species (Enforcement and Permitting) Order 2019 – Post Implementation Review' (legislation.gov.uk, December 2024) 16 and 26 <www.legislation.gov.uk/ukia/2024/170/pdfs/ukia_20240170_en.pdf> accessed 28 May 2025

748 APHA noted that this figure includes funding for the NNSS's work in UK Overseas Territories

749 Olaf Booy, 'Non-Native Species Inspectorate Update' (2024) <www.nonnativespecies.org/assets/4-Olaf-Booy-2024-June-SF-NNSI.pdf> accessed 29 May 2025. It should be noted that the figure for 2020 related to a scoping study, and 2021 related to a pilot of the NNSI

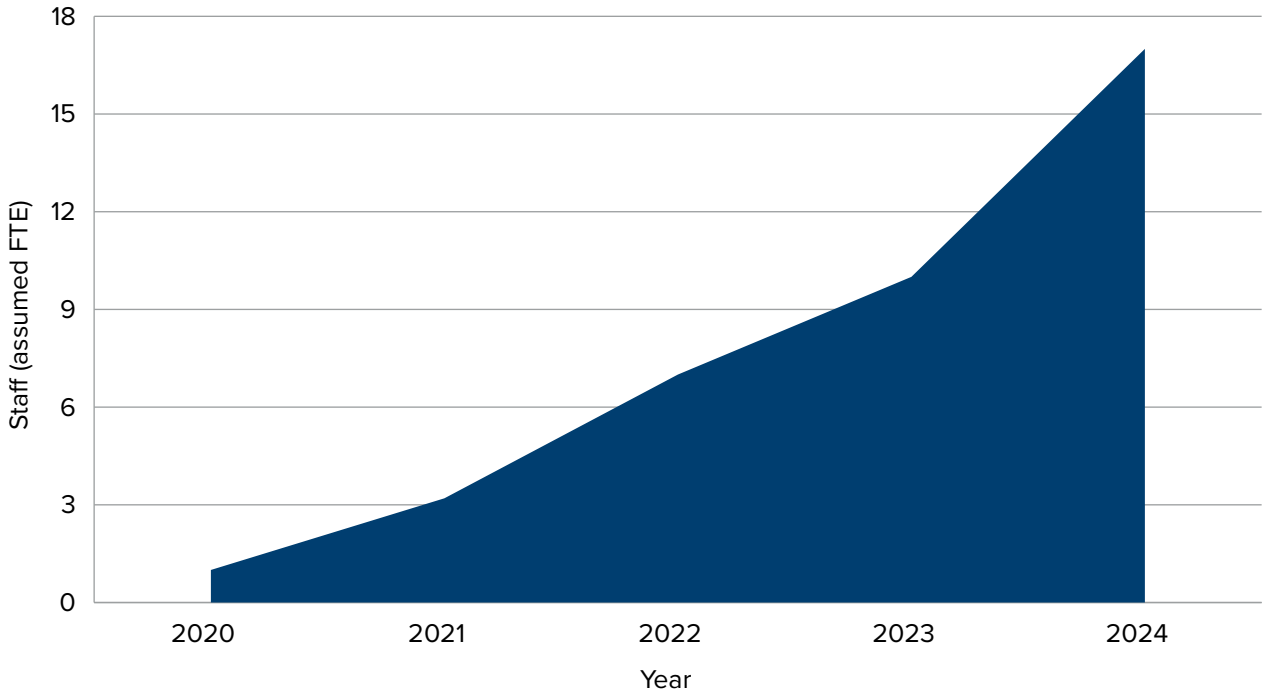

Figure K. Staffing levels at the NNSI

APHA separately informed us that in the FY 2023/24 specifically, the NNSI had 9.6 full-time-equivalent staff.

5.2 Remit of the NNSI

With the relatively limited resources discussed above, the NNSI (and the wider NNSS) is expected to cover a wide remit, with APHA stating to us that permitting is only a "relatively small" part of the NNSI's work.

As outlined above, the NNSI aims to ensure that existing legislation relating to IAS is enforced. This work encompasses a range of legislative regimes beyond IAS permitting, with the NNSI carrying out 1,378 inspections in the FY 2023/24, all in respect of matters within its remit other than IAS Permit compliance.[750]

The NNSI also aims to collect data so that certain risks relating to IAS are better quantified and understood,[751] to conduct rapid response and control/eradication work,[752] and to ensure that stakeholders are properly educated on existing legislation.[753]

With this context in mind, the NNSI's capacity to conduct IAS Permit compliance inspections is likely to be limited, and in any event must be balanced with the other aspects of its remit.

750 Emphasising the scope of the NNSI's work, the NNSS explains that its inspections work alone is carried out at "a range of events and premises including trade fairs, angling and boating events, pet shops, animal rescue centres, garden centres etc." (GB Non-Native Species Secretariat, 'Inspectorate' (NNSS, undated) <www.nonnativespecies.org/about/inspectorate> accessed 28 May 2025)

751 *Ibid*

752 Rob Wakefield, 'An Introduction to the Non-native Species Inspectorate', (Wildlife and Countryside Link, 12 May 2025) <www.wcl.org.uk/intro-non-native-species-inspectorate.asp> accessed 29 May 2025

753 GB Non-Native Species Secretariat, 'Inspectorate' (NNSS, undated) <www.nonnativespecies.org/about/inspectorate> accessed 28 May 2025

5.3 Challenges of implementing a new regime

The EU predecessor of the Assimilated IAS Regulation came into force in 2014 (taking direct effect in the UK, with APHA beginning to issue permits in small numbers under it in 2016). However, it was only in December 2019 that the IAS Order came into force, providing a detailed statutory framework for the implementation and enforcement of the IAS Permit regime.

Similarly, although APHA has acted as the relevant competent authority since before the IAS Order was put in place, a dedicated inspectorate for IAS in the form of the NNSI only came formally into being in 2021.[754]

As such, some explanation for the lack of IAS compliance inspections in the FY 2023/24 could be found in the context of a new organisation, seeking to implement a regime which itself remained relatively nascent.

It is for example, impossible to inspect an entity for IAS Permit compliance if it does not hold an IAS Permit in the first place. It was, for example, noted in 2021 that "there has been some confusion on the part of customers about which activities require a permit and which require a licence",[755] and we understand that some entities have been wrongly granted licences when in fact they should hold IAS Permits. Licences are, like IAS Permits, issued under the IAS Order,[756] but they relate to different activities and are administered by Natural England.

On top of those entities obtaining the wrong type of authorisation, there are many which hold none at all. We were told by APHA that analysis in 2023/24 suggested that approximately 60% of premises holding IAS for which an IAS Permit was required, held neither an IAS Permit nor a licence.[757] It was suggested that this was likely a result of ignorance of the legislation.

Considering the above, it would not be surprising if the NNSI saw value in prioritising that IAS Permits are held in the first place, alongside (or even over) conducting compliance inspections of those which did.

A further factor which appears to have impacted the implementation of the IAS Permit regime and its associated inspections was COVID-19, with the 2024 PIR of the IAS Order noting that:

> "*Due to the COVID-19 pandemic, the permitting and inspection process was limited in the years following the introduction of this legislation. This resulted in limitations in the level of monitoring and enforcement*."[758]

We note that, despite the challenges outlined here, inspections are now being carried out. We also understand that organisational changes are taking place which are expected to aid the NNSI in implementing the regime. For example, alongside inspecting for IAS Permit compliance, it is planned for the NNSI to take charge of issuing IAS Permits in the first place.

754 Rob Wakefield, 'An Introduction to the Non-native Species Inspectorate', (Wildlife and Countryside Link, 12 May 2025) <www.wcl.org.uk/intro-non-native-species-inspectorate.asp> accessed 29 May 2025

755 Secretary of State, Scottish and Welsh Ministers, 'Review of Implementation of the Retained EU Invasive Alien Species Regulation (EU 1143/2014) in Great Britain 2015-2020' (GB Non-Native Species Secretariat, 2021) 8 <www.nonnativespecies.org/assets/21_03_01-Post-implementation-review.docx> accessed 28 May 2025

756 IAS Order, art 36

757 APHA noted that this analysis was based on a small sample

758 Defra, 'The Invasive Alien Species (Enforcement and Permitting Order 2019 – Post-Implementation Review' (Defra, December 2024) 26

APHA noted to us in January 2025 that this "will make it far easier to ensure that non-compliant premises are brought into compliance."

5.4 Transparency and Reporting

As outlined above, the only statutory reporting requirement specifically relating to IAS Permit inspections is that found in the Assimilated IAS Regulation. This duty requires the Secretary of State to publish information relating to inspections by 1 June 2019 and on a six-yearly basis thereafter.[759]

Pre-Brexit reporting under the provision (to the EU Commission), was relatively detailed. Its form was prescribed in statute.[760] Information on permit compliance inspections conducted had to be provided on a species-by-species basis, and had to cover matters such as the number of establishments inspected and levels of non-compliance found.[761] This information (such as it was – few Member States having conducted inspections at the time of the last reporting deadline in 2019) was then published on the online and publicly accessible 'Invasive Alien Species portal',[762] and on the European Environment Agency's central data repository.[763]

The UK authorities may now specify the format of the reporting "in order to simplify and streamline reporting obligations".[764] The first report published under this approach indicates that key information about the inspections programme continues to be captured (indeed, Defra has described the reporting to us as "if anything, a more detailed account" than it was previously): despite describing itself as only an 'overview of the information required to be published', it contains figures including the NNSI's annual inspection target, the number of establishments inspected per permit type, and the number of those establishments deemed to be in non-compliance with permit conditions.[765]

Other statutory reporting requirements in the IAS Order and Assimilated IAS Regulation, as noted above, do not explicitly require reporting on IAS Permit inspections. We note nevertheless that PIRs of both the IAS Order and the Assimilated IAS Regulation have discussed inspections, albeit in limited and specific contexts,[766] and at times when none had yet taken place.

The extent to which future reporting under these general provisions, which from hereon will occur when IAS Permit inspections are actually taking place, may incorporate discussions of those inspections, is unknown.

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759 Assimilated IAS Regulation, art 24(1)(h)

760 Commission Implementing Regulation (EU) 2017/1454 of 10 August 2017 specifying the technical formats for reporting by the Member States pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council [2017] OJ L 208/15. This legislation has now been repealed domestically (Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019/223 pt 4 reg 12(c))

761 *Ibid*, annex

762 European Environment Agency, 'Invasive Alien Species portal' (EEA, data up to 2018) <https://ias.eea.europa.eu/> accessed 29 May 2025

763 European Environment Agency, 'EIONET Central Data Repository: Report pursuant to article 24 of Regulation (1143/2014)' (EIONET, last modified 31 May 2019) <https://cdr.eionet.europa.eu/gb/eu/ias/envxjyqya/overview> accessed 13 June 2025

764 Assimilated IAS Regulation, art 24(4)

765 Defra, 'Report pursuant to Article 24 of the invasive Alien Species Regulation (EU 1143/2014) in Great Britain 2019-2025' (nonnativespecies.org, 2025) <www.nonnativespecies.org/assets/GB-Report-Pursuant-to-Article-241-of-the-Invasive-Alien-Species-Regulation-version-for-accessibility-check.docx> accessed 13 June 2025

766 See Defra, 'The Invasive Alien Species (Enforcement and Permitting) Order 2019 – Post Implementation Review' (gov.uk, December 2024) 24 <www.legislation.gov.uk/ukia/2024/170/pdfs/ukia_20240170_en.pdf> accessed 28 May 2025; and Secretary of State, Scottish and Welsh Ministers, 'Review of Implementation of the Retained EU Invasive Alien Species Regulation (EU 1143/2014) in Great Britain 2015-2020' (GB Non-Native Species Secretariat, 2021) 8 <www.nonnativespecies.org/assets/21_03_01-Post-implementation-review.docx> accessed 28 May 2025

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