



House of Commons
Environmental Audit Committee

Hand car washes: Government Response to the Committee's Tenth Report

Fourteenth Special Report of Session
2017–19

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Environmental Audit Committee

The Environmental Audit Committee is appointed by the House of Commons to consider to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development; to audit their performance against such targets as may be set for them by Her Majesty's Ministers; and to report thereon to the House.

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Fourteenth Special Report

The Environmental Audit Committee published its Tenth Report of Session 2017–19, [Hand car washes](#) (HC 981) on 15 November 2018. The Government's response was received on 14 January 2019 and is appended to this report.

Government Response

Environmental pollution

1. *The failures to enforce planning and environmental regulations at hand car washes must be rectified. Risk prioritisation by the Environment Agency and water companies should not translate into a permissive licence to pollute for hand car washes or other businesses.* (Paragraph 43)

The Government agrees with the importance of effective regulation to prevent pollution impacting on water quality.

Evidence¹ shows that the number of water pollution incidents from hand car washes is low compared to other pollution sources. The actual polluting impact from an individual hand car wash is very low and normally indistinguishable from normal road and roof drainage, i.e. it often can't be separated as from other pollution sources by the time it reaches a stream. This is one of the main factors in determining the appropriate regulatory response. In many such cases there is little or no realistic chance of securing a prosecution against an individual car wash and the resource required to pursue a case would be outweighed by low likelihood of success. The Environment Agency (EA) follows the Regulators code² and undertakes a series of public interest tests when deciding what action to take in relation to environmental pollution.

However other action can be and is taken. The risk of pollution incidents from car washes are minimised through advice and guidance to prevent pollution occurring and to correct any problems. In more serious cases there are a range of enforcement and sanctions options open to the EA, including, warning letters, formal cautions, enforcement notices, civil sanctions and prosecution. Pollution incidents from car washes are normally dealt with by either advice or guidance to correct any problems, or warning letters. The EA will explore opportunities for the greater use of existing legally binding notices and other powers as enforcement options. They can also take prosecutions should serious offences occur.

We also welcome the committee's recommendations for the various departments and regulatory agencies to work together as the best way to address a range of issues arising from hand car washes. This is considered more fully in response to recommendation 4 below.

1 See the Written Evidence submitted by DEFRA to the committee published on 20 June 2018

2 <https://www.gov.uk/government/publications/regulators-code>

2. *The Environment Agency should reinstate its pollution prevention guidance for car washes. We recommend that the Agency also writes to the planning departments of Local Authorities across the UK to remind them that hand car washes should have interceptors installed and be connected to the foul sewer so that their wash water is treated rather than discharged directly into the environment. (Paragraph 44)*

The Government agrees with the Committee's recommendation to update the pollution prevention guidance. As committed to during the oral hearing, the Environment Agency will update the guidance for publication on GOV.UK early next year.

The Environment Agency will also direct planning departments in England to the updated guidance.

3. *The Environment Agency should also write to major supermarkets to remind them that any hand car washes operating in their car parks needs to have the appropriate drainage in place connecting to a foul sewer. (Paragraph 45)*

The Government agrees that supermarkets and other businesses which host hand car washes have a role to play. The Environment Agency is already working with the major supermarkets as part of the voluntary hand car wash pilot scheme in the Midlands. The scheme encourages landlords to take responsibility for ensuring any hand car wash operations set up on their land meets regulatory requirements including those for protecting the environment. The EA will use the best practice developed during this trial and incorporate this into any wider roll out of the scheme moving forward.

Additionally the EA has agreed to write to major supermarkets in 2019 advising them of their responsibilities as landlords to ensure any hand car washes on their land follow pollution prevention advice and guidance for the protection of the environment and refer them to the guidelines to be published on .GOV.UK as per the committee's recommendation.

4. *The Environment Agency should work with immigration, tax recovery and GLAA enforcement to ensure that unannounced inspection of hand car washes are comprehensively investigated for a full range of potential regulatory breaches. (Paragraph 46)*

The Government recognises the Committee's recommendations for the various departments and regulatory agencies to work together as the best way to address a range of issues arising from hand car washes.

There is an existing voluntary pilot scheme that various departments, agencies and supermarkets are working on together in the Midlands. This also complements other initiatives such as the Church of England's CLEWER initiative for reporting concerns about hand car washes and the Downstream Fuel Association's Responsible Car Wash scheme which was launched at the House of Lords on 22nd October. The Responsible Car Wash Scheme recognises car wash operators who comply with all welfare and environmental requirements. The scheme allows operators to display a logo which indicates to consumers that the car wash has passed an audit and follows regulatory requirements.

In addition, the Environment Agency, the Gangmasters and Labour Abuse Authority, Police, the Health and Safety Executive, Local Government Association and Her Majesty's Revenue and Customs will discuss how they can best work together. This will focus on the

sharing of advice, guidance and intelligence from investigations to ensure a comprehensive and joined up response to the issue. In this way we aim to make information easily accessible to anyone setting up a hand car wash scheme on their responsibilities and the consequences of failing to meet them.

This builds on to the existing voluntary pilot scheme the departments and agencies and the supermarkets are working on together in the Midlands.

5. *The Government should consider whether changes are necessary to the water regulations governing urban diffuse pollution. Water companies should be encouraged to map and report to the environment agency where waste water is not properly being handled. This would help address the lack of data that currently hampers effective enforcement.* (Paragraph 47)

The Government recognises the impact of urban diffuse pollution. The 25 Year Environment Plan commits to improving at least three quarters of waters to be close to their natural state as soon as practicable. Our evidence suggests that urban diffuse pollution accounts for around 11% of the pressures which affect water quality and failure to meet the Water Framework Directive standard in England. Urban diffuse pollution comes from surface water drainage systems which drain water from roofs and roads. These surface water drains can be contaminated by dirty water from highways or misconnected foul water from households, industrial and commercial premises. Given the range of sources, it is a significant challenge to address.

The Government are taking steps to reduce this risk. Through its 21st Century Drainage Programme, Water UK (the water industry representative body) has been working with water companies, UK and Welsh governments, the Water Services Regulation Authority (Ofwat), and the environmental regulators to improve long-term planning for both drainage and wastewater. In September 2018, the programme launched the Drainage and Wastewater Management Planning (DWMP) framework. Using this non-statutory framework, the water companies will establish the capacity of their sewerage network, the resilience of those networks and assets, the risks that they pose to the environment and how to mitigate them, together with any planning and assets needed for the future, taking account of increasing populations and climate change. In the government's July 2018 Surface Water Management Action Plan, we committed to review progress on the development of DWMPs and consider putting them on a stronger regulatory footing if sufficient progress has not been made.

Defra and the Environment Agency are also working the Highways Agency through investment programmes to reduce pollution from these sources.

Labour exploitation

6. *It is important to note that not all hand car washes violate labour, employment, taxation, health and safety and environmental regulations. Nevertheless, there appears to be widespread and flagrant rule breaking taking place at hand car washes across the country. This is unacceptable.* (Paragraph 95)

Her Majesty's Revenue and Customs (HMRC) regularly undertakes investigations across the UK, often in partnership with other government agencies, to tackle non-compliance in the sector. It works closely with the police, particularly on unannounced visits carried out at hand car washes, under its tax and National Minimum Wage (NMW) powers.

Most individuals and businesses in the UK pay the tax that is due and do not try to bend or break the rules to evade it. But the Government and HMRC are clear, paying the tax that is owed is not an optional extra, it is a legal requirement and we are determined to keep up the pressure on the small minority of individuals and companies who attempt to break or bend the rules.

7. When it comes to combatting labour exploitation, the failure of authorities to enforce the law appears to be a wider problem. We were astonished to discover that there have only been 14 minimum wage prosecutions since 1999. Prosecuting more employers for non-payment of the minimum wage would send a stronger signal that the Government is serious about enforcing labour market laws. HMRC should work with other Labour Market Enforcement agencies and consider using prosecution for non-payment of the minimum wage as a means to clamp down on premises where serious labour exploitation is suspected to be taking place. (Paragraph 96)

The Government is determined that everyone who is entitled to the national minimum wage (NMW) receives it. Her Majesty's Revenue and Customs (HMRC) will not hesitate to take action to ensure that workers receive what they are legally entitled to. In 2017/18 HMRC identified record amounts of arrears for over twice as many workers as in the previous year: £15.6m for over 200,000 workers. HMRC responds to 100% of worker complaints and also conducts proactive, targeted enforcement of at-risk employers. Activities include increasing awareness raising activity to prevent non-compliance in the first place and therefore reduce the need for enforcement action.

In 2017/18 HMRC received additional funding to provide support to employers seeking to get NMW right while also targeting more complex employers for investigation.

HMRC routinely undertakes both individual and joint operations into high-risk employers and sectors in order to ensure that workers are not being exploited, are legally employed and are receiving what they are legally entitled to. For example HMRC regularly shares intelligence and takes part in joint operations with enforcement bodies such as the Gangmasters and Labour Abuse Authority (GLAA), the Employment Agency Standards inspectorate (EAS), Police and Local Authorities.

As part of its NMW compliance activity, HMRC refers all potential criminal cases to the Crown Prosecution Service (CPS) who ultimately decide whether to prosecute. These are cases where there is an evidenced pattern of suspected or potential criminality - for example aggravated NMW offenses, suspected tax fraud, or cross-government offences such as employing illegal workers. All other cases are subject to strict civil (non-criminal) sanctions where, in addition to the payment of wage arrears to workers, non-compliant employers are subject to penalties of up to 200% of the arrears, and public naming.

Prosecution is not necessarily the best approach in most cases. Criminal sanctions against companies can mean that workers, the ultimate beneficiaries of NMW enforcement, end up waiting longer for their lost earnings to be paid back. In addition, the average cost of a prosecution case is estimated to be many times more costly than a civil case.

The Immigration Act 2016 provided additional powers to HMRC to issue either a labour market Enforcement Undertaking (LMEU) or a Labour Market Enforcement Order (LMEO). These measures are designed to supplement powers granted to HMRC through the NMW Act and can be used to ensure the future compliance of serious and persistent offenders.

8. *We also encourage HMRC to explore potential tax evasion by hand car wash operators to establish the extent of material revenue leakage from the public purse from these operators and to develop strategies to recover tax due.* (Paragraph 97)

Her Majesty's Revenue and Customs (HMRC) takes a risk based approach to all of its compliance interventions; focusing its resources on the highest tax risks and targeting interventions to reduce the scope for non-compliance. HMRC treats everyone even-handedly and works hard to make sure all UK businesses pay the tax they owe. As well as activity to prevent and respond to deliberate non-compliance, it also conducts a wide range of work to make tax compliance the easy option.

HMRC intelligence suggests that some operators in the hand car wash sector are failing in their tax obligations. HMRC investigates hand car washes across the UK to tackle these failings and prevent further tax losses to the Exchequer.

There are two major 'non-compliant behaviours' of concern within the hand car wash sector. HMRC's work in this area identifies businesses that are both evading tax (for example by not administering PAYE correctly for each of their employees) and those said to be operating in the 'hidden economy' (where entire sources of taxable economic activity are hidden from HMRC). HMRC targets assessed risk and suspect activity regardless of the trade sector and do not categorise in terms of whether a business is 'established' or 'gang' operated. HMRC's strategic response to these risks is coordinated nationally, according to a full assessment of tax risks, not on a sectoral basis.

HMRC has been involved in the development of the 'Responsible Car Wash Scheme', which is presenting opportunities to identify businesses that aren't tax compliant. HMRC will work with partners in investigating businesses identified by data from the new application, when there is a suggested risk of non-compliance (both with tax and NMW obligations).

9. *We are encouraged that the GLAA and Director of Labour Market Enforcement are stepping up their efforts to tackle labour exploitation at hand car washes. Ensuring that hand car washes operating on the car parks of major supermarkets are compliant is the first step. We welcome the Responsible Car Wash Scheme. The public must have confidence that hand car washes at major supermarkets operate within the law. The Government should ensure that large businesses hosting hand car washes include them in their Modern Slavery Act transparency statements.* (Paragraph 98)

10. *To make enforcement easier, the Government should trial a licencing scheme for hand car washes that brings together all of the major compliance requirements, including on environmental pollution, into a single, more easily enforceable, legal requirement. The Government should also review whether the Modern Slavery Act 2015 could be updated to cover businesses as small as hand car washes.* (Paragraph 99)

The Government is committed to tackling modern slavery, including labour exploitation and that is why, the Government introduced measures through the Immigration Act 2016

to strengthen the response to the enforcement of labour market legislation. This included reforming the Gangmasters and Labour Abuse Authority, giving it wider enforcement powers under the Police and Criminal Evidence Act 1984 to investigate serious cases of labour exploitation across all sectors of the economy, including in the hand car wash sector. Tackling non-compliance in hand car washes has been the focus of increased law enforcement activity, with agencies working in partnership to clamp down on exploitation.

The Government recognises that licensing can be a valuable tool in tackling non-compliance and labour exploitation. However, it believes that changes to the current licensing regime should be informed by an assessment of the full evidence to better understand the threat of exploitation in different sectors and the full range of options to tackle it, including the most appropriate regulatory approach. The Government believes that this can be better achieved by a voluntary pilot approach that brings together relevant partners over a compulsory trial licensing scheme.

Using its wider labour market remit, the GLAA alongside the Environment Agency, the Health and Safety Executive (HSE) and HMRC are supporting an industry-led voluntary pilot, the Responsible Car Wash Scheme, which was launched by the Downstream Fuel Association in October 2018. The enforcement bodies worked closely with stakeholders in the petrol retail industry to develop this accredited scheme, which is underpinned by a code of practice designed to identify compliant hand car washes. The code provides a holistic set of standards covering existing environmental and health and safety regulatory and other labour market offences.

The scheme will be evaluated to allow us to more thoroughly test existing regulations and legislation in order to understand where the gaps are and to help inform future decisions, including considering the scope for rolling the scheme out more widely.

Section 54 of the Modern Slavery Act 2015 was designed to place reporting requirements on large businesses who can promote action by smaller businesses further down their supply chains. For example, the legislation has encouraged large businesses including supermarket chains who host hand car washes on their premises to use their leverage to improve conditions for workers and to collaborate with local agencies and the GLAA where labour exploitation is found. Good transparency reporting is driven by NGOs, investors and consumers who can use reporting data to hold companies to account. These levers are less likely to be effective for small businesses on the high street like hand car washes who may not be accountable to shareholders and are too small to be effectively scrutinised by NGOs.

The Government has commissioned an independent review of the Modern Slavery Act 2015 headed by Frank Field MP, Maria Miller MP and Baroness Butler-Sloss. The Review will identify where the Act is working well, what can be improved in the implementation of the Act and whether specific areas of the legislation, including the transparency in supply chains provisions in section 54, need to be strengthened. The Review will report to the Home Secretary by 31 March 2019 and the Government will carefully consider any recommendations relating to the scope of section 54.