

A&L Goodbody

The Irish Waste Management Conference

Waste policy and enforcement:
update

Alison Fanagan

28 November 2019

 *The Irish Waste Management Conference*

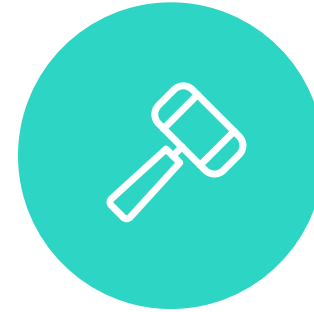
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Introduction



Waste policy

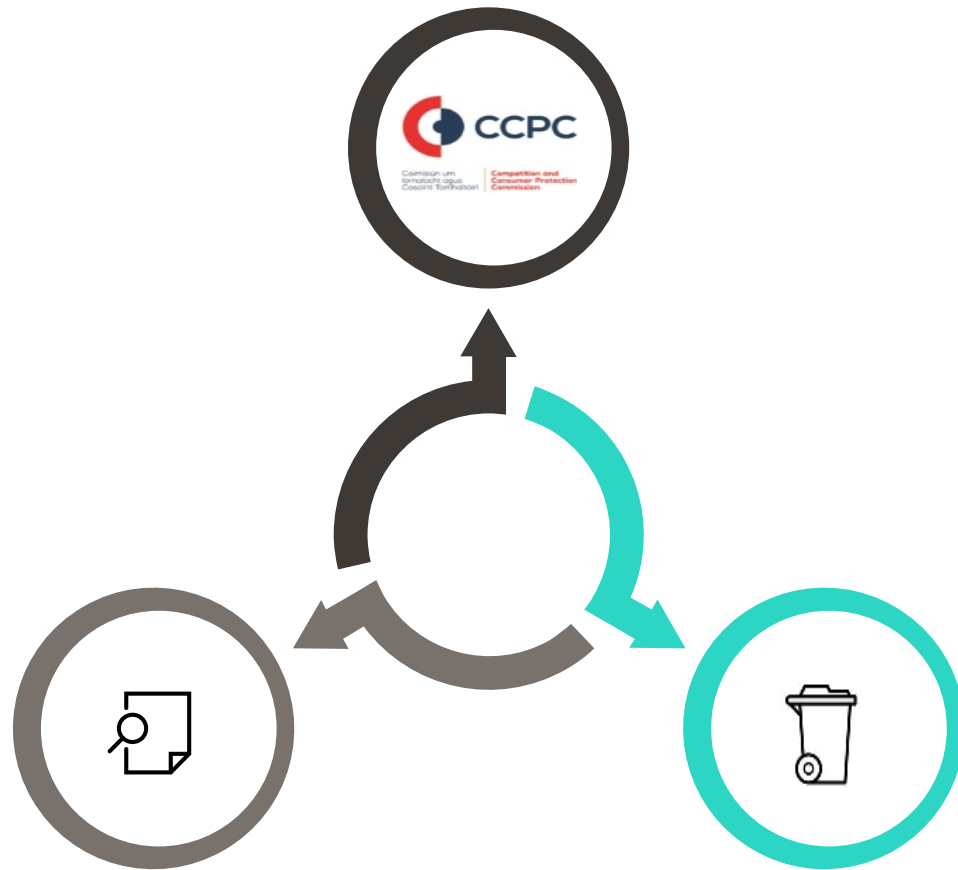
- 2012 “A resource opportunity”: up for review
- Calls for “re-municipalisation” of household waste collection
- What does EU law require/not require?



Waste enforcement

- What are Ireland’s obligations under EU law?
- Is Irish waste enforcement effective?
- What else could be done?

Waste policy – Ireland



July 2012

“A resource opportunity” is current policy: due for review

September 2018

CCPC Report: some “*tendering*” i.e. competition for the market may be needed (customer needs, market structure). Current market structure is “*complex*”.

July – September 2019

Calls for remunicipalisation, Dublin, Cork and other councils

Waste policy - EU context

EU Circular Economy Action Plan, 4 March 2019

2020/2030 targets

- Packaging and packaging waste
- Landfill/diversion of biodegradable municipal waste
- WEEE
- Waste Framework Directive
- ELVs
- Batteries and accumulators
- Food Waste
- Single use plastics

NB Economic incentives for producers to put greener products on the market and support recovery and recycling schemes.

Waste policy – Ireland

- Challenge to meet targets
- Climate Action Plan 2019 – “*Measures to Deliver Targets*”

Action No. 135

Steps necessary for delivery	Timeline by quarter	Lead
Commence public consultation on waste policy	Q3/2019	DCCAE
Review of submissions for development of a draft plan	Q3/Q4/2019	DCCAE
Development and publication of a Circular Economy Action Plan	From Q2 2020	DCCAE

Waste policy – Ireland

1

Revised policy will be reflected in revised Regional Waste Management Plans

2

They inform planning and licensing decisions

What must policy address?



Measures to reduce, recycle, reuse, divert



Major “step up” in recycling to meet EU targets e.g. recycling: 55%/60%/65% of municipal waste by 2025/30/35; 70% of packaging waste by 2030; targets for plastic, cardboard, paper, aluminum and glass



Create a fund to promote innovation



Levies to encourage behaviour

Waste collection

Environmental & competition principles

“Review waste collection and management system, to maximise the collection of clean, segregated materials for reuse and/or recycling from all households and businesses, and to incentivise consumers to reduce, reuse and recycle”: CAP 2019.

Waste collection

Current structure:

Competition *"in"* the market.

1

Tendering:

Competition *"for"* the market.

2

Public Service:

Public Service: Councils take back collection.

3

Mix:

E.g. could tender out some areas.

4

Waste collection

- Change market structure as needed if and to extent necessary to deliver on objectives and targets.

1

- Environmental, competition and economic analysis needed.

2

Treaty on the Functioning of the European Union

01

Article 3(3) TFEU defines the objectives of the EU:

“The Union shall work for sustainable development of Europe based on balanced economic growth and price stability (...) and a high level of protection and improvement of the quality of the **environment**”.

02

Article 191 – obligations under the TFEU:

“Union policy on the **environment** shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay”.

Waste enforcement – EU

Waste Directive 2008:

Article 13 - Protection of human health and the environment

- Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:
 - a) without risk to water, air, soil, plants or animals;
 - b) without causing a nuisance through noise or odours; and
 - c) without adversely affecting the countryside or places of special interest.

Waste enforcement – EU

Article 36 - Enforcement and penalties

1. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste.
2. Members States shall lay down provisions on the penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive.

Waste enforcement – Irish legislation

01

Sections 55, 56,
57 & 58 WMA
1996

02

Sections 32 & 39
WMA 1996

03

Section 160
PDA 2000
(planning
injunction)

04

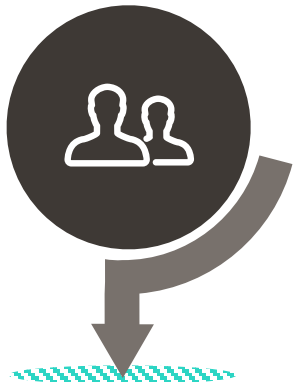
Section 5
Declaration
PDA 2000

05

Proceeds of
Crime Act 1996

Waste enforcement – Irish legislation

Section 55: clean-up notice



01

LA or EPA



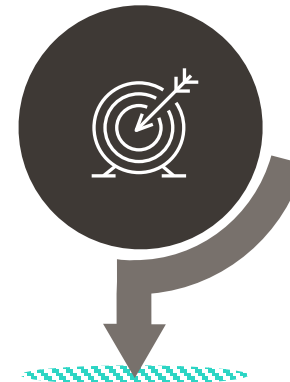
02

Where necessary
*“to prevent or limit
environmental
pollution caused or
likely to be caused,
by the holding,
recovery or
disposal of waste”*



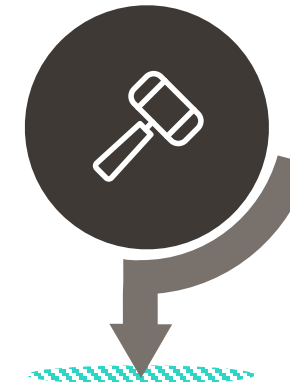
03

In conjunction
with a prosecution



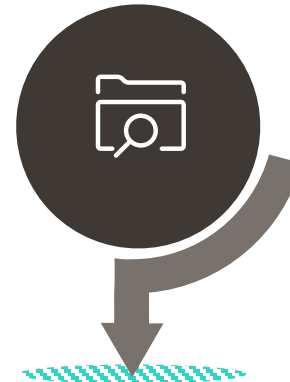
04

Specify
measures to be
taken



05

An offence to
fail to comply



06

No planning
permission
required

Waste enforcement – Irish legislation

Section 56 – LA & EPA can themselves take measures

Sections 57 & 58 – LA or EPA or “any person”

- Application to Circuit or High Court
- Where waste is being held, recovered or disposed of in a manner that causes or is likely to cause environmental pollution.

Key cases:

1

Donegal County Council v Ferry, Barrett J. (ongoing)

2

South Dublin County Council v Clean Build & Ors, Clarke J. 4 August 2011

3

Wicklow County Council v Brownfield & Ors, Humphreys J. 19 July 2017 and Costello J. Court of Appeal 16 October 2019

Waste enforcement – Irish legislation

Prosecutions – Sections 32 & 39



“Appropriate person”

“Fit and proper person”

S.32: Offence to hold, transport, recover, dispose or transfer control of waste unlawfully/in manner that causes or is likely to cause environmental pollution

S.39: Offence to dispose or undertake the recovery of waste other than under and in accordance with a waste licence.

Waste enforcement – Irish legislation

S.160 – Planning Injunction

- Applies if “*unauthorised development*” has or is due to take place.
- Includes – unauthorised structures, unauthorised use, breach of planning permission conditions e.g. exceedance of capacity limits
- LA, EPA, any person
- Circuit or High Court

Waste enforcement – Irish legislation

S.5 Declaration

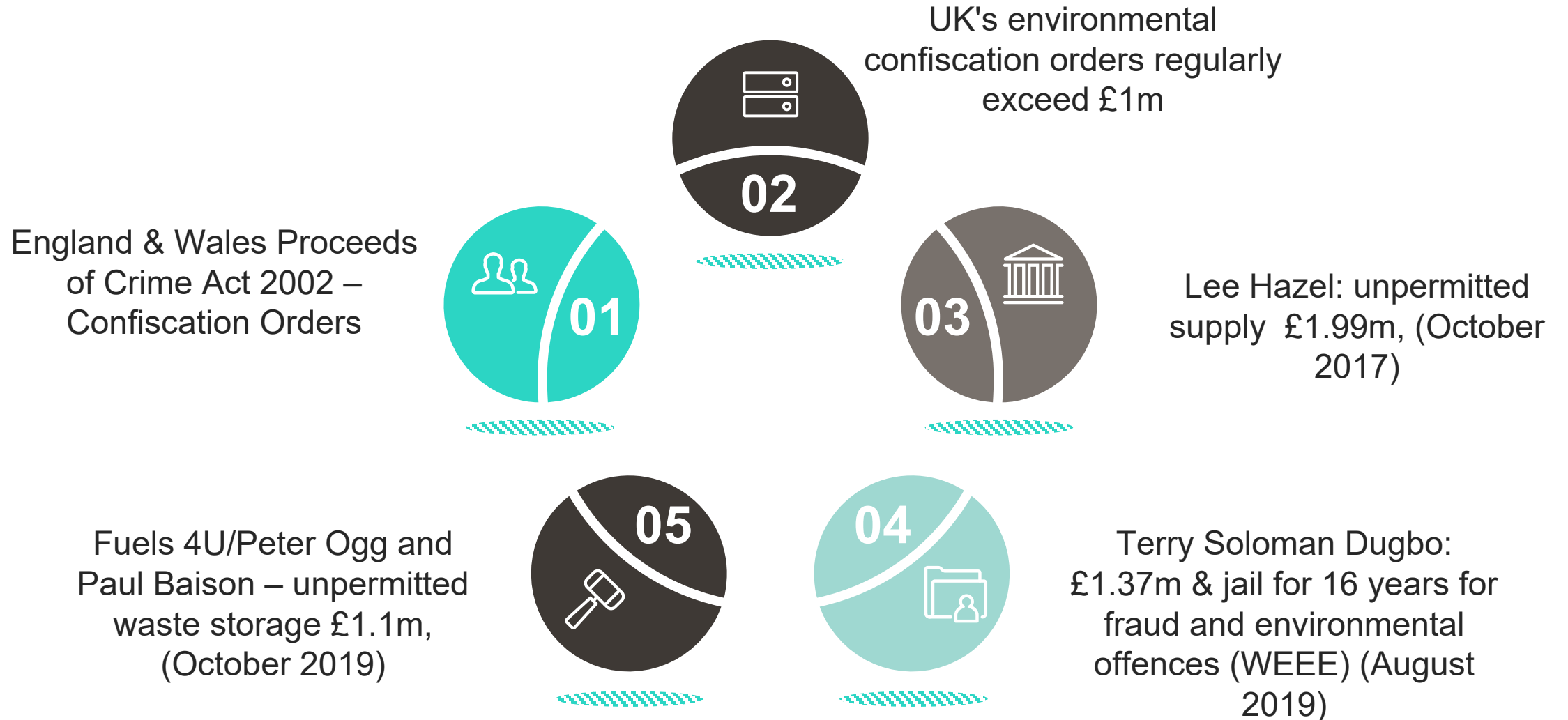
- Application by LA or any person
- To An Bord Pleanála or LA
- Has “*development*” taken place? Is it “*exempted*”?
- Relevance to s.160

Waste enforcement – Irish legislation

Proceeds of Crime Act 1996

- Not used in Ireland for environmental crime
- England & Wales experience
 - Environmental offence (“*criminal activity*”)
 - Make confiscation order
 - UK Proceeds of Crime Act 2002 is much more extensive
 - Used widely and for years
- Environment Offence
 - Unauthorised or harmful deposit, treatment or disposal of waste
 - Breach of waste permit

Proceeds of Crime (England & Wales)



Enforcement in practice

- Plenty of “*ammunition*”, but perhaps strengthen Proceeds of Crime legislation?
- Coordination and resources required
- WERLAs working well
- National Priority Sites System: EPA
- Financial provision
- Climate Action Plan 2019 “*Waste & the Circular Economy*”.

Action No. 141 “*Identify opportunities to strengthen the regulatory and enforcement frameworks...*”

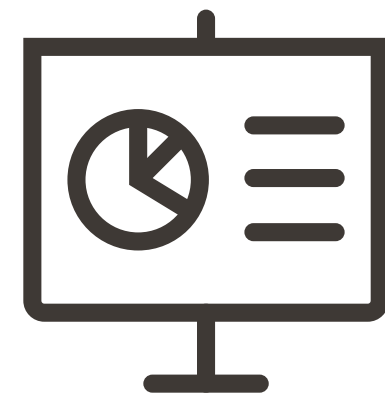
Enforcement in practice

Action No. 141

Steps necessary for delivery	Timeline by Quarter	Lead
Review waste enforcement legislation as part of waste review	Q4/2019	DCCAE
New waste enforcement structures	Q4/2020	DCCAE
Implementation of Regional Waste Management Plans	From Q1 2022	DCCAE

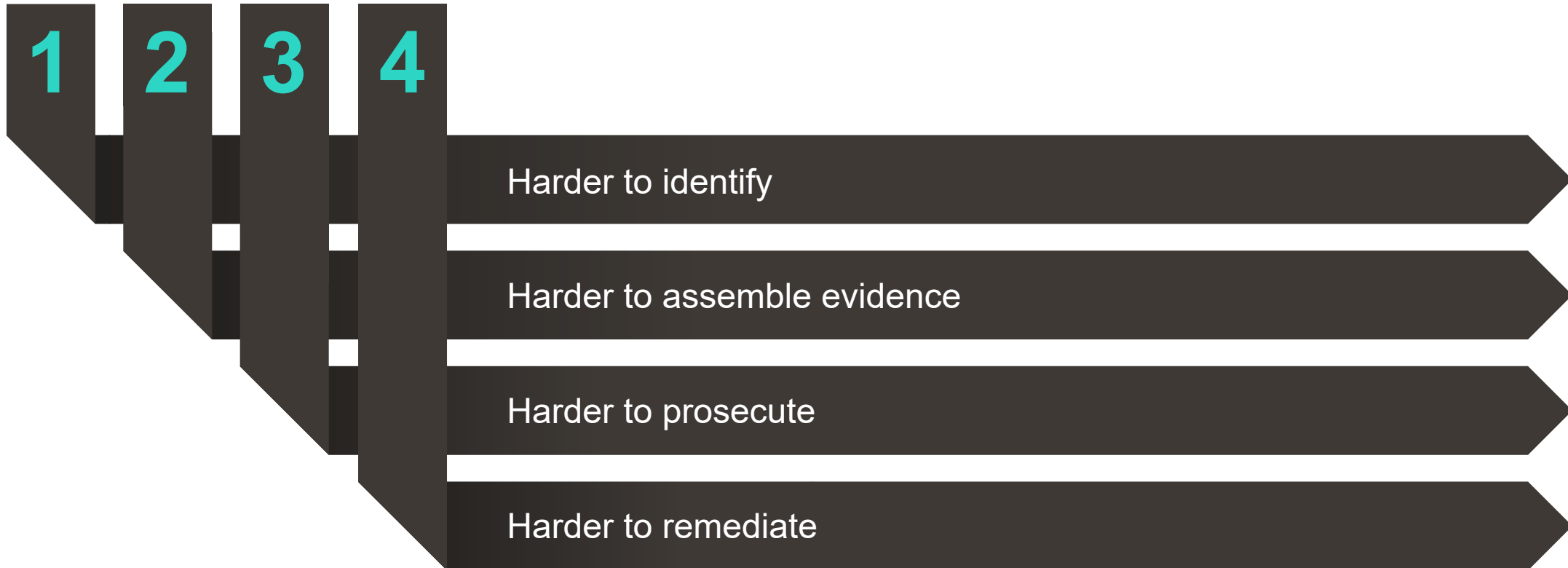
EPA, Industrial & Waste Licence Enforcement Report 2018

- **2018**: 15 prosecutions, 13 convictions (typical)
- **25%** site visits due to complaints
- **84%** complaints: odour and nuisance
- **22%** reduction in complaints in 2018 compared to 2015, 2016 & 2017
- Open compliance investigations down from 184 in 2015 to 94 in 2018
- **75%** of sites visited each year in 2015 to 2018
- **41%** of sites visited twice in 2018



What about unlicensed sites? – Issues remain

“*RTE Investigates*”: 6 month investigation, 2018



Conclusion

- EU Law demands that Member States protect human health and prioritise the environment
- The Climate Action Plan 2019 anticipates developments in both waste enforcement and policy
- More can be done! It takes resources, determination and expertise - resources is probably the key missing ingredient
- Consultation on revised waste policy = next step.



Thank you
