

Appendix I – Proposed EA risk-based regulatory regime (under consultation)

Level of compliance	Indicator	Level of intervention
High	<ul style="list-style-type: none"> • Collections providing on-site or doorstep separate collection or kerbside sort for each paper, glass, plastic and cans. • Collectors who rigorously applied the Route Map and collection arrangements are based on well-evidenced, documented and justified decisions 	Low
Medium	<ul style="list-style-type: none"> • Collectors sending co-mingled material to a MRF which is providing poor quality recyclate • Evidence suggests poor quality of recycling and are not separate collections • Collector advertising a new contract that is prescriptive about type of collection/sorting service unless it is clear it wants a multi-stream/separate collection • Move from separate collections to co-mingled since 2012 • Collections which are not collecting any of at least one of the four streams – paper, metal, plastic and glass – other than through civic amenity or bring banks 	Medium
Low	<ul style="list-style-type: none"> • Any implication that waste has ended up as illegal export • Evidence that good quality recyclate has been deliberately sent for disposal or incineration or remixed with other waste 	High

Appendix II – Legal advice in full

PROJECT INTEGRA PARTNERS SEPARATE WASTE COLLECTION FROM 2015

ADVICE

1. Regulation 13 of the Waste (England and Wales) Regulations 2011 (“the Regulations”) provides:
 - “(1) This regulation applies from 1st January 2015.*
 - (2) Subject to paragraph (4), an establishment or undertaking which collects waste paper, metal, plastic or glass must do so by way of separate collection.*
 - (3) Subject to paragraph (4), every waste collection authority must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements are by way of separate collection.*
 - (4) The duties in this regulation apply where separate collection –*
 - (a) is necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve recovery; and*
 - (b) is technically, environmentally and economically practicable”.*
2. Regulation 13 has implications for the members of Project Integra, which is a partnership comprising 11 Waste Collection Authorities, Hampshire County Council as Waste Disposal Authority, the unitary authorities of Portsmouth and Southampton (each responsible for waste collection and disposal) and Veolia Environmental Services (VES), the integrated waste management contractor. The Partners work together to provide an integrated solution to Hampshire’s municipal waste.

Existing Collection Arrangements

3. Each of the Partners operates separate waste collection arrangements. The following is a summary of the arrangements overall:

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- (a) All of the Partners collect paper, cardboard, cans and plastic bottles from Hampshire households but they are co-mingled at the point of collection.
 - (b) Glass is not included in the co-mingled waste but is instead collected either by a separate kerbside collection or households are directed to a network of glass bottle banks.
 - (c) The Partners also provide “Bring” sites to which households may take a limited range of items for recycling.
 - (d) The three waste disposal authorities operate a number of large-scale recycling centres within Hampshire to which households may take a wide range of materials including garden waste, electrical appliances, DIY waste, rubble and general waste.

Arrangements for the co-mingled waste

4. Once collected from the kerbside, the co-mingled waste is delivered to one of two Material Recovery Facilities (MRFs) in Hampshire. At these MRFs the waste is sorted into its component fractions (e.g. steel, paper, cans) using a mix of hand sorting and technology. The resulting fractions are then sent to various reprocessors in the UK and abroad for recycling. One of the MRFs has a Material Analysis Facility (“MAF”) which provides detailed information on the composition and inputs and outputs from the MRF. Of relevance to the issues on which my advice is sought, the MAF measures contamination within the co-mingled waste which has to be extracted for disposal. This includes glass, plastic bags and foil. I assume that it also measures the quantity of waste which, by reason of the co-mingling or otherwise, has ceased to be suitable for recycling.

The Issue

5. The Partners are presently considering the implications of Regulation 13 for their waste collection arrangements. Other than those collection authorities which have an in-house collection service, collection contracts are in place with a variety of contractors across the Project Integra area, none of which expires before 2017. In order to undertake a robust assessment of the need for and practicability of separate collection of waste paper, metal, plastic and glass, a draft “*Waste Regulation Route Map*” has been prepared. My advice is sought on the robustness of that Route Map, whether it can be improved to minimise risk of legal challenge, the evidence base required to minimise the risk of such a challenge and on the approach which should be taken in relation to a number of more specific issues.

The Law

6. Before responding both generally and to the specific issues raised, it is important to have a clear appreciation of the statutory and policy context. Helpfully, this has been recently and comprehensively reviewed by Hickinbottom J in R (on the application of UK Recyclate) v Secretary of State for the Environment, Food and Rural Affairs [2013] Env LR 23. UK Recyclate argued that the Regulations failed properly to transpose the Waste Framework Directive (the WFD). In particular, they argued that (a) the importation of the Necessity Test into Regulation 13 was inconsistent with the

WFD when properly interpreted; (b) that separate collection could be avoided only where it did not meet the Practicability Test; (c) that as matter of law Parliament could not leave the decision as to whether the Practicability Test was met to another, such as a Local Authority; and (d) (although the Court was not asked to make a finding of fact) there was evidence to show that the separate collection of waste met the Practicability Test in all possible circumstances of collection throughout England and Wales (and by implication, separate collection was in all instances required).

7. Hickinbottom J rejected each of these grounds. He concluded that it was open under European Law for the Secretary of State to fulfil the obligations under the WFD with a system which allowed local authorities to determine within their areas whether separate collection was necessary or practicable and which provided for enforcement through the Environment Agency. He also held that on a proper interpretation of the WFD, the Necessity Test was required to be satisfied in addition to the Practicability Test. On the approach to be taken to practicability, Hickinbottom J held that whether this was met depended on a balancing exercise, and local authorities were uniquely qualified to undertake that balance having regard to local circumstances. The reasoning by which he reached these conclusions has a bearing on the proper approach to be taken to the two tests in a local assessment and I address the key passages under a series of headings.

(a) Objectives of the WFD

8. The judge stressed that:

“As one would expect of a directive, [the WFD] sets out high level principles, aims and objectives, the primary objective being to protect the environment and human health. So it states that:

“The first objective of any waste policy should be to minimise the negative effects of the generation and management of waste on human health and the environment...” (recital (6))¹

(b) Local Circumstances

9. In rejecting the argument that the issue of practicability had to be assessed on a national basis, Hickinbottom J held:

“Given the need to consider the particular circumstances of the collection, it is perfectly understandable that the primary decision-making function has been given to local authorities which are uniquely placed to take into account local circumstances.

Nor does the Waste Framework Directive, as a matter of law, require a particular authority to make a decision with regard to practicability for the entire area it covers or for any particular area. Whether separate collection is technically, environmentally and economically practicable depends on a balancing exercise that is both sophisticated and context-specific (see [19] above).² The relevant factors will be different (and certainly, will attract different weight) in a city centre from a sparsely populated countryside, and

¹ Para. 9

² A reference to paragraph 4.4 of the Commission Guidance on the Interpretation of Key Provisions of Directive 2008/98/EC on waste.

may well be different within the same city centre or within the same particular sparsely populated area. One can imagine idiosyncratic collection circumstances (perhaps remote households) where the exercise of assessing the practicability of separate collection will require an especially specific, if not unique, consideration of the relevant factors. As the Commission Guidance in respect of the Waste Framework Directive (referred to in [18] above stresses (Notice p.3):

“In practical implementation and enforcement, specific circumstances and the context of the waste management situation, as well as the requirements of the legislation, will always need to be taken into account”.

*Indeed, as a matter of law, as I have indicated, the test for technical, environmental and economical practicability not only permits but demands consideration of the particular collection circumstances”.*³

10. As to the contention that the evidence showed that separate collection was in all circumstances practicable within the UK, the judge was dismissive:

*“I appreciate that the claimants have a strong belief in the benefits of recycling, and the advantages of separate collection of waste to that end. However, on any view, this is an extremely bold contention. I am not called upon to make any factual finding in respect of it – nor do I formally do so – but it would be remiss of me if I were not to mark that, in my view, the evidence before me does not bear out that assertion. Of course, all parties acknowledge that, in many circumstances, separate collection of waste is both practicable and appropriate. The Directive clearly encourages it, and the evidence is that, for some authorities, separate collection has proved practicable and both environmentally and economically efficient. On the basis of figures for 2010-2011, 38 per cent of local authorities in England and Wales even then separately collected all four waste streams in their area, and the proportion may possibly be even higher now. However, there is no evidence to support the very different proposition that it is technically, environmentally and economically practicable to collect separately the four types of waste in all collection circumstances throughout the United Kingdom, or at least throughout England and Wales”.*⁴

11. Having reviewed the available sources of evidence, the judge added⁵

“Whilst making no factual finding as to England and Wales as a whole, or any particular local authority area, from the evidence it is quite clear that technical, environment and economic practicability in the sense used in the Directive and hence Regulation requires a sophisticated and complex context-specific balancing exercise

³ Paras. 44 & 45

⁴ Para. 48

⁵ Para. 50

that, depending on particular circumstances, is capable of resulting in different conclusions”.

(c) “Necessary”

12. Hickinbottom J having held that the Necessity Test had to be applied rather than simply the Practicability test stressed that:

“The opening words of art. 10(2) mean what they say: waste shall be collected separately, where such collection is necessary to comply with art. 10(1) (i.e. to ensure that the waste undergoes recovery operations, and to facilitate or improve recovery). The recovery operations that are to be ensured must, as the provision says, be performed in accordance with arts 4 and 13. They require the correct priority be given to the recovery, subject to the Directive’s overall aim of delivering “the best environmental outcome”.

....the primary objective of the Waste Framework Directive is not the separate collection of waste: it is the protection of the environment and human health (see recital 49)). Separate collection is itself a means to the achievement of that primary objective. Insofar as prioritising recycling over disposal and some other forms of recovery is an objective of the Directive, it is of course subsidiary and subservient to the higher objective of the “best environmental outcome” (art 4(20: see [15] above).....

The European Court has consistently held that [the principle of proportionality] requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question” (R v Ministry of Agriculture, Fisheries and Food exp National Farmers Union [1998] CMLR 1125 at [96]). Those principles are expressly recognised in Recital (49) of the Waste Framework Directive, which confirms the primary objective of the Directive, and expressly states that the Directive does not go beyond what is necessary in order to achieve that objective. In the light of those principles, and their express recognition in the Directive, it would be very strange indeed if the European Parliament and Council had determined that it was necessary for the four streams of waste to be separately collected throughout the Union.”

13. The judge rejected the contention that the Practicability Test alone was sufficient to ensure the proportionality of the measure:

“Where, in particular circumstances, separate collection does not lead to a better environmental and human health outcome, it is not necessary for the objective of the Directive. There is of course overlap between the necessity and practicability requirements – both of which involve exercises in judgment on the basis of factors, some of which are common – but that does not mean that the practicability test fully encompasses necessity.....they are

analytically distinct – as para. 4.3.4 of the Commission’s Guidance (with which I deal with below: see [63] below) makes clear.”⁶

14. Having regard to a variety of sources of evidence, Hickinbottom J was not prepared to hold that separate collection was in all circumstances necessary to achieve the objectives of the WFD. As he pointed out, there is a significant amount of evidence that the decision is context specific. In particular he relied upon evidence from local councils that:

“...at least arguably, recovery by way of separate collection would be detrimental to the overall environmental outcome, because of the higher carbon emissions in such collection systems and/or the amount of aggregate recyclables collected may in fact be considerably higher if streams are co-mingled, to the extent that any potentially recyclable waste that has to be disposed of because of (e.g.) contamination is far outweighed by the saving in waste disposal overall. This evidence goes to both practicability and necessity.”⁷

(d) Practicability

15. In relation to the meaning and scope of the words “*technically, environmentally and economically practicable*”, the judge held:⁸

“In common parlance “practicable” means more than merely “convenient”, “useful” or even “practical”; but rather “feasible” or “capable of being done”.

He then quoted the Commission Guidance paragraph 4,4 with approval:

“The combination of terms “technically, environmentally and economically practicable” describes the preconditions for Member States being, to varying extents, obliged to set up separate collection under Articles 10 and 11.....The wording has been introduced into the [Waste Framework Directive] without any preceding examples in EU waste management legislation.

‘Technically practicable’ means that the separate collection may be implemented through a system which has been technically developed and proven to function in practice. ‘Environmentally practicable’ refers to a separate collection which does not cause excessive costs in comparison with the treatment of a non-separated waste stream, considering the added value of recovery and recycling and the principle of proportionality.”

16. He added:

“This guidance suggests that the phrase “technically, environmentally and economically practicable” is used in the Directive as a term of art, importing the principle of proportionality and demanding a sophisticated context-driven exercise of judgment balancing (amongst other things) the positive and

⁶ Para. 61

⁷ Para. 62(iii)

⁸ Paras 18 & 19

negative environmental and economic effects of separate collection.”

17. In summary, the statutory position is thus as follows:

- (i) Whether separate collection is necessary must be assessed by reference to the principal objective of the WFD i.e. the protection of the environment and human health but according the correct priority to be given to the Waste Hierarchy and (in the context of this advice) recovery. If there is no material benefit to be gained either the primary objective or performance against the Waste Hierarchy by changing from co-mingled collection to separate collection, then it is not necessary to do so;
- (ii) Practicability is to be judged in a sophisticated and balanced way by reference to the specific context and not more generally. The focus should not necessarily be on the relevant waste collection area as a whole; and
- (iii) The decision under each test will be fact sensitive.

Policy

18. In terms of guidance, the Commission Guidance advises⁹ under the heading “*Possibility of co-mingling*”:

“The WFD does not include an explicit statement covering the co-mingled collection of different recyclable waste streams (as one co-mingled stream).

As a starting point, it should be borne in mind that in accordance with Article 11(1), paragraph 3 WFD, and subject to the conditions set out in this provision, there is an obligation to have in place by 2015 separate collection for paper, metal, plastic and glass. Separate collection is defined as waste-stream-specific separate collection (see above).

On the other hand, setting up a separate collection is also subject to the principle of proportionality (subject to Article 10(2) WFD: necessity and technical, environmental and economic practicability). Considering that the aim of separate collection is high-quality recycling, the introduction of a separate collection system is not necessary if the aim of high-quality recycling, can be achieved just as well with a form of co-mingled collection.

So, co-mingled collection of more than one single waste streams [sic] may be accepted as meeting the requirement for separate collection, but the benchmark of “high-quality recycling” of separately collected single waste streams has to be examined; if subsequent separation can achieve high quality recycling similar to that achieved with separate collection, then co-mingling would be in line with Article 11 WFD and the principles of the waste hierarchy. Practically, this usually excludes co-mingled collection of bio-waste and other “wet” waste fractions with dry fractions such as e.g. paper. On the other hand, subject to available

⁹ Para. 4.3.4

separation technology, the co-mingled collection of certain dry recyclables (e.g. metal and plastic) should be possible, if these materials are being separated to high quality standards in a subsequent treatment process”.

19. As is clear from the guidance, high quality recycling is seen as the most appropriate means to achieve the primary objectives of the WFD, subject to proportionality and practicability¹⁰. It is also clear from the final paragraph of the extract quoted above, that it is relevant to whether that “high quality” recycling objective is met to take account of how and by what means the co-mingled waste is separated rather than simply the inherent potential of the waste itself. It is therefore legitimate to take into account what in practice will happen to the co-mingled waste and the extent to which the separation process meets the threshold of high quality recycling in forming the judgment as to whether it is necessary to have separate collections.
20. In terms of UK policy, the Government has refrained from issuing any meaningful guidance on how local authorities can ensure compliance with the Regulations whilst retaining collections of co-mingled waste. The letter dated October 2013 from The Parliamentary Under Secretary stresses (correctly) that local authorities cannot assume that co-mingled collections remain permissible in all circumstances after 1 January 2015, and that the requirements of Regulation 13 are “*a high hurdle*”.
21. The principal source of guidance available to local authorities on how to comply with the requirements of Regulation 13 is the Waste Regulations Route Map (April 2014) produced by WRAP and others. This guidance comes with the health warning that it is not legal advice but advises that:
“...councils that follow a rational, proportionate approach, will have a good level of assurance”

The need for an evidenced based assessment with a clear audit trail is particularly stressed.

22. In terms of the Necessity and Practicability Tests, the advice in the Route Map may be summarised as follows:
 - (a) Each waste stream needs to be considered separately and the question posed whether or not separate collection is necessary to move waste up the Waste Hierarchy;
 - (b) If there is a departure from the Waste Hierarchy, can it be justified as the best overall environmental outcome justified by life-cycle thinking on overall impacts of the generation and management of waste;
 - (c) The Necessity Test correctly posed is “Is separate collection of waste necessary to ensure that waste is recycled and to facilitate or improve recovery? That involves both quantitative and qualitative considerations i.e. consideration of the question “Is it clear that separate collection will not increase the quantity or the quality of the material collected;”
 - (d) The Necessity Test relates to the recycling potential of the material collected and should be assessed by reference to that potential rather than practical considerations such as the actual facilities to which the materials might be relevant;
 - (e) The objective of separate collection is high quality recycling. In ascertaining whether that objective is met, key considerations are whether the recovered

¹⁰ See also Art.11 of the WFD

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- material can be used in the same ways and with the same overall environmental benefit as separately collected waste;
- (f) In terms of the Practicability Test, the principal issues are:
 - (i) Can a separate collection system be implemented which has been technically developed and proven to function in practice;
 - (ii) Would separate collection of waste achieve a net environmental benefit; and
 - (iii) Would it result in excessive costs in comparison to the alternatives and would any additional costs be proportionate to the benefits;
 - (g) Comparison with any alternative must be undertaken by reference to reasonable estimates of how separate collection would perform and its costs and should reflect well performing optimum schemes;
 - (h) The assessment will need to be undertaken by reference to sub-areas of collection where appropriate and not simply the relevant authority's collection area as a whole. What may be necessary or practicable may vary dependent upon the area chosen.

23. Save for one aspect, I would endorse the WRAP advice. The only issue on which I would add a rider is the advice relating to whether or not the actual facilities to which the materials will be taken in practice should be ignored for the purposes of the Necessity Test in favour of looking simply at the recycling potential of the waste itself. The WRAP advice states:

“Note that the Necessity Test concerns the recycling potential of the material you collect. When carrying it out, it may be advisable to leave aside practical considerations regarding the actual facilities to which materials might be delivered, which will become relevant in the Practicability Test. Even if, for example, you consider it likely that paper you collect separately might need to be delivered to the same paper mill, and be used to produce the same grade of paper as it would be if collected co-mingled, this does not affect whether the separate collection is in principle necessary “to facilitate or improve recovery”.

24. Whilst I can see that the fact that a waste stream will end up in the same treatment facility undergoing the same treatment process and resulting in the same end product does not of itself justify a conclusion that separate collection is not necessary, I can see no logical reason why it should not be treated as a material consideration to the decision on what is necessary, having regard to the legal position established in the UK Recyclate case. I can see no reason why, in the decision as to whether or not separate collection is necessary, account should not be taken of the facilities and technologies available to sort wastes. To apply a literal approach to the WRAP advice would effectively mean that separate collection is in all instances necessary, in which case the Necessity Test would have no meaningful function. That is not the approach taken by the Directive or the Regulations which transpose it. The WRAP advice should properly be interpreted as directed at the recycling process itself, rather than the sorting of wastes undertaken at MRFs.

The Issues

25. Within this wider legal and policy context, I turn to consider the specific issues upon which my advice is sought before considering the Partners' own route map proposals for complying with Regulation 13.

The Bring Sites

26. I do not consider that reliance on the Bring sites alone and irrespective of usage, satisfies the requirements of Regulation 13. Whilst waste deposited at Bring sites, such as glass, will form *part* of that waste stream which is collected, for those who choose not to use a Bring site, the alternative will be to use their residual household waste disposal route with collection by one of the Partners. Regulation 13(2) will apply to waste streams discarded in that way notwithstanding the existence of the Bring sites as an alternative. The collection authority is collecting the relevant waste and it would not be consistent with the objectives of the WFD or the Regulations for the Bring sites to be treated as discharging the obligation in the absence of any usage evidence.

Use of Third Party Data to Demonstrate Compliance

27. I see no reason why the Partners cannot rely on evidence provided by the operators of household waste recycling centres to demonstrate compliance with the Regulations. What matters is not the source of the evidence i.e. who provides it but whether it is relevant evidence demonstrating either that (a) waste is being separately collected or, to the extent that it is not, further separate collection arrangements would enhance neither the quality nor quantity of the waste stream being recycled or (b) would fail the practicability test e.g. because the costs of providing a further collection service would far outweigh any environmental benefit of doing so.

The Point of Assessment of Recycling Potential

28. I have addressed this issue above. In my view, the Partners are entitled to have regard to the sorting facilities which are available to sort the waste as part of the application of the Necessity Test provided they consider both the qualitative and quantitative aspects of the need for recovery.
29. Even if I were wrong in that view, it would clearly be relevant to the Practicability Test and in particular the economic practicability. If the waste stream, even if co-mingled, is used for the same purpose and object as it would be if separated and the costs are greater, it is likely to be disproportionate to require separate collection. I say “likely” as the judgment as to this will depend on the evidence both as to the comparative quality and quantity of the separate/co-mingled waste and, for example, whether the end user has to use greater energy resources in relation to the co-mingled waste when compared with the separated waste.

Factors relevant to economic practicability

30. The two economic practicability questions posed by the WRAP guidance are:
“Would separate collection result in excessive costs in comparison with alternatives?”

Are any extra costs proportionate to the environmental benefits?”
31. In my view, the Partners may take into account all of the costs, fairly and reasonably assessed on a realistic and pragmatic basis which will result from the introduction of a separate collection for one or more of the waste streams. This should include consideration of the options (if any) for the introduction of separate collections on less than a collection authority area-wide basis.

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32. The WRAP guidance advises caution on how contract termination or amendment costs are addressed with an apparent underlying concern that contracts entered into after the Regulations came into force and which make it more costly to comply with the Regulation 13 requirement may be seen as a means to circumvent the WFD. Given that the current collection agreements of the Partners were entered into in 2011 at a time when the Regulations expressly sanctioned co-mingled collection, this is not a material concern on the facts here and such costs are relevant to proportionality. However, I should stress that the fact that additional costs may be incurred is not of itself sufficient to demonstrate that it is not economically practicable to introduce a separate collection. The issue is whether those costs, together with all the other costs are excessive in comparison with the alternative options and the added value of recovery and recycling and whether those costs are disproportionate to the benefit.
33. Clearly the Partners will need to seek advice on their likely liability for early termination or variation of any existing collection contract in order to inform this assessment.

Commercial & Industrial Waste

34. The Regulations draw no distinction between household waste and commercial and industrial waste and the same principles apply. I agree with the WRAP guidance in this respect which advises:
- “Remember, the Practicality Test will need to be applied to separate collection of any waste stream where the four materials are collected and the Necessity Test is met – even if collection is at present within the residual waste stream. This includes any commercial waste you collect, or that is collected on your behalf”.*

The adequacy and robustness of the Partners’ Outline Approach

35. I have reviewed the Partners’ proposed Waste Regulations Route Map which is largely modelled on the WRAP Route Map. I have the following comments on its content which are all designed to minimise the risk of challenge to the ultimate decisions of the Partners:
- (i) The “Key Points” section should contain a clear reference to the WRAP Route Map and a sentence which states that the Partner’s Route Map should be read together with it;
 - (ii) There needs to be clear statement that the default position is *not* assessment of separate collection within the collection authority area *as a whole*. The Partners will need to consider whether Regulation 13 requires discrete separate collection areas if the assessment concludes that it is not practicable for this to be done on an area wide basis. If the Necessity Test is not satisfied then this issue does not arise;
 - (iii) After each of the steps I would recommend including a summary of the resulting evidential outputs. This will ensure that the questions posed establish an appropriately rigorous mindset and provide a meaningful checklist against which to check the assessment process. This could be achieved either by including the “Evidence” sections from each Step section

of the WRAP Route Map (e.g. paras. 1.3, 2.2, 3.3 and 4.1.1, 4.2.1, 6.1 et seq) or simply cross-referencing these sections of the WRAP Route Map;

- (iv) Under Step 2, there needs to be an express reference to the quantity and not just the composition of waste in relation to the MRF data;
- (v) Under Step 4 – Necessity Test, there is a need to build the quantitative analysis into the MRF outputs;
- (vi) Under Step 4 – Practicability Test, it would be advisable to repeat the WRAP guidance that, even if the necessity test is satisfied, it is prudent to go on to consider the Practicability Test. This will make any legal challenge much harder to sustain given the nature of the balance required. There is also a need to address the question of whether an alternative collection approach would yield a better environmental outcome. This is a key consideration in the costs/benefit/proportionality balance;
- (vii) Step 7 – in the *What?* Box, I suggest adding “*Any material change affecting a factor which might influence the outcome of the application of the necessity and practicability tests*” before the example given;
- (viii) Summary – there needs to be reference to the MRF quantitative analysis (see above), to costs and to the environmental benefits/disbenefits of options.

36. Subject to these alterations, I am satisfied that the Route Map provides a sound framework for the relevant assessments.

SIMON BIRD QC
7 July 2014



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Appendix III - Section 48, Environmental protection Act, 1990

“Duties of waste collection authorities as respects disposal of waste collected.

(1) Subject to subsections (2) and (6) below, it shall be the duty of each waste collection authority to deliver for disposal all waste which is collected by the authority under section 45 above to such places as the waste disposal authority for its area directs.

(1A) A waste collection authority in England which is not also a waste disposal authority must discharge its duty under subsection (1) above in accordance with any directions about separation of waste given by the waste disposal authority for its area.

(2) The duty imposed on a waste collection authority by subsection (1) above does not, except in cases falling within subsection (4) below, apply as respects household waste or commercial waste for which the authority decides to make arrangements for recycling the waste; and the authority shall have regard, in deciding what recycling arrangements to make, to its waste recycling plan under section 49 below.

(3) A waste collection authority which decides to make arrangements under subsection (2) above for recycling waste collected by it shall, as soon as reasonably practicable, by notice in writing, inform the waste disposal authority for the area which includes its area of the arrangements which it proposes to make.

(4) Where a waste disposal authority has made arrangements, as respects household waste or commercial waste in its area or any part of its area, to recycle the waste, or any of it, the waste disposal authority may, by notice served on the waste collection authority, object to the waste collection authority having the waste recycled; and the objection may be made as respects all the waste, part only of the waste or specified descriptions of the waste.

(5) Where an objection is made under subsection (4) above, subsection (2) above shall not be available to the waste collection authority to the extent objected to.

(6) A waste collection authority may F3... provide plant and equipment for the sorting and baling of waste retained by the authority under subsection (2) above.”

Appendix IV - Tripartite decision report

REPORT TO: ENVIRONMENT AND COMMUNITY SAFETY 2ND OCTOBER 2008

REPORT BY: PAUL HUNT: HEAD OF ENVIRONMENT AND PUBLIC PROTECTION

WRITTEN BY: KAREN RUTTER: WASTE RECYCLING AND DISPOSAL MANAGER

SUBJECT: WASTE MANAGEMENT TRIPARTITE AND SERVICE LEVEL AGREEMENT (SLA)

WARDS AFFECTED: ALL

1. Purpose of Report

- 1.1. To provide an overview of the Tripartite agreement and Service Level Agreement (SLA), and their benefit to the Portsmouth City Council ('the Authority').
- 1.2. The purpose of this report is to recommend the final agreements between the Authority and Hampshire County Council concerning the management of issues between the authorities relating to waste management.

2 Recommendation

- 2.1 That the Executive Member agrees to the signing of the Tripartite and Service Level Agreement between Hampshire County Council, Southampton City Council and the Authority.

3 Background

- 3.1 The waste disposal service contract commenced on 1 January 1996. The successful contractors were Hampshire Waste Services, a limited company, who have subsequently become part of the wider Veolia Environmental Services company.
- 3.2 Hampshire County Council, who at the time was the sole Waste Disposal Authority for Hampshire, signed the contract.

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- 3.3 After the Local Government reorganisation in 1997, Portsmouth, along with Southampton, became a unitary authority, and took on the waste disposal responsibility for their respective administrative areas.
 - 3.4 As well as the new statutory responsibilities, the Authority was also liable for a share in the costs arising from the waste disposal service contract with Hampshire County Council.
 - 3.5 Jointly the three waste disposal authorities agreed to pursue a 'Tripartite', which would be a legal agreement between the three authorities relating to the sharing of responsibilities under the waste disposal contract.
 - 3.6 After a number of drafts, and being effectively abandoned for a number of years, work recommenced in 2007 to get the Tripartite document finally agreed and signed.
 - 3.7 A number of options were put forward and discussed between the three authorities involved, and it is felt that the agreement that has been reached is one that is financially beneficial to the Authority.
 - 3.8 The main aspect to have benefited the Authority is the notion of sharing all costs using a countywide apportionment formula, rather than the authority accepting a much larger share of the southeast area alone (contract area DC2).
 - 3.9 This 'pooling' of costs has also allowed for a levelling of the variable costs that previously were different for each disposal point.

4 Savings

- 4.1 The move to a unit cost apportionment has meant that the Authority's liability for the pass through costs (relating the architectural enhancements of the facilities) has increased by approximately £800,000 over the lifetime of the contract.
- 4.2 However the revenue savings¹ are approximately £120,000 per annum, and have been applied since the cost apportionment formula was first agreed in April 2007.
- 4.3 Therefore the total savings over the course of the contract are approximately £1.36 million (assuming an end-date of 2025).
- 4.4 The Tripartite also allows for any windfall savings across the contract to be shared in accordance with the agreed percentage splits, something that previously would not have happened.

¹ These savings have been incorporated within budgets from 2007/08.

5 Service Level Agreement

- 5.1 To complement the Tripartite is the Service Level Agreement that outlines the work that Hampshire County Council will undertake on behalf of the Authority and Southampton City Council in order to administer the waste disposal service contract. The SLA is attached as an appendix to the Tripartite.
- 5.2 The SLA sets out the work that Hampshire County Council have to undertake in verifying and auditing the monthly weighbridge information from Veolia Environmental Services. It also covers Hampshire officer time on certain development projects that have benefits to all three authorities.

6 Resources

- 6.1 Signing up to the Tripartite and SLA requires no additional resources. All costs associated with the waste disposal contract and administration is already included within 2008/09 budgets and moving forwards. Savings have already been realised through the new cost apportionment, which has been applied since April 2007.

7 Financial Issues

- 7.1 The Tripartite and SLA mainly relate to the financial apportionment of costs relating to the waste disposal contract. By accepting this agreement revenue savings can continue to be made with the budgets of current and future years of approximately £120,000 per annum.

8 Service Changes

- 8.1 None

9 Corporate Policies

- 9.1 This continues the policy of finding efficiencies where possible and working more closely with partner authorities for the benefit of the Authority

10 Political Issues

- 10.1 None

11 Risk Assessment

- 11.1 A legal representative of the Authority has assessed legal risks. Senior officers within Waste Management and Finance have assessed financial risks and deemed the Tripartite and SLA a beneficial outcome for the Authority.

12 Legal issues

- 12.1 A legal representative of the authority has been involved at every stage of the process of creating this document and has seen and been able to comment upon each draft

Appendix V – Further information on quality

Material Specific Information on quality grades and specifications

The information below is material specific. It refers to several sources of information, 2 of the important ones being:

MRF Output Material Quality Thresholds – WRAP, 2009, found [here](#)

Sought to broadly assess current state of play with quality demands. Most of this based on questionnaires sent to MRF operators and reprocessors. Note that this was the state of play in 2000, and it is likely that things have changed in the interim.

Material quality standards in place are very much specific to reprocessors. Most issue a written quality spec document, but some do not. This means there are not common industry approaches. Where standards and specifications have been published (PAS/BS) these are often borrowed from. Generally MRFs are happy with the specs given to them by their customers, although that is more ambiguous for overseas customers.

There is a discrepancy between MRF and reprocessor views of the quality of material. In addition, reprocessors say that MRF output quality is generally the same or worse than both two stream and kerbside sorted material.

Informal agreements over quality common for plastic, glass and metal – but all surveyed had written specs for paper, reflecting the importance of quality for that material. Reprocessors also set their own standards, which vary.

Overall

- Common terminology not used across industry
- Some standards do not use measurable limits, making acceptance/rejection a judgement call
- However, it was decided not to pursue standardisation, with development of a PAS the only tangible outcome from this report.

“ReQIP” – Recycling Quality Information Point, found [here](#)

As discussed in main body, In June 2014, the Resource Association (a professional advocacy body for the reprocessing and recycling industries) launched ReQIP. This is designed to provide a reference point for understanding reprocessors’ recyclate quality requirements, and to understand what is meant by “High Quality Recycling.” The project received input from 36 companies and industry associations, and it includes general information on specifications as well as example specifications from specific reprocessors. Where appropriate these are considered under each material type below.

Plastic Bottles

WRAP MRF Output Material Quality Thresholds report – suggests most contaminants are easy to remove.

Recoup guidance – “Typically 2-5% by weight of general contamination can generally be tolerated in baled bottles” but that “deliveries with bales found to contain critical or hazardous contaminants will not normally be accepted.” It divides contaminants into general contamination (cans, cardboard, carrier bags etc) and critical contamination (glass, sharps etc).

PAS 103 – Collected Waste Plastics Packaging (no longer available as it has expired and not been updated) – It is built around a visual inspection methodology. It is not a threshold, but an approach to inspection and description. Reprocessors do not seem to make much use of this standard, which may explain why it has not been revised. The core of the PAS is a visual inspection log for describing and recording waste plastics.

ReQIP - ReQIP states that bottles are traditionally 'sold as seen'. However, reprocessors are looking for:

- A minimum 35% to 38% clear PET
- A minimum 25% to 38% Natural/Coloured HDPE
- A maximum of 18% other plastic bottles
- Zero contamination, but will accept 1% residual food waste on packaging by weight, and < 6% PTT (of which < 20% is black Trays). If End Users have a PRF, then they may be able to cope with more contamination (e.g. up to 20% PTT).
- All contaminants must not exceed 6%, of which
 - < 1% can be Plastic Bags;
 - < 2% Steel Cans;
 - < 3% News & PAMs;
 - <5% Aluminium Cans. If End Users have a PRF, then they may be able to cope with more contamination (e.g. up to 20% PTT).

In 2013-14, 99.6% of PI plastic bottles were sent to Closed Loop Recycling Ltd. CLR have a specification made available through ReQIP (found [here](#)) which states that bales should consist of the following:

- Clear/light blue PET – minimum 38% (+/- 5%)
- HDPE natural – minimum 38% (+/- 5%)
- Other bottle – maximum 18%, including:
 - PET/HDPE colour
 - HDPE natural detergent
 - PP
- Maximum 6% of out throws including metal, paper, PTT, films and non-bottle plastic.
- Zero prohibited materials including glass, sharps, oils and sand/dirt/grit

Aluminium

WRAP MRF Output Material Quality Thresholds report - refers to the Novelis specification, which is that that material should be free of steel, lead, iron, plastic, sand, paper, glass, foil. No measurable threshold given, but it is believed to be around 1%.

ReQIP – Novelis received 100% of PI aluminium in 2013-14, and they contributed a specification to *ReQIP*. The specification states that steel cans must be removed before baling, and that the following are regarded as contaminants:

- Bottle closures
- Cardboard
- Dirt, gravel, stones
- Foil
- Glass
- Other metals
- Medical waste
- Paper
- Plastics
- Rubber
- Wood
- WEEE
- Aerosols

Batch processing of each load delivered to the Novelis Recycling plant allows for accurate analysis of contamination levels. The combined tolerance level for steel and plastic contamination is 3%. Loads found to contain above 3% will be subject to a deduction in value.

Novelis will only accept aerosols evenly mixed with cans, up to a maximum of 2% by weight.

A moisture weight deduction applies to loads with a moisture content of more than 4%.

Steel

WRAP MRF Output Material Quality Thresholds report – refers to a discussion with Corus who said that MRF quality not deemed to be an issue, because of effectiveness of steel separation using magnets, plus the lenient nature of acceptance criteria which is based on the fact that high temperatures involved in reprocessing will oxidise contaminants and remove it as part of the process.

ReQIP – refers to “Grade 6F - Clean Steel Cans – Loose.” Which is steel from food, drinks and domestic aerosol cans, collected from the public e.g. by can banks and door-to-door (“kerbside”) collection schemes. Only mention of contamination is that “Cans should be free from excessive contamination by other materials.” This is in keeping with the position indicated in the threshold report, i.e. that quality is not a big issue in steel can reprocessing.

Paper

BSEN634 – European List of Standard Grades of paper and Board for Recycling, 2013 (not available free of charge, but guidance note [here](#)) - This is not a specification but a list of grades. It includes the following definitions:

- “Prohibited materials” - “any materials which represent a hazard for health, safety and environment, such as medical waste, contaminated products of personal hygiene, hazardous waste, organic waste including foodstuffs, bitumen, toxic powders and similar.” Contrary to unwanted materials, for which maximum tolerance levels have been introduced, prohibited materials are not permitted at all.

- “Unwanted material (out throws)” - means “*material not suitable for the production of paper and board*” and may comprise the following elements:
 - non-paper components
 - paper and board not according to grade definition
 - paper and board detrimental to production
 - paper not suitable for deinking (if applicable).
- “Paper and board not according to grade definition” - when paper and board in the load does not correspond to the description of the specific EN 643 grade of paper for recycling,
- “Paper and board detrimental to production” - “*for grades intended for deinking, all paper containing brown, unbleached fibres are considered detrimental to production.*”

It also states that “*paper for recycling originating from multi-material collection systems has to be specifically marked.*”

EN643 includes maximum tolerance levels for non-paper components (maximum of 1.5% for the majority of grades) and for unwanted materials and includes maximum tolerance levels

PAS105 – Recovered paper sourcing and quality for UK end markets, 2007 (available in hard copies only) - This Publicly Available Specification (PAS) was developed by a group of industry bodies, including WRAP. It is not a specification, it is guidance.

Key points:

- “*Collection systems should be designed to achieve optimal participation and recovery, with minimum contamination, at the lowest possible overall cost.*”
- The PAS sets out best practice in collection, transport etc.
- Paper is generally sorted/graded prior to arrival at reprocessor.
- All paper mills are different in terms of their requirements
- It includes description of key recovered paper grades:

Grade	Description	Typical UK Mill Requirements	
		Content	Contraries
Newspapers and Magazine	All white papers including newspapers, magazines, brochures, catalogues, office paper. Clean, fresh and dry	News/magazines free from latex-backed or bound books and telephone directories. Magazine should be less than 40% of each bale.	Maximum contraries 2%
Old Corrugated containers (OCC)	Clean, dry brown cardboard boxes	Printed or unprinted cardboard boxes and solid fibreboard boxes. Proportion of solid board should not exceed 10% per bale. May contain a minimum of adhesive tape.	Contraries should not exceed 2%, and should exclude wax, bitumen, plastic laminates, egg boxes.
Mixed papers	Clean dry papers from mixed sources	Mixed and various types of re-pulpable paper, cartons, board, newsprint and magazines	Contraries should not exceed 2%, and should exclude wax, bitumen, plastic laminates.

ReQIP - EN 643 code already described and splits paper down into three components. All have a maximum moisture tolerance of 10%:

- Newspaper and Magazines

The main EN 643 Code for this grade is 1.09.00. The mixture must contain a minimum of 30% of newspapers and a minimum of 30% magazines with the precise percentages of newspapers and magazines above 30% being determined by agreement with the receiving mill. EN 643 states a maximum level of 0.5% contamination limit for "non-paper components" and a maximum level of 1% for "non-paper components and other unwanted material combined".

In 2013/14, 58% of PI News and Pams was sent to Aylesford Newsprint, who have contributed a specification to ReQIP (found [here](#)) which states:

- Grade definition is as per EN643 - 0.5% non-paper, 1% total unwanted material
- Mixture of newspapers and magazines (predominantly unsold); each of them with a minimum of 30%.
- All material shall be supplied **substantially free** of prohibitive and objectionable material, as detailed below:

Prohibitive	Objectionable
Glass	Textiles
Fire damaged material	Plastics
Sand/building materials	Cans
Food	Egg boxes and cereal boxes
Healthcare waste	Cardboard/brown paper
WEEE	Shredded paper
General rubbish	Wet strength paper
	Carbon paper
	Waxed papers
	Label waste

- Cardboard

The main EN 643 Codes for these grades are 1.04.00 and 1.05.00. The raw material must contain a minimum percentage of corrugated board depending on the Grade being produced. UK manufacturers want less than 1% contamination as a norm.

EN643 states a maximum level of 1.5% contamination limit for "non paper components" (see definition above); and a maximum level of between 2.5% & 3% for "non-paper components and other unwanted material combined" (see definition above). Additional criteria include maximum tolerances on the content of non-corrugated paper and board materials being present (depending on the EN 643 Code).

Two of the reprocessors contributing to the ReQIP are PI outlets, both of who work to the standards set in EN643.

- Mixed paper and card

The main EN 643 Code for this grade is 1.02.00. The raw material can only contain a maximum of 40% newspapers & magazines. UK manufacturers want as little as 0.5% contamination as a norm.

The EN 643 states a maximum level of 1.5% contamination limit for "non-paper components" (see definition above); and a maximum level of 2.5% for "non-paper components and other unwanted material combined" (see definition above). Additional criteria include a maximum moisture level tolerance of 10%.

It should be noted that there are a number of Newsprint Paper Mills in the UK that buy Mixed Papers (or EN643 Code 1.01.00) and 'positively sort' from it material that they can recycle. This contains a 'mixture of various grades of paper & board'. It has an EN 643 maximum tolerance limit of 1.5% contamination limit covering the "non-paper components"; and a maximum of 3% for "non-paper components and unwanted material combined".

Two of the reprocessors contributing to the ReQIP are PI outlets, both of who work to the standards set in EN643.

Appendix VI - Cost analysis (WRAP ICAP report)

Kerbside collections, cost information

WRAP indicative costs

Information here is taken from "Kerbside Recycling: Indicative costs and performance" (2008, WRAP, found here plus technical annex here)
 Report is found here: [link](#)
 Technical Annex here: [link](#)

The schemes described below are the most relevant to PI authorities in terms of materials collected, containers and frequency of collection. However there is not an exact match for all PI authorities. In this instance an estimate is made- these are indicated in the table of PI indicative costs further down. As the costs are from 2007, they have been increased by comparing RPI in Dec 13 to that in Dec 07.

Year	RPI
Dec-07	232.0
Dec-13	253.4
Dec-12	246.0

Kerbside sort systems modelled for kerbside and stillage vehicle options - urban

Ref	Refuse frequency	Recycling container	Recycling frequency	Materials Collected				Vehicle type	Yield kg/hh/yr	Capture %	Dec-07		Dec-13		Net cost of recycling	
				P	C	M	G				€/hh/yr	€/home	€/hh/yr	€/home	€/hh/yr	€/home
KS2u	Fortnightly	1 boxes + 11d	Fortnightly	✓	✓	✓	✓	Kerbside	228	46	12.28	43.77	14.63	100.01	4.31	26.76
											€/hh/yr	€/home	€/hh/yr	€/home		
KS3u	Fortnightly	2 boxes + 11d	Weekly	✓	✓	✓	✓	Kerbside	347	73%	22.76	130.69	27.35	157.03	12.73	73.56
											€/hh/yr	€/home	€/hh/yr	€/home		
KS5u	Weekly	2 boxes + 11d	Weekly	✓	✓	✓	✓	Kerbside	317	58%	18.18	111.18	21.84	137.64	10.21	74.22
											€/hh/yr	€/home	€/hh/yr	€/home		
KS7u	Weekly	2 boxes + 11d	Fortnightly	✓	✓	✓	✓	Kerbside	302	50%	13.77	113.79	16.50	136.72	6.81	57.06
											€/hh/yr	€/home	€/hh/yr	€/home		

Single stream co-mingled recycling systems modelled - costs and yield collected

Ref	Refuse frequency	Recycling container	Recycling frequency	Materials Collected				Vehicle type	Yield kg/hh/yr	Capture %	Dec-07		Dec-13		Net cost of recycling	
				P	C	M	G				€/hh/yr	€/home	€/hh/yr	€/home	€/hh/yr	€/home
SSC01	Fortnightly	2M wheeled bin	Fortnightly	✓	✓	✓	✓	Urban	517	60%	11.35	61.55	13.64	73.95	17.02	32.35
											€/hh/yr	€/home	€/hh/yr	€/home		
SSC02	Fortnightly	2M wheeled bin	Fortnightly	✓	✓	✓	✓	Rural	213	72%	15.22	68	18.29	81.71	22.12	88.8
											€/hh/yr	€/home	€/hh/yr	€/home		
SSC03	Weekly	Sack	Weekly	✓	✓	✓	✓	Urban	136	66%	11.28	29.73	13.57	56.37	14.54	20.47
											€/hh/yr	€/home	€/hh/yr	€/home		
SSC04	Weekly	Sack	Weekly	✓	✓	✓	✓	Rural	385	63%	19.46	103.1	21.57	120.75	25.43	111.1
											€/hh/yr	€/home	€/hh/yr	€/home		

PI authorities indicative costs

PI	No. HH 2013-14	Defra classification	Urban	Co-mingled collections														Kerbside Sort										Summary (G)																		
				Classification for purpose of cost comparisons	Does Authority collect glass in street?	Scheme in WRAP report most similar to reality	WRAP forecast yield of paper, cans, plastic (from table above)	Current kerbside yield of paper, cans, plastic (if collected)	% of current yield that is glass	Difference between current yield and WRAP forecast yield	% Difference between current yield and WRAP forecast yield	Income received for paper, cans, plastic (19-14.02)	Scheme in WRAP report most similar to reality (all, include glass)	WRAP forecast yield including glass	WRAP forecast yield adjusted for current performance (see column 10)	% of forecast yield which is glass (see column 6)**	WRAP forecast glass yield	Difference between WRAP forecast yield kerbside sort and actual yield co-mingled, paper, metal, plastic	Total tonnage paper, metal, plastic	WRAP forecast tonnages and income***					Collection only cost (as per WRAP e-missions)					Gate fee, transfer fees	Material income	Total	Kerbside glass collection costs			Glass plus co-m										
																				Mixed paper and card	Steel	Plastic Bottles	Aluminium	Total	Value per tonne (G)	Income (G)	Tonnage	Value per tonne (G)	Income (G)				Tonnage	Value per tonne (G)	Income (G)		Tonnage	Value per tonne (G)	Income (G)	Total	Income (G)	Cost per HH	Income per HH	Net cost per HH		
PC2	80,170	Large Urban	Urban	N	No Comments	112	88.01	88.01	0	0.02	-21.35	-20.83	358,313	45%	163	80.73	30.97	25.00	55.73	-32.92	4,966	4,279	70	299,553	219	355	31,023	412	110	45,269	62	834	51,534	429,392	12.74	15.97	-2.34	2.02	-4.02	-4.82	11.41	13.17	0	0	0	11.41

Notes relating to table above:

All yield figures are in KG/HH/YR unless otherwise stated

*For the purpose of this exercise, these three authorities have been classified as rural but do contain significant urban populations

**Because kerbside glass collection is well established in these authorities for the whole of 13-14, kerbside glass collections have not been included for these authorities.

***None of the four co-mingled schemes given were suitable comparators. However, for the purpose of this analysis, it is assumed that yields and costs would be halfway between those for SSC02 and SSC04.

306000

****None of the four kerbside sort schemes were suitable comparators. However, for the purpose of this analysis, it is assumed that yields and costs would be halfway between those for KS2 and KS3.

*****Where an authority has no current kerbside glass scheme, an average based on figures in column 6 is used.

*****Splits between materials are based on current splits observed in co-mingled collection. Material values per tonne are highest possible achieved in 2013-14 according to Lets Recycle

An operational cost of £389.34 has been assumed for kerbside sort transfer and bulking. Following discussions with industry experts, this value in ICAP covering this was considered to be

£3 taken from data gathered via waste system costs exercise, 2013-13

PI	Current kerbside yield paper, cans, plastic	WRAP forecast yield paper, cans, plastic	Difference (E per HH)
PC2	88.01	55.73	32.28

PI	Forecast kerbside sort costs (E per HH)	Comparative co-mingled costs (E per HH)	Difference (E per HH)
PC2	13.17	11.41	1.76