



CABINET – 17TH DECEMBER 2014

SUBJECT: COLLECTION OF DRY RECYCLABLES – WASTE FRAMEWORK DIRECTIVE & WASTE (ENGLAND & WALES) REGULATIONS 2011

REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To provide Cabinet and Council with an update on legislative changes which come into effect on 1st January 2015 and its potential impact on the recyclable collection regime employed by Caerphilly County Borough Council.
- 1.2 To seek Member authorisation to continue with existing collection arrangements until further evidence is available on which to base long-term future decisions.

2. SUMMARY

- 2.1 This report sets out the basis of the legislation, complexities over its interpretation and implementation and the many complex issues surrounding the Authority's collection regime such as performance and user satisfaction.
- 2.2 The report then considers the various aspects of "TEEP" (Technical, Environmental, Economical & Practical) and the evidence that the Authority has available.
- 2.3 Finally, the report asks Cabinet to consider all of these aspects and to reach a decision on the current situation and any future review.

3. BACKGROUND

- 3.1 Caerphilly County Borough Council currently operates a collection system that involves:-
 - Weekly co-mingled kerbside recycling (the term "co-mingling" means that dry mixed recyclables (metal cans, glass jars & bottles, plastic bottles & trays, newspaper, magazines & junk mail) are placed in a single collection container (predominantly a brown wheeled bin).
 - Weekly food waste collection (food caddy)
 - Weekly garden waste collection (re-usable bag)
 - Fortnightly residual waste (green or black wheeled bin)
- 3.2 This service mix has operated since October 2009 when it was introduced following significant public consultation, consideration by the "Caerphilly Waste Forum" and endorsement by Scrutiny and Cabinet.
- 3.3 Caerphilly was fairly unique as the Authority had previous experience of delivering recycling services via the kerbside sort system (initially fortnightly then weekly) and the change

introduced in 2009 has dramatically improved the Authority's recycling performance (this is discussed later in this report).

- 3.4 The Waste (England & Wales) Regulations 2011 implement certain aspects of the EU revised Waste Framework Directive, with regard to the collection and processing of certain recyclable materials. The aim is to ensure that materials collected as recyclables are in fact recycled and not disposed of in a certain way. The Directive is concerned with the quality of materials collected and the ability of materials processors to sort materials and provide high quality materials for subsequent reprocessing and use.
- 3.5 The interpretation of the Directive & England & Wales Regulations has been the subject of significant debate within the waste industry with the result that the Welsh Government (WG) consulted on potential draft statutory guidance on the separate collection of recyclables in the summer of 2014. The Authority responded to this consultation after receiving joint legal advice (from a specialist waste lawyer) with the other authorities in Wales that collect recyclables in a similar manner to Caerphilly. However, at the time of writing this report WG have not issued any guidance or its response to the consultation (in comparison, DEFRA in England have decided not to issue any guidance). The Authority's response to the consultation was retorted to the Regeneration and Environment Scrutiny Committee on 16/9/14.
- 3.6 The Separate Collection requirements of the Regulations come into force on 1st January 2015. From this date Waste Collection Authorities will be required to provide separate collections of glass, metals, plastics and paper where doing so is:-
 - (i) **NECESSARY** - to ensure waste undergoes recovery operations to facilitate improved recovery (the so called **NECESSITY TEST**) and,
 - (ii) it is **TECHNICALLY, ENVIRONMENTALLY AND ECONOMICALLY PRACTICABLE (TEEP)** to do so
- 3.7 In addition to the legislation described above, WG's policy preference is for separate or kerbside sort collections and may or may not use fiscal measures (such as conditioning the Sustainable Waste Management Grant) to drive forward this policy preference in the future.
- 3.8 For clarity, "separate collections" means the gathering of waste, including the preliminary sorting and storage of waste for the purposes of transport to a waste treatment facility where a waste stream is kept separately by type and mixture so as to facilitate a specific treatment. There has been significant debate over what constitutes separate collection and the matter has been the subject of legal argument in the UK.
- 3.9 The important aspect of the new legislation is the necessity test. If separate collection would increase the quantity or quality of material collected, this would generally indicate that it meets the necessity test and change from a co-mingled to a separate collection would be necessary.
- 3.10 The over-riding aim of the legislation is to ensure that collection authorities produce recyclate capable of being used by reprocessors to process the materials into a product of similar quality to the original.
- 3.11 Co-mingling is therefore allowed where separate collection is determined not to be necessary to provide higher quality recyclates or where separate collection is not technically, environmentally and economically practicable.
- 3.12 At this stage, what is important is to review the evidence available for the purposes of the necessity test; to consider the robustness of that evidence and any gaps and to make an informed decision that a collection system change is or is not necessary at this time. This decision will also need to be reviewed in the future (particularly as there are gaps in the evidence base).

4. LINKS TO STRATEGY

- 4.1 Maximising re-use and recycling has been at the heart of many of the Authority's strategies for a number of years, including the corporate plan and various service improvement plans. The positive effect that re-use and recycling can make to the management of natural resources is also recognised as part of the cleaner and greener agenda of the Local Service Board.

5. THE REPORT

5.1 **Performance of the current Caerphilly Collection System**

- 5.1.1 Since the current collection regime was introduced in October 2009, the Authority's recycling performance has continued to increase. This is demonstrated below:-

Year	Tonnage of Dry Recyclables	Recycling % (PI)
2008/09	9,621	32%
2009/10	16,286	44% (<i>WG Target 40%</i>)
2010/11	17,635	51%
2011/12	20,106	55%
2012/13	22,283	57% (<i>WG target 52%</i>)

- 5.1.2 In terms of comparison with others, WG categorises Local Authorities based on topography, demographics, settlements, etc. Consequently, Caerphilly is categorised as a "Valley Authority". For a number of years, Caerphilly has been the best performing Valley Authority for recycling and has consistently been amongst the top performing recycling authorities in Wales.
- 5.1.3 In 2013/14, Caerphilly was again the top performing Valley Authority and the 5th best performing Authority in Wales. Worthy of note is the fact that in 2013/14, the 5 best performing Welsh Authorities all provide a co-mingled or twin stream recycling collection service. These "top" performers were as follows:-

Authority	2013/14 Recycling Performance	Collection System
Denbighshire	63.20%	Fully Co-mingled
Monmouthshire	63.00%	Twin Stream Co-mingled
Pembrokeshire	60.30%	Co-mingled + Separate Glass
Ceredigion	58.40%	Co-mingled (no glass)
Caerphilly	57.60%	Fully Co-mingled

5.2 **Customer satisfaction with Caerphilly Collection System**

- 5.2.1 In addition to the Authority's general bi-ennial household survey, the Community & leisure Services division undertakes a summer bi-ennial Customer Survey for its front-line services. Public satisfaction with recycling has shown an upward trend since 2007:-

Year	Public satisfaction with Recycling
2007	84%
2009	88%
2011	94%
2013	95%

- 5.2.2 In addition to measuring public satisfaction, the last 2 survey's respondents have been asked for their views on changing back to a kerbside sort collection system. On average, 66% of residents surveyed would not take part in recycling if they had to revert back to separating

materials, 81% would not purchase carrier bags and 79% would not participate if they had to change back to a box or bags. Whilst it is accepted that changing the collection system would probably have a detrimental effect on participation and performance it is difficult to reach an exact assessment.

5.3 **Likely future performance**

- 5.3.1 The WG statutory recycling target for 2015/16 is 58% recycling/composting rising to 70% by 2024/25.
- 5.3.2 In recent weeks, Local Authorities have met (via the CSS – County Surveyors Society) to discuss concerns relating to changes in the regulatory position over certain materials that have previously counted towards recycling (wood & leaf sweepings). The CSS has raised concern with WG that this change in position could affect achievement of statutory recycling targets across Wales and have requested a consequential review of the statutory targets.
- 5.3.3 Wood has generally contributed circa 5% towards Caerphilly's recycling performance and it is likely that unless this position is addressed, the Authority's performance in 2015/16 (the 58% statutory target year) could reduce with the target not being achieved. Not achieving statutory recycling targets could result in fines of £200 per tonne being levied by WG.
- 5.3.4 In addition to the issues relating to wood and leaf sweepings, the mix of waste arriving at the Authority's civic amenity sites is changing with an indication that waste for recycling is falling. This may be due to the new van and trailer restrictions although it is too early to predict whether this will have a detrimental effect on the Authority's recycling performance.
- 5.3.5 Once the full Project Gwyrdd contract commences (April 2016) the Authority will benefit from its share of the plant's incinerator bottom ash and metal recycling which is likely to add 4-6% to the recycling performance.

5.4 **The Necessity Test**

- 5.4.1 In accordance with the Necessity Test, the Authority must consider whether it actually needs to separate materials further in order to achieve high quality recycling. A simple benchmark for this test is comparing the quality of Caerphilly's materials, at the point that they are recycled with "good" kerbside sort authorities. Unfortunately terms such as "high quality" and "good kerbside sort authority" are not defined in the legislation or the draft WG statutory guidance. Officers consider these to be fundamental points when considering whether the Authority should switch from what is a highly affective high performing, efficient service which enjoys high levels of public satisfaction.
- 5.4.2 WG have determined that authorities should seek to achieve the best overall environmental outcome, and that, where possible, "Closed loop" recycling should be achieved. This, for example, would mean a glass bottle being re-melted to produce another glass bottle rather than grinding to form road aggregate.
- 5.4.3 There is a degree of confusion among local authorities that collect recyclables with co-mingled systems on how to address the necessity question, and what to compare collections to. As a starting point officers have compared the destinations for Caerphilly's recycling to those used by Welsh kerbside sort authorities and given the level of information and knowledge obtained to date, the comparison would suggest that the end destination are comparable with kerbside sort authorities for a number of materials. This comparison has been collated and forms part of the Authority's file of evidence available to date.
- 5.4.4 Although the above is fairly compelling, it is important that the Authority has a full understanding of the quality of its recyclable materials before a full conclusion can be made on the Necessity Test.

- 5.4.5 The Materials Recycling Facility (MRF) regulations which came into force in October 2014 will assist with the necessity test. These regulations require MRF's to undertake detailed sampling of material as it is received and again after it has been through the sorting process. This will enable the Authority to ascertain the true quality of its material, and how it is, or isn't, affected by the MRF process. The Authority will then be in a better position to compare the quality of the material it provides to reprocessors to that of kerbside sort authorities, in addition to providing robust, accurate data on reject/contamination levels.
- 5.4.6 As stated above the MRF Regulations have only been in place since October 2014 and a full assessment is likely to require at least 6 months of data. Consequently, it is not anticipated that the reports required from the MRF Regulations will be available before June/July 2015.
- 5.4.7 In addition to the above, the Waste Resources Action programme (WRAP) consultancy has been commissioned by WG to undertake an end destinations study which will complement the MRF data. Caerphilly has agreed to take part in this study but it is unlikely that it will report until the first quarter of 2015.

5.5 **The TEEP Test**

- 5.5.1 If it is found that it is necessary for the Authority to collect certain materials separately, it will also need to be considered whether it is TEEP to do so. The TEEP consideration will need to look in detail at 3 key issues although failure to pass any of the TEEP elements individually will result in a justifiable argument for no change.

- (a) **Technically Practicable** – Given that separate collections operate in County Boroughs similar to Caerphilly (eg: Torfaen, Bridgend), it is likely to be concluded that such collections, would be technically practicable within Caerphilly County Borough. An interesting factor to be considered will be the experience of two of Caerphilly's immediate neighbours (Merthyr & Blaenau Gwent County Borough Council's) who are currently in the process of changing from co-mingled to kerbside sort recyclable collections with WG funding support. The practicality of this change and effect on their recycling performance will be interesting to observe over the coming months.
- (b) **Economically Practicable** - The benchmark for whether collections are economically practicable is that they must not be "excessive" in comparison to non-separate collections. Officers from Community & Leisure Services and Corporate Finance have undertaken an initial piece of work to model the costs of change. Obviously, this modelling is heavily reliant on assumptions such as different levels of reduction in public participation, various levels of material income and the different levels of kerbside sorting undertaken. The modelling suggests that the best case scenario (separating glass only) is likely to incur additional annual revenue costs of circa £210,000 while this rises to £1.2m in the worst case scenario (full kerbside sorting). It should be noted these are annual revenue costs only but change (particularly in the worst case scenario) would also require large capital investment to change and increase the size of the collection fleet. This capital investment could be as high as £3m - £4m.

Two of our immediate neighbours have been awarded circa £2m each in WG Capital Grant to facilitate a change to kerbside sort and it is likely that each Authority will need to add circa £1m of their own funds. Both of these Authorities are considerably smaller than Caerphilly so these costs would be elevated if applied to a larger authority.

- (c) **Environmentally Practicable** – If change is deemed necessary then the Authority would need to model the environmental consequences of change. This modelling would need to examine such issues as vehicle emissions and fuel usage as well as the carbon resource efficiency benefits of each collection system.

5.6 The Local Government Measure 2009

5.6.1 In addition to the necessity and TEEP tests, the Authority is subject to the requirements under Schedule 2 of the Local Government Measure 2009. Under the measure, the Authority must “make arrangements to secure continuous improvement in the exercise of its functions”. In doing so, the Authority must have regard in particular to the need to improve the exercise of its functions in terms of:-

- Strategic effectiveness
- Service quality
- Service availability
- Fairness
- Sustainability
- Efficiency
- Innovation

5.6.2 Any decision to change the current collection arrangements must also be justified when considering the above points. Further consideration will therefore need to be given to how the Authority would apply those 7 requirements to any new collection regime. Examples include:-

- **Strategic effectiveness** – where does the service sit within Corporate priorities and is it currently meeting its performance targets? Is there a major strategic case for investment in change compared to other council priorities?
- **Service quality** – does the service meet the needs of its residents, satisfaction ratings, participation levels, etc?
- **Efficiency** – in the current financial climate, is it a prudent and efficient use of public funds to invest heavily in changing a service that may be performing well when other services are either ceasing or being reduced?

5.7 The Overall Evidence Base

5.7.1 As the body of the report outlines, this is a complex area with a higher level of ambiguity and uncertainty than is normally the case with new legislation.

5.7.2 Officers have reviewed the evidence available to date (customer satisfaction, high level costings, performance and limited end destination comparisons) which indicates that the Authority does not need to change its collection regime at present. However, it has to be accepted that there are significant gaps in the evidence base (as the information is not available to the Authority) and that this information will be crucial in making a fully informed, robust decision on future service provision. In summary, these significant “gaps” include:-

- At least 6 months worth of MRF regulations data
- WRAP’s work on the end destinations of materials
- WG not having published its final guidance.

5.7.3 Consequently, it is not possible to make a fully informed, long-term decision on whether or not the Authority needs to change its collection regime until this additional evidence is gathered (probably the summer of 2015). Even where change is deemed necessary, WG accepts that the ability to change may be delayed for a number of operational reasons (eg: vehicle life cycles, contractual timescales, etc.).

6. EQUALITIES IMPLICATIONS

6.1 No equality impact assessment has been undertaken to date. However, this will need to form part of any future consideration in respect of changing the collection service.

7. FINANCIAL IMPLICATIONS

- 7.1 As outlined in section 5.5.1 (b) above there is a range of annual revenue costs between £210,000 and £1.2m dependant on the type of change and assumptions relating to public participation and income for recyclables. This annual revenue cost would be in addition to capital costs for changes to the vehicle fleet which could be as high as £3m - £4m.
- 7.2 Additional costs noted in paragraph 5.5.1b and 7.1 are indicative estimates based on a set of assumptions that will impact on the cost of collection & treatment from source separating. Further work will be required to firm up on the possible financial impact. This work will be undertaken when additional evidence/information becomes available during 2015.

8. PERSONNEL IMPLICATIONS

- 8.1 There are no personnel implications associated with this report at the present time. However, if the Authority moves to a full kerbside sort (WG collections blue-print) service, then it is likely that the number of recycling collection drivers and operatives would need to increase 3-fold.

9. CONCLUSIONS

- 9.1 The Authority is in a very fortunate position with its recycling service. It has been one of the highest performers for recycling in Wales. Often services are changed because of a failure in performance. The Authority is not in that position and therefore it has to be recognised that a very strong case for change would need to be evidenced.
- 9.2 The EU Directive calls for quality and also quantity in recycling. Whilst further investigation is required in relation to quality, it cannot be argued that the Authority does not achieve quantity given that is such a high performer. The draft WG guidance does not answer how to reconcile the quality v quantity debate.
- 9.3 In addition, feedback from public consultation previously reported to Members demonstrated that the recycling service is well regarded by the citizens of the County Borough. It can therefore be foreseen that the public would question why the Council was embarking on a major investment for change when the current service was performing well and is well regarded. Moreover, the Authority is managing the most challenging financial times in the history of modern local government so investment in wholesale service change would be difficult to justify to the public, although the issue would need to be carefully considered based on the necessity and TEEP tests and legal compliance.
- 9.4 At the time of writing this report there remain gaps in the evidence base which will need further consideration and a further decision on the recyclable collection regime. It is the view of officers that change now is not required but this will need a future review in light of additional evidence. In this further review, it will be important that the future service:-
- Is sustainable and environmentally efficient;
 - Is affordable and maximises economic benefit and value;
 - Produces high quality recyclates;
 - Is supported by the public, businesses and wider communities;
 - Is periodically reviewed to ensure that it meets its legal obligations.
- 9.5 It is important for Members to note that there is a risk that the Authority may be legally challenged for its decision to continue with its current practices. In particular, it may be challenged in relation to the interpretation of the separate collection obligations and/or the obligation not to mix waste of a specific type or nature with other waste or other material with different properties. However, to mitigate this risk the Authority has followed a process based on the evidence and data currently available. If the recommendations in section 11 are

agreed, the Authority will have also committed to keep the issue under review in light of additional evidence and to bring more information forward for consideration at the appropriate time in 2015.

10. CONSULTATION

10.1 The report reflects the views of the listed consultees.

11. RECOMMENDATIONS

That Cabinet agrees and recommends to Council:-

11.1 That the existing method of kerbside collection of dry recyclables is continued subject to further review in 2015 when additional evidence/information becomes available.

11.2 That officers of the Authority agree to continue to participate in the study being undertaken by the Welsh Government to gather further end destination evidence and to participate in the WG exercise to model various collection scenarios.

12. REASONS FOR THE RECOMMENDATIONS

12.1 To ensure that the Authority operates a high performing, economically effective, legally compliant recycling service.

13. STATUTORY POWER

13.1 Local Government Acts, Environmental Protection Act 1990, Waste (England & Wales) Regulations 2011, Local Government Measure 2009

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Background Papers:-

- (1) Report to Regeneration & Environment Scrutiny Committee 16/9/2014 - Various Waste Management Issues
- (2) Report to Cabinet 28/10/2008 – Waste Less Recycle More; Compulsory weekly kerbside recycling
- (3) Report to Living Environment Scrutiny Committee 16/10/2008 – Waste Less, Recycle More; Compulsory weekly kerbside recycling
- (4) Welsh Government Consultation Document – Consultation on Draft Statutory Guidance on Separate Collections of Waste Paper, Metal, Plastic and Glass