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Report for SIPTU on the Remunicipalisation of the Household Waste Collection Sector in Ireland

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Part I – Introduction

1.1 Background

This Report details the research of the University College Cork Environmental Law Clinic into the possible remunicipalisation of the household waste collection sector in Ireland. The Report examines the legality of remunicipalisation of the household waste collection sector and identifies legal obstacles which might frustrate this policy objective. Four researchers undertaking the LLM in Environmental and Natural Resources Law participated in the research group which was conducted on the basis of desktop research during the period January to May 2019. The research project was supervised by Professor Owen McIntrye and the researchers would like to thank him for his assistance in this regard.

1.2 Policy Context

Recent studies and findings have identified relatively low levels of participation in household waste collections services which has been estimated at 28% nationally.[1] The low levels of participation have been attributed to a number of factors such as poor service coverage by private waste collectors operating on the basis of "side by side" competition. For example, there is evidence that some private operators are targeting customers in the most profitable areas where there a high population density and declining to provide services in less densely populated or lower income areas.[2] Since local authorities exited the household waste collection market the responsiveness of the waste collection sector to social conditions has diminished as waste collection charge waivers which had previously been commonly available are now only provided by one local authority.[3] These features of the household waste collection sector and the low participation rates in waste collection services have been linked to the associated environmental problems of illegal dumping, back yard burning, and increased litter. The fragmentation of the household waste collection market also results in overlapping waste collection routes and consequently further environmental impacts through additional greenhouse gas emissions, and increased traffic congestion.[4]

It is also clear that there are significant compliance issues regarding the performance of some waste collection operators in relation to their obligations under the Waste Management Act 1996. Some major operators have accumulated multiple convictions over a number of years in relation to environmental offences, and in some cases the cost of remediation has fallen on the State.[5] Accordingly, while local authorities have divested themselves of the responsibility of delivering household waste collection services, this is based on a false economy as the external costs of ineffective waste management falls

[1] Southern Waste Region, Waste Management Plan 2015-2021" (2015) at p103 available at < http://southernwasteregion.ie/content/southern-region-waste-management-plan-2015-2021-associated-reports> (date accessed 2nd January 2019).
[2] Competition and Consumer Protection Commission, "The Operation of the Household Waste Collection Market" (2018) at [4.10-4.11] < https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/10/The-Operation-of-the-Household-Waste-Collection-Market.pdf> (date accessed 2nd January 2019).
[3] Limerick City and County Council, "Household Waste Collection Subsidy Scheme 2019" available at < https://www.limerick.ie/sites/default/files/media/documents/2018-11/Qualifying%20Criteria%202019%20Household%20Waste%20Collection%20Subsidy%20Scheme%20.pdf > (date accessed 31st January 2019).
[4] CCPC Report 2018 (n 2) at [3.17].
[5] Peter Murtagh, "Wicklow council ordered to remove up to 1.4m tonnes from dump" Irish Times 7th July 2017 available at < https://www.irishtimes.com/news/crime-and-law/courts/high-court/wicklow-council-ordered-to-remove-up-to-1-4m-tonnes-from-dump-1.3146953> (date accessed 11th February 2019).

upon local authorities as the remediator of last resort.

The environmental performance of the household waste collection sector has been highlighted as an issue that could undermine the State's ability to achieve its environmental objectives.[6] Both Irish and EU waste management policy set ambitious objectives which seek to enable the creation of a "circular economy" which avoids the creation of waste where possible, and seeks to manage any waste as a resource.[7] Around 10% of the total waste in Ireland is generated from households.[8] The effective collection and subsequent treatment of household waste and the accountability of the household waste collection sector are therefore important considerations in the realisation of Ireland's waste management objectives. It will be argued that the current system of household waste collection is not appropriately tailored to achieving these aims.

Accordingly, the performance of the waste collection sector, and the need to achieve ambitious environmental objectives, may provide policy justification for local authorities to reassert themselves in the provision of household waste collection services.

1.3 Structure and Outline of the Report

This Report will firstly examine the environmental performance of the household waste collection sector having regard to relevant contextual factors. Some of the more salient issues regarding the performance of the sector have been highlighted above.

The Report will go on to explain the statutory functions of local authorities in relation to the provision of household waste collection services. It will be seen that while there is some legal scope for local authorities to reassert their role in the household waste collection sector, their ability and their obligations in this regard are significantly curtailed by the provisions of the Waste Management Act 1996. Accordingly, in the absence of legislative reform, it will be suggested that the most reliable means for local authorities to re-enter the household waste collection sector is through making arrangements for private operators to deliver waste collection services on their behalf.

However, the economic viability of local authorities re-entering the household waste collection sector could be undermined by the requirements of national competition law which is likely to frustrate any attempt to alter the current model of "side by side" competition by excluding private operators from the sector. The Irish model of "side by side" competition is atypical compared to other European countries which tend to require that household waste collection services are provided through a competitive tendering process or by a State run monopoly.[9] Accordingly, the general approach of EU countries has been to favour the delivery of household waste collection services by a single operator on an exclusive basis. This approach thereby avoids the scenario whereby private operators adopt aggressive pricing strategies competing only for the most profitable routes

[6] CCPC Report 2018 (n 2) at [5.9].

[7] European Commission, "Being wise with waste: the EU's approach to waste management" (Luxembourg: Publications Office of the European Union, 2010) at p 3 available at <http://ec.europa.eu/environment/waste/pdf/WASTE%20BROCHURE.pdf> (date accessed 5th January 2019); Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living Well, Within the Limits Of Our Planet' [2013] OJ L354/171 at Annex [1] and [40].

[8] EuroStat, Waste generation by economic activities and households, 2016 available at < https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Waste_generation_by_economic_activities_and_households,_2016_(%25).png> (date accessed 2nd February 2019).

[9] CCPC Report 2018 (n 2) at [1.3], [3.8-3.9], [3.11-3.17], [5.4].

while leaving less profitable areas unserved. However, in *Nurendale v Dublin City Council*[10] the Irish High Court held that a joint waste management plan between the four Dublin authorities which sought to remunicipalise household waste collection services by requiring that such services are provided by a single service operator on an exclusive basis was contrary to national competition law. This judgement is likely to prevent any attempts by local authorities to introduce exclusivity to service provision in the household waste collection market either through economic licensing by means of competitive tendering for the market or alternatively through the direct provision of services by local authorities. Accordingly, without legislative reform local authorities will only be able to re-enter the household waste collection market by competing with private operators on the basis of the present "side by side" competition model.

As the remunicipalisation of the household waste collection sector in any form would inevitably require local authorities to procure waste collection supplies or services it is likely that the resultant transactions would come within the scope of procurement law. This could create significant opportunities to raise the present standards in the household waste collection sector. Both national and EU procurement law require that environmental, social and labour law standards must be complied with in the performance of public contracts.[11] Moreover, procurement processes can also be used strategically to require enhanced standards of performance through concepts known as "green public procurement" and "socially responsible public procurement". Accordingly, this Report will consider how public procurement can be utilised as an effective tool to achieve social and environmental aims going beyond the present standards in the household waste collection sector.

Arguments in favour of remunicipalisation are likely to focus attention on the performance of local authorities in relation to service delivery. It will be explained that local authorities are multifunctional bodies capable of delivering a wide range of services. In performing their functions local authorities are subject to a number of accountability mechanisms including democratic accountability through the elected representatives of local authorities, and supervision by Central Government Departments and independent governmental agencies such as the EPA. Moreover, the performance of local authorities is also reviewed by auditing bodies such as the National Oversight and Audit Commission, the Local Government Audit Service, and the Comptroller and Auditor General. These mechanisms should provide sufficient oversight in relation to the environmental and financial performance of local authorities thereby ensuring compliance with public standards in the delivery of household waste collection services.

Lastly, this Report will also suggest a number of legislative reforms which would assist the remunicipalisation of the household collection sector. These proposed reforms will include firstly, that the mandatory obligation on local authorities to collect household waste could be strengthened. Secondly, that local authorities could be expressly empowered to provide household waste collection services directly to householders. Thirdly, that provision be made for the introduction of a single service provider model in the household waste collection sector; thereby ensuring that that such services must be delivered by a single provider on an exclusive basis as is the European norm.

[10] Nurendale v Dublin City Council and Ors [2009] IEHC 588.

[11] European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016) reg. 18(4), schedule 7; Parliament and Council Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC [2104] OJ L 94 preamble [40], article 18(2), Annex X.

Part II – Environmental Performance

2.1 Introduction

Recent studies have identified low participation in household waste collection services. There is evidence that this finding could at least be partly attributable to the commercial practices of private waste collection operators who seek to concentrate their activities on the most profitable service routes. Moreover, since local authorities exited the household waste collection sector the availability of wastes charge waivers has diminished removing a previously available support for low income households. The accessibility of waste collection services to households therefore appears to be restricted by the availability of services, and the affordability of such services.

There is also evidence that some waste collection operators are failing to comply with their legal obligations in relation to all of their waste management activities, thereby leading to additional costs falling on the State. Accordingly, the environmental impacts of lack of access to household waste collection services and the environmental performance of waste collection operators will now be discussed having regard to national and EU waste management policy objectives and performance targets.

2.2 Waste Management Objectives and Targets

Irish waste management policy has developed within the framework provided by the EU Waste Directives,[12] the Packaging and Packaging Waste Directives[13] and the Landfill Directives.[14] The EU framework has been transposed into Irish law through a number of statutes,[15] and statutory instruments.[16] The legal requirements are then supported by national and regional waste management policy.

The national waste policy is set out in the Department of Environment, Community and Local Government *"A Resource Opportunity: Waste Management Policy in Ireland"*.[17] This policy instrument informs regional waste management planning objectives as set out in the three Regional Waste Management

[12] Council Directive 2008/98/EC on waste and repealing certain Directives [2008] OJ L 312; Parliament and Council Directive 2018/851 amending Directive 2008/98/EC on waste [2018] OJ L 150.

[13] Parliament and Council Directive 94/62/EC on packaging and packaging waste [1994] OJ L 365 as amended by the Parliament and Council Directive 2018/852 amending Directive 94/62/EC on packaging and packaging waste [2018] OJ L 150.

[14] Council Directive 1999/31/EC on the landfill of waste [1999] OJ L 182; Parliament and Council Directive 2018/850 amending Directive 1999/31/EC on the landfill of waste [2018] OJ L 150.

[15] Waste Management Act 1996, Waste Management (Amendment) Act 2001, Protection of the Environment Act 2003, Environment (Miscellaneous) Provisions Act 2011, Environment (Miscellaneous Provisions) Act 2015

[16] For example, in relation to household waste collection the statutory instruments include *inter alia*; Waste Management (Collection Permit) Regulations 2007 (S.I. No. 820 of 2007); European Union (Household Food Waste and Bio-waste) Regulations 2013 (S.I. No. 71 of 2013); Waste Management (Collection Permit) (Amendment) Regulations 2016 (S.I. No. 24 of 2016); Waste Management (Collection Permit) (Amendment)(No.2) Regulations 2016 (S.I. No. 346 of 2016).

[17] Department of Environment, Community and Local Government "A Resource Opportunity: Waste Management Policy in Ireland" (2012) available at < https://www.dccae.gov.ie/en-ie/environment/publications/Documents/46/A%20Resource%20Opportunity-%20Waste%20Management%20Policy%20in%20Ireland.compressed.pdf> (date accessed 2nd February 2019).

Plans.[18] The national policy states a number of objectives which seek to establish a system of regulation that maximises the collective wellbeing.[19]

Objectives of National Waste Collection Regulation (pp 29-30)

- support the attainment of our environmental objectives;
- adhere to the waste hierarchy and the polluter pays principle;
- minimise the disposal of waste in landfill;
- maximise recoverable resources;
- consistency with the legal requirements national and European policy;
- provide for the segregation of household waste;
- maximise the number of households with access to a waste collection service;
- maximise householder participation in waste collection services;
- minimise the cost of household waste collection services
- ensuring that a high quality of service is provided to householders;
- support a competitive and progressive waste management industry that works in cooperation with the State in the meeting its responsibilities;
- provide market stability and regulatory certainty to enable investment in necessary infrastructure;
- minimise social disamenity and maximise health and safety;
- motivate compliance through a robust enforcement regime.

Accordingly, it can be seen above that national waste management policy sets ambitious objectives in relation to participation in household waste collection services and the treatment of waste in accordance with the waste hierarchy. This approach recognises that effective waste collection systems are an important element in the achievement of waste management objectives and targets.[20]

However, a Competition and Consumer Protection Commission (CCPC) report published in 2018 expressed the view that the current structure of the household waste collection market is impacting the State's ability to achieve its waste management targets.[21] The CCPC identified that private operators enjoy considerable autonomy in relation to the achievement of key environmental targets, such as the provision of brown bins and pay-by-use collection charges.[22] In particular, the CCPC explained that despite a legislative requirement that brown bins would be provided to all householders living within agglomerations of over 500 people by 2016, it is estimated that only 50% of householders participating in a waste collection service had a brown bin service by 2016.[23]

The ability of the Irish waste collection sector to achieve environmental performance targets is a particularly salient issue given that more ambitious EU targets for the recovery of waste that will come into effect in the coming years. Preparation for re-use and recycling targets have been increased under the Waste Directive 2018, and more ambitious targets are also provided in relation to the management of

[18] See for example, the Southern Region Waste Management Plan (n 1).
[19] National Waste Policy 2012 (n 17) at pp 29-30.
[20] European Commission Waste Policy 2010 (n 7) at p 3.
[21] CCPC Report 2018 (n 2) at [5.09].
[22] Ibid.
[23] Ibid.

packaging waste and reducing the disposal of waste at landfill.

The purpose of these targets and the overarching objective of EU waste policy, (which guides Irish waste policy) is to engender a "circular economy" and a "recycling society" which avoids waste where possible, and seeks to manage any waste as a resource.[24] One of the key objectives of the EU's 7th Environmental Action Programme is to create a circular economy where residual waste is close to zero and resources are managed sustainably.[25] An efficient waste collection service has been identified as a necessary component in on the creation of a "recycling society".[26] Given that household waste collection services in Ireland are characterised by low levels of participation nationally, and poor service coverage in some areas, the achievement of more ambitious EU waste recovery targets could prove challenging for Ireland.

Disposal at Landfill

EU Landfill Directive 1999 Target

See Article 5

- Current Target – Biodegradable municipal waste going to landfills must be reduced to 35% of the total quantity (by weight) biodegradable municipal waste produced in 1995 (427,000 t).

EU Landfill Directive 2018 Target

See Article 1(4)(d)

- The total amount of municipal waste by weight that is landfilled must be reduced to 10% by 2035

Preparing for Reuse and Recycling

EU Waste Directive 2008

See Article 11

- Current Target – 50% of household waste by weight must be prepared for reuse and recycling by 2020

EU Waste Directive 2018 Targets

See Article 1(12)(c)

- Increase to 55% of municipal waste by weight by 2025
- Increase to a minimum of 60% of municipal waste by weight by 2030
- Increase to a minimum of 65% of municipal waste by weight by 2035
- Separate collection for textiles by 2025

In order to achieve its EU waste recovery targets, Ireland is also required to design a self-sufficient network of waste treatment installations. This network must facilitate the disposal or recovery of waste in one of the nearest installations while achieving a high level of environmental protection.[27] An adequate network of waste recovery installations is also necessary to reduce the quantity of waste going to landfill. In 2014, the amount of municipal waste sent to landfill in Ireland was 223 kg per capita compared to the EU average of 132 kg per capita.[28]

[24] European Commission Waste Policy 2010 (n 7) at p 3. See also Commission Communication of the 2nd December 2015, COM (2015) 614 (Closing the loop - An EU action plan for the Circular Economy) at pp 2-3 available at < https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-614-EN-F1-1.PDF> (date accessed 16th May 2019).

[25] EU 7th EAP 2013 (n 7) at Annex [1] and [40].

[26] Waste Directive 2008 (n 12) preamble [28].

[27] Ibid article 16(3).

[28] Central Statistics Office, "Environmental Indicators Ireland 2016" available at <https://www.cso.ie/en/releasesandpublications/ep/p-eii/eii2016/waste/> (date accessed 4th February 2019).

The EU has stated that co-operation between waste collection and waste treatment installations will be necessary to ensure that the Member States and the EU can become self-sufficient in respect of household waste disposal.[29] However, local authorities are only legally empowered to direct the treatment of waste where they have collected, or arranged for the collection of such waste.[30] Accordingly, the achievement of Ireland's objectives and targets under EU waste management law could be assisted through remunicipalisation of household waste collection services thereby ensuring that local authorities have sufficient control over waste treatment.

2.3 The Irish Household Waste Collection Market

In Ireland, household waste collection services are now almost exclusively provided by private operators on a commercial basis. Traditionally local authorities provided waste collection services in respect of household and commercial waste.[31] However, since 2015, the only local authority which still provides a waste collection service to householders is Kerry County Council in respect of the former Killarney Town Council area.[32] Callanan suggests that as private operators became established in the waste collection market, it became increasingly uneconomical for local authorities to operate household waste collection services due to local authorities also administering waste charge waivers for low income householders.[33]

The privatisation of the household waste collection sector has led to significant fragmentation in service delivery. In 2016, there were 63 operators active in the household waste collection market,[34] competing on the basis of "side by side" competition. The current household waste collection market has been described as a "natural monopoly" by the CCPC, meaning that the market is characterised by significant economies of scale resulting in a large cost advantage for a single provider of services.[35] Internationally, countries have responded to this feature of the household waste collection market by structuring the market on the basis of service delivery by a single provider chosen on the basis of a competitive tendering process for the market, or alternatively by the direct provision of all household waste collection services by a State run monopoly.[36] These single service provider models can maximise efficiency thereby ensuring better value services for consumers and society as a whole.

In Ireland, there is evidence that private operators are only targeting the most profitable service routes and a CCPC report published in 2018 found that householder participation in waste collection services is

[29] Waste Directive 2008 (n 12) preamble [32].
[30] See Waste Management Act 1996 section 33(7) which only vests local authorities with the ownership where such waste has been collected by local authorities or was collected on their behalf.
[31] M Callanan, "Local Government in the Republic of Ireland" (Dublin, IPA, 2018) p 142; Office of the Ombudsman, "Waste waiver schemes administered by local authorities: A report of an investigation by the Ombudsman October 2008" (2012) at p 10 available at < https://www.ombudsman.ie/publications/reports/waste-waiver-schemes-admi/index.xml> (date accessed 5th February 2019).
[32] See Kerry Council Adopted Budget 2019 at p 22 available at < http://docstore.kerrycoco.ie/KCCWebsite/finance/docs/budget2019a.pdf> (date accessed 20th May 2019) and Kerry Council, Chief Executive's Report Draft Budget 2019 at pp 111-112 available at < http://docstore.kerrycoco.ie/KCCWebsite/finance/docs/ce2019.pdf> (date accessed 20th May 2019).
[33] Ibid.
[34] CCPC Report 2018 (n 2) at [2.24]. Some of the main operators include; Greenstar/Panda; Thornton's Recycling; Greyhound Recycling; City Bins; Oxigen Environmental; AES; Country Clean; Mr Binman.
[35] Ibid at [2.7].
[36] Ibid at [3.11]-[3.17], [5.4].

greatest in the localities that are most profitable for private operators.[37] This feature of the market will now be considered in relation to the accessibility of waste collection services to householders.

2.3.1 Accessibility to Household Waste Collection Services

Since the privatisation of household waste collection sector, a number of areas have experienced poor service coverage or a dearth of options in relation to a choice of service providers. This indicates that effective competition has not materialised in some parts of the sector. For example, 25% of consumers in Dublin, and 18% nationally, only have the option of one service provider.[38] Even where there is more than one operator, consumers may not have adequate switching options.[39] A choice of operators should be one of the key benefits of side by side competition however, such choice is absent in some areas of the country.[40]

Overall participation rates in household waste collection services is poor. For example, the Southern Region Waste Management Plan 2015-2021 estimates that 28% of households nationally do not participate in a household waste collection service. This figure is 33% in the Southern region itself, and it may be greater than 45% in some rural areas.[41] Consumer market research undertaken by the CCPC has found that 54% of householders that do not participate in a waste collection service claimed that there was no service available to them.[42] By contrast in 2005, when local authorities in the Dublin Region provided household waste collection services, 100% of households were provided with a household waste collection service.[43]

When local authorities provided household waste collection services, they responded to the circumstances of low-income householders by providing waste charge waivers to enable participation in waste collection services. There are a number of environmental benefits flowing from the provision of waste charge waiver schemes. Firstly, such a scheme can reduce instances of back yard burning, illegal dumping and the associated clean-up costs. Secondly, a partial waste charge waiver scheme limited by weight and/or the number of lifts could help to reduce waste generation by motivating householders to stay within the limits of their waiver.

Unlike local authorities, private operators did not and do not provide a waste charge waiver to low-income householders.[44] Moreover, the privatisation of the waste collection industry has also restricted the ability of local authorities to provide for waste charge waivers. In *Mr Binman v Limerick City Council*, Dunne J held that the wording of section 75(3) of the Waste Management Act 1996[45] precludes a local authority from providing a waste charge waiver to householders availing of a private waste collection service, unless that service is being provided on behalf of the local authority.[46] As of 2019, the only existing waste charge waiver

[37] Ibid at [4.10].
[38] Ibid at [2.34].
[39] Ibid.
[40] CCPC Report 2018 (n 2) at [5.6].
[41] Southern Region Waste Management Plan (n 1) at p 103.
[42] CCCPC Report 2018 (n 2) at [4.11].
[43] EPA, The Nature and Extent of Unauthorised Waste Activity in Ireland" (2005) at [6.1] available at < http://www.epa.ie/pubs/reports/waste/unauthorised waste/epa_unauthorised_waste_activities.pdf> (date accessed 1st May 2019).
[44] Ibid at p 12.
[45] Waste Management Act 1996 section 75(3) as inserted by the Protection of the Environment Act 2003 section 52.
[46] Mr Binman Limited v Limerick City Council [2005] IEHC 192 at p 9. See also Waste Management Act 1996 section 75(3) as inserted by the Protection of the Environment Act 2003 section 52.

scheme in the country is administered by Limerick City and County Council which provides a waste charge waiver to householders qualifying under certain income classes.[47] The scheme operates by agreement of the Council and waste collectors who tender for the role of providing waste collection services on behalf of the Council to the waiver households. This agreement between Limerick City and County Council and the waste collection operators enables the Council to provide a waiver scheme through private operators without acting ultra vires its powers under section 75 of the Waste Management Act 1996.

While the Limerick waiver scheme avoids the restriction under section 75 of the Waste Management Act 1996, an Ombudsman's Report published in 2012 found that local authorities were generally of the view that a waste charge waiver should not be provided by local authorities to fund waste collection services delivered by private operators.[48] Given that the marginal cost of providing waste collection services in some areas is quite low,[49] it is likely that the direct provision of services by local authorities would be the most economical means of providing waste collection services to waiver householders.

Having regard to the foregoing, it is clear that the current market structure in the household waste collection sector is having a significant impact on participation in household waste collection services. Low participation in household waste collection services is associated with a number of negative environmental impacts and these will now be assessed below.

2.4 Environmental Impacts

Low participation in household waste collection services is likely to lead to the associated environmental problems such as illegal dumping, back yard burning, and increased litter. Moreover, the fragmentation of the household waste collection market has also resulted in overlapping waste collection routes and consequently additional greenhouse gas emissions, and increased traffic congestion.[50]

The CCPC has stated that a lack of waste collection services has resulted in some households disposing of waste by illegal means such as burning and dumping.[51] In market research conducted by the CCPC, 2% of householders who did not participate in a household waste collection service admitted to dumping their waste, and a further 1% admitted to burning their waste.[52] The City and County Managers Association (CCMA) has also estimated that about 3% of households (around 50,000 households) dispose of waste illegally.[53] However, these statistics may not represent the full scale of the problem as the accuracy of the statistics is dependent on either the admission of wrongdoing or the detection of illegal disposal. For example, the Southern Region Waste Management Plan notes that the full extent of

[47] Limerick Waste Charge Waiver Scheme 2019 (n 3). There are two grounds under which applicants can qualify for this waiver scheme. The first ground provides that the applicant must be over 66 years old; in receipt of a State contributory/non-contributory pension or widows(ers) pension only; The applicant must also be living alone and in receipt of a living alone allowance or living with a spouse/partner who also qualifies. The second ground requires that the applicant is in receipt of Disability Allowance and is either living alone; with a qualifying old age pensioner; with another person in receipt of Disability Allowance; or with dependents without an income.

[48] Ombudsman Report 2012 (n 31) at p 12.

[49] CCPC Report 2018 (n 2) at [2.15].

[50] Ibid at [3.17].

[51] Ibid at [4.12].

[52] Ibid.

[53] Ibid.

back yard burning is unknown.[54] Moreover, a 2005 EPA report asserted that given the low participation in household waste collection services in some areas, the only reasonable conclusion to be reached, is that a significant quantity of unmanaged household waste is likely being disposed of by backyard burning.[55]

Unmanaged household waste can also contribute "litter" which results in significant costs to the State. Litter is waste that is deposited in a place where it is likely to become unsightly, deleterious, nauseous or unsanitary.[56] The Litter Pollution Act 1997 prohibits the deposit of litter in a public place, or in any place that is visible from a public place.[57] Moreover, the placement of "municipal waste"[58] in litter receptacles is also prohibited.[59] Local authorities incur significant costs in implementing litter management policy, and the total costs in 2018 were approximately €107 million. This expenditure included nearly €91.5 million on street cleansing; nearly €9.5 million on litter warden services; and nearly €5 million on public awareness initiatives.[60]

There are a number of causal factors that contribute to littering such as passing pedestrians and motorists; retailors; gathering points; fast food outlets and illegal dumping. The National Litter Pollution Monitoring Scheme states that in 2017 about 1.9% of littering nationally was caused by instances of illegal dumping.[61] However, this statistic may not reflect the full aesthetic and financial impact of illegal dumping as a litter source. For example, the most common cause of littering is considered to be cigarette related (56%) which is generally of a lower impact than examples of illegal dumping. Accordingly, it is likely that illegal dumping has aesthetic and financial impacts that are go beyond its prevalence. Moreover, in the recent Tipperary County Council Litter Management Plan the disposal of household waste in municipal litter bins was highlighted as problem.[62]

It could also be argued that low participation rates in household waste collection services could also be undermining the significant efforts that have been made to promote public awareness initiatives aimed at reducing litter and improving waste management practices. Education and awareness has been described as an important environmental policy area which provides "the greatest scope to reduce negative behaviours at the individual, community, regional and national levels" and thereby achieve reduced levels of waste.[63]

54 Southern Region Waste Management Plan (n 1) at p103.
55 EPA Unauthorised Waste Activity Report 2005 (n 43) at [6.1].
56 Litter Pollution Act 1997 section 2.
57 Litter Pollution Act 1997 section 3. This prohibition relates to various types of waste including; commercial, household, industrial or municipal waste.
58 Litter Pollution Act 1997 section 3(5) provides that "municipal waste" has the same meaning as provided by the Waste Management Act 1996 section 5, namely; "municipal waste" means household waste as well as commercial and other waste which, because of its nature or composition, is similar to household waste.
59 Litter Pollution Act 1997 section 3(3).
60 Department of Communications, Climate Action and Environment, "Local Authority Street Cleaning and Litter Expenditure 2014-2016" available at <https://www.dccae.gov.ie/documents/LA%20street%20cleaning%202014-2016.pdf> (date accessed 9th February 2019).
61 Department of Communications, Climate Action and Environment, "The National Litter Pollution Monitoring System: Litter Monitoring Body System Results 2017" at p 12 available at < http://www.litter.ie/Reports/Systems_Survey_Report_2017.pdf> (date accessed 9th February 2019).
62 Tipperary County Council, "Litter Management Plan 2018-2021" (2018) at p 15 available at < https://www.tipperarycoco.ie/sites/default/files/Publications/Litter_Plan%207_0.pdf> (date accessed 7th May 2019).
63 Southern Region Waste Management Plan (n 1) p 72. See also the Environmental Protection Agency, "Towards a Resource Efficient Ireland: A National Strategy to 2020 incorporating Ireland's National Waste Prevention Programme" (2014) available at <

Indeed, it is salient to note that one of the objectives of the Limerick City and County Council Litter Management Plan 2015-2018 is to liaise with householders, landlords and business owners to ensure that they have a refuse collection service in place.[64] This is also an objective of national waste policy which sets a policy aim to strengthen educational and awareness measures and encourages the waste collection sector to play a role in this regard.[65]

Accordingly, in addition to contributing to the problems of illegal dumping and backyard burning, the low level of participation in household waste collection services could also be leading to increased litter management costs, while also undermining significant efforts that are being made to promote educational and awareness initiatives directed at better waste and litter management.

2.5 Regulatory Compliance by Private Operators

It is clear that there are significant compliance issues regarding the performance of some waste collection operators with their obligations under the Waste Management Act 1996. Some major operators have accumulated multiple convictions over a number of years in relation to environmental offences, and in some cases the cost of remediation has fallen on the State. Accordingly, while local authorities have divested themselves of the responsibility of delivering household waste collection services, this is based on a false economy as the external costs of ineffective waste management falls upon local authorities as the remediator of last resort.

Section 34 of the Waste Management Act 1996 provides that private operators must hold a permit granted by the National Waste Collection Permit Office (NWCPO)[66] in order to provide waste collection services. The NWCPO may only grant a permit to an operator where it is satisfied that that the activities undertaken by the operator will not cause environmental pollution and that the grant of the permit is in accordance with the objectives of the relevant waste and hazardous waste management plans.[67] However, the NWCPO is fettered by the exercise of power of the Minister to set mandatory waste collection permit conditions through Regulations made under sections 34(7) and 34(11) of the Waste Management Act 1996.[68] The Minister has made Regulations prescribing that a number of conditions must be attached to waste collection permits including; that waste (not including glass) must be weighed and the householder notified;[69] preparation and publication of customer charter to the satisfaction of the NMCPO;[70] provision for the

https://www.epa.ie/pubs/reports/waste/prevention/reports/TowardsAResourceEfficientIreland.pdf> (date accessed 29th April 2019) which seeks to promote more resource efficient behaviours.

[64] Limerick City and County Council, "Litter Management Plan 2015-2018" (2015) at p 11 available at < https://www.limerick.ie/sites/default/files/media/documents/2017-06/Litter%20Management%20Plan%202015-2018%20-%20Full%20Meeting%20of%20Limerick%20City%20and%20County%20Council.pdf> (date accessed 7th May 2019). See also Tipperary Litter Management Plan (n 62) at p 15.

[65] National Waste Policy 2012 (n 17) at [4.3.2].

[66] Waste Management Act 1996 section 34(1)(ii).

[67] Waste Management Act 1996 section 34(4)(b) as amended by the Protection of the Environment Act 2003 section 31.

[68] See Waste Management Act 1996 sections 34(7)(b), 34(7)(c), 34(7)(d) and 34(11)(v).

[69] Waste Management (Collection Permit) Regulations 2007 (no. 820 of 2007) reg 20(2)(g)(i)(I)-(II) as amended by the Waste Management (Collection Permit) (Amendment) Regulations 2016 (S.I. No. 24 of 2016) reg 2(n).

[70] Waste Management (Collection Permit) Regulations 2007 (no. 820 of 2007) reg 20(2)(g)(i)(VI) as amended by the Waste Management (Collection Permit)

segregated collection of at least the 7th Schedule recyclable materials;[71] that recyclable household kerbside waste shall be collected at least every fortnight;[72] and that the frequency of food waste collection occurs in accordance with the European Union (Household Food Waste and Bio-waste) Regulations 2015.[73] It should be noted that the Waste Management Act 1996 and the Regulations made thereunder do not enable local authorities to impose permit conditions which require the delivery waste collection services on an exclusive basis within a defined geographical area.

A waste collection permit can only be granted to "a fit and proper person" within the meaning of section 34D of the Waste Management Act 1996.[74] A person is deemed to be a fit and proper person where *inter alia*; he or she has not been convicted of certain prescribed environmental offences;[75] has the requisite qualifications;[76] and is able to meet the necessary financial requirements.[77] Moreover, a waste collection operator's employees, or persons under the control of such an operator must also comply with the fitness requirements set out in the 1996 Act.[78] In circumstances where a waste collection operator has been convicted of a prescribed environmental offence, then this information should be factored into an assessment of whether such an operator is a fit and proper person capable of holding a waste collection permit. However, as will now be explained, the fit and proper person requirement has not prevented some major waste collection operators from accumulating numerous of convictions while continuing to provide services.

Many of the waste collection firms in Ireland operate their services by collecting and transporting waste to their private materials recovery facilities (MRF) for further possessing. While the waste collection element of their business is regulated by the waste collection permit system, most of the larger MRFs operate under the EPA waste licensing system,[79] and the smaller MRFs operate under waste facility permits which are granted by local authorities.[80] There are significant issues

(Amendment) Regulations 2016 (S.I. No. 24 of 2016) reg 2(n).

[71] Waste Management (Collection Permit) Regulations 2007 (no. 820 of 2007) reg 20(2)(g)(i)(VII) as amended by the Waste Management (Collection Permit) (Amendment) Regulations 2016 (S.I. No. 24 of 2016) reg 2(n). See also Waste Management (Collection Permit) Regulations 2007 (no. 820 of 2007) Schedule 7 as inserted by the Waste Management (Collection Permit) (Amendment) Regulations 2015 (S.I. No. 197/2015) reg. 2(o).

[72] Waste Management (Collection Permit) Regulations 2007 (no. 820 of 2007) reg 20(2)(g)(i)(VIII) as amended by the Waste Management (Collection Permit) (Amendment) Regulations 2016 (S.I. No. 24 of 2016) reg 2(n).

[73] Waste Management (Collection Permit) Regulations 2007 (no. 820 of 2007) reg 20(2)(g)(i)(VII) as amended by the Waste Management (Collection Permit) (Amendment) Regulations 2016 (S.I. No. 24 of 2016) reg 2(n). See also European Union (Household Food Waste and Bio-waste) Regulations 2015 (S.I. No. 430/2015).

[74] Waste Management Act 1996 section 34(4)(a) as amended by the Environment (Miscellaneous Provisions) Act 2015 section 37 and the Protection of the Environment Act 2003 section 31.

[75] Waste Management Act 1996 section 34D(1)(a) as inserted by the Environment (Miscellaneous Provisions) Act 2015 section 39. The prescribed offences on summary conviction are; Waste Management Act 1996 section 32(1),31(6); and 55(8). The prescribed offences on conviction on indictment are; an offence under the Waste Management Act; or the Environmental Protection Agency Acts 1992 to 2011; or the Local Government (Water Pollution) Acts 1977 to 2007; or the Air Pollution Acts 1987 and 2011.

[76] Waste Management Act 1996 section 34D(1)(b).

[77] Waste Management Act 1996 section 34D(1)(c).

[78] Waste Management Act 1996 section 34D(1)(a) as inserted by the Environment (Miscellaneous Provisions) Act 2015 section 39.

[79] Waste Management Act 1996 section 39.

[80] Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007) reg. 18. See also Waste Management Act 1996 section 39(4) as amended by the Environment (Miscellaneous

regarding the compliance of some waste collection operators with the conditions of their MRF licences, and there is also evidence of illegal landfilling of waste material.[81] There have been numerous prosecutions against some major waste collection operators as illustrated below (See also Appendix I).

Some Examples of Non-Compliance by Private Waste Collection Operators

(See also Annex II)

In 2017, Greyhound Recycling was convicted of five charges relating to inter alia; the transfer of waste to an unauthorised person; failing to keep proper records; and not properly storing waste. Greyhound was fined a total of €25,000 and an award of costs of €50,000 was also made against the company.

In 2015, Oxigen Environmental was convicted of holding waste in a manner that was likely to cause environmental pollution and endanger human health. Fines totalling €6,000 were imposed on the company, and costs of €12,000 were awarded to the EPA.

In 2015, Country Clean Recycling was convicted of failing to ensure that its activities did not give rise to environmentally harmful emissions; failing to properly store waste; and failing to control dust and odours. Fines totalling €12,000 were imposed on the company, and costs of €9,545.50 were awarded to the EPA.

Continued.

In 2012, Greenstar was convicted for failing to properly manage and inspect waste at its facility, and for failing to ensure that waste at its facility was subjected to initial waste categorisation off site. Greenstar was fined €1,000, and costs of €11,217 were also awarded against the company.

One of the most prominent examples of environmental pollution in recent years relates to operation of Ferry's Refuse Collection where waste was improperly stored on site leading to the bleeding of pollutants into a stream that flows into Lough Swilly. Moreover, when WERS Waste Management took over the Ferry's Refuse Collection operation, it did not at that time have a permit for the relevant waste facility.

There are also a significant number of the MRFs which have long term environmental compliance issues, resulting in the EPA issuing non-compliance notices, and the institution of prosecutions. Moreover, the Greenstar, Sarsfield Court site in Cork was placed on the EPA Office of Environmental Enforcement's (OEE) list of National Priority Sites in October 2018.[82] Since 2013, the issuance of non-compliance notices by the OEE to private operators who hold waste or industrial emissions licencees has been dominated by waste collection operators, with Greyhound Recycling receiving the most notices of any operators (see Appendix I).

The cost of non-compliance with regulatory standards can be significant. While the Waste Management Act 1996 includes a number of

Provisions) Act 2015 section 40, and the Protection of the Environment Act 2003 section 33, and the European Communities (Amendment of Waste Management Act, 1996) Regulations 1998 (S.I. No. 166 of 1998) reg.4,

[81] Laois County Council v Hanrahan [2014] IESC 36.

[82] EPA Office of Environmental Enforcement, National Priority Sites, available at <http://www.epa.ie/enforcement/nationalprioritysites/> (date accessed 6th February 2019).

mechanisms for allocating the cost of environmental harm to the polluter,[83] in circumstances where the polluter cannot be identified, or where the polluter has become insolvent, the cost of remediating environmental harm will inevitably fall on the State. For example, in 2017, the High Court ordered Wicklow County Council to remediate the largest illegal dump that had ever been discovered in the State.[84] The site was estimated to contain between 288k to 1.4m tonnes of waste. The waste included asbestos that was in contact with water that was part of the River Slaney river basin. Additionally, it was estimated that there were about 1 million tonnes of contaminated soil at the site. The total cost of remediating the site was estimated at €35m and Wicklow County Council was given three years to complete the works.[85]

2.6 Summary

It is clear that there are significant problems and challenges in the Irish household waste collection sector. A number of studies have identified that about one quarter of households do not participate in a household waste collection service. Moreover, consumer market research undertaken by the CCPC has found that around half of these households claimed that they did not have access to a household waste collection service. The cost of services may also be a salient issue as most low-income households can no longer avail of a waste charge waiver. There is also evidence that the low level of participation in household waste collection services is contributing to environmental problems such as illegal dumping, backyard burning and increased litter.

The environmental performance of the waste collection operators is also a cause for concern, particularly given the ambitious environmental targets and objectives the State has committed to achieving in relation to waste management practice. Some of the largest waste collection operators have been subject to enforcement action by regulators and a number of operators have been convicted of environmental offences. In some cases, the cost of remediation for environmental harm by private operators has fallen on local authorities as the remediator of last resort.

Accordingly, the performance of the waste collection sector, and the need to achieve ambitious national and EU environmental objectives, may provide justification for local authorities to reassert their role in the provision of household waste collection services. This could improve the availability of household waste collection services to households and ensure that environmental standards are observed in the sector.

[83] See Waste Management Act 1996 Part VI. See also John Ronan v Clean Build Ltd (In voluntary liquidation) [2011] IEHC 350.

[84] Murtagh 2017 (n 5).

[85] Ibid.

Part III – Obligations and Functions of Local Authorities in relation to the Collection Household Waste

3.1 Introduction

The Waste Management Act 1996 sets out a number of functions and obligations of local authorities in relation to the collection of household waste. In certain circumstances local authorities are under an obligation to provide such services. In situations where no obligation exists then local authorities have been vested with some powers that enable them to provide waste collection services to households. These obligations and functions, and the need for legislative reform in relation to certain options for remunicipalisation will be explained hereunder.

3.2 Statutory Obligation of Local Authorities in relation to the Collection of Household Waste

Section 33(1)-(3) of the Waste Management Act 1996 provides that there is a mandatory obligation on local authorities to collect, or arrange for the collection of household waste where <u>all</u> the following exemptions are disapplied;

- an adequate waste collection service is available,

<u>and</u>

- the estimated costs of collection would be unreasonably high,

<u>and</u>

- adequate alternative arrangements for disposal can reasonably be made by the holder of waste.

Where an obligation is identified to exist then it can apply to the entirety of a local authority's functional area or part thereof.[86]

This mandatory obligation on local authorities has been inferred to apply in a narrow range of circumstances. For example, in *Nurendale v Dublin City Council*, obitar dicta statements by McKechnie J suggest that the mandatory obligation on local authorities gives rise to at best "residual obligations of a limited nature to collect waste".[87] Accordingly, the application of the mandatory obligation is considerably circumscribed by each of the three exemptions which preclude the application of the obligation more generally.

Each condition exempting the application of the mandatory obligation will now be examined in turn.

<u>*Availability of an Adequate Service*</u>

In *De Burca v Wicklow County Council,* the High Court held that an adequate service must be available, and that the possibility of a service being available is not sufficient to disapply the obligation.[88] Accordingly, in parts of the country where there are no waste collection services available it would not be a defence to suggest that waste collection services from other areas could be expanded to include additional households. However, in *De Burca*, O'Caoimh J accepted the evidence of Wicklow County Council that a household waste collection service was available throughout the county, and this fact was not rebutted by the litigant.[89]

[86] De Búrca v Wicklow County Council [2002] 2 I.R. 196 at p 243.
[87] Nurendale (n 10) at [71].
[88] De Búrca (n 86) at p 243.
[89] Ibid at p 243.

It is important to note that in *De Burca*, the High Court only considered this exemption in relation to whether services were available, and it did not inquire as to the "adequacy" of the available services as would appear to be required by section 33 of the Waste Management Act 1996. The High Court did however consider the issue of adequacy in relation to third exemption which relates to whether "adequate" alternative arrangements are available to householders. In relation to the third exemption, the High Court explained that "adequacy" is identified by reference to compliance with regulatory requirements. Accordingly, given the compliance issues in relation to the performance of some private waste collection operators (See section 2.5 of this Report), it could be argued that "adequate" services are not available in at least some parts of the country.

Unreasonably High Costs

In relation to the consideration of service costs, it was held by the High Court in *De Burca* that the "polluter pays" principle must be applied in determining this exemption. Accordingly, O'Caoimh J explained that the Court must examine the cost of a local authority waste collection service from the perspective of the householder (being the polluter) receiving such a service, not from the perspective of the local authority providing the service. However, in *De Burca*, the executive of Wicklow County Council had proposed a scheme of household waste collection charges that was rejected by the Elected Members as the proposed charges were twice the amount offered by some private operators. Accordingly, the High Court held that the Council was entitled to infer that the cost of its waste collection services would be unreasonably expensive for householders.[90]

As explained in section 2.3.1 of this Report, around 28% of householders decline or unable to participate in a household waste collection service. It is likely that at least some of these households are low income households who are unable to afford private services and no longer have access to a waste charge waiver scheme. Accordingly, it could be argued that the provision of household waste collection services by, or on behalf of local authorities, would not result in unreasonably high costs from the perspective of the householder.

However, it should be noted that in *Nurendale v Dublin City Council*, obitar statements by McKechnie J seemed to infer that the reasonableness of costs should be assessed from the perspective of the local authority providing the service.[91]

Adequate Alternative Arrangements

In *De Burca* the High Court held that the identification of a list of waste collectors by the local authority facilitates householders in making their own arrangements for waste disposal.[92] However, the High Court also assessed the concept of "adequacy" confirming that adequacy is not established merely on the basis that operators are prepared to provide a service to householders. The Court explained that "adequacy" must be assessed in light of the requirements under the Waste Framework Directives and the obligations on operators in relation to registration and appropriate supervision by regulatory bodies.[93]

Accordingly, given the history of some waste collection operators failing to comply with their regulatory obligations (See Section2.5 of this Report), it could be argued that in the

[90] De Búrca (n 86) at p 243.
[91] Nurendale (n 10) at [71].
[92] De Búrca (n 86) pp 243-244.
[93] Ibid at pp 243-244.

absence of household waste collection services being delivered by local authorities, some householders are unable to make adequate arrangements for the collection of their household waste.

Application of the Mandatory Obligation

Having regard to the lack of accessibility to household waste collection services, and poor regulatory compliance by some private operators in the household waste collection sector, it could be argued that there is a mandatory obligation on local authorities to provide household waste collection services in at least some parts of the country. However, the threshold to disapply each of the statutory exemptions is unclear. As can be seen in *De Burca* it may difficult to adduce the necessary evidence to establish the existence of a mandatory obligation on a local authority.

Accordingly, it is suggested that the mandatory obligation on local authorities to collect or arrange for the collection of household waste should be clarified through legislative reform to ensure that geographically isolated or low-income households are not left without access to a household waste collection service where the market fails.

3.3 Discretionary Power of Local Authorities to Arrange for the Collection of Household Waste

Section 33(5) of the Waste Management Act 1996 enables local authorities individually or together, to engage private operators or other local authorities to provide waste collection services on their behalf.[94] In *De Burca* it was acknowledged by the High Court that this provision could be utilised to enable local authorities to maintain a presence in the household waste collection market.[95] Accordingly, section 33(5) of the Act could enable local authorities to reassert their role in the collection of household waste by procuring private operators or other local authorities to deliver services on their behalf.

The exercise of this power would provide local authorities with a greater level of control in relation to directing treatment of waste that is collected on their behalf. Under Section 33(7) of the Waste Management Act 1996, where waste is collected by or on behalf of a local authority then the ownership of such waste is vested in that local authority. By directing the treatment of waste collected local authorities would be better equipped to assist the attainment of national and EU waste management objectives and targets (See section 2.2 of this Report).

Accordingly, the power of local authorities to arrange for the collection of waste provides the most reliable basis for their re-entry to the household waste collection sector. The implementation of this approach through public procurement processes will discussed in Part V of this Report.

3.4 Discretionary Power of Local Authorities to Directly Collect Household Waste

The Waste Management Act 1996 does not expressly empower local authorities to directly provide household waste collection services notwithstanding the circumstances where they are under a mandatory obligation to collect household waste. This gap in the legislation could potentially create an issue were local authorities to re-enter the household waste collection market through the direct provision of services.

In contrast to the collection of household waste, section 33(4) of the Waste Management

[94] De Búrca (n 86) at p 244.

[95] Ibid.

Act 1996 specifically provides that local authorities "may" collect or arrange for the collection of non-household waste. Moreover, prior to the abolition borough corporations[96] and town councils, the foregoing bodies also had discretion in relation to the provision of household waste collection directly, or through arrangement with private operators.[97]

The failure of Waste Management Act 1996 to also delineate the discretionary powers of local authorities in relation to the direct collection of household waste may be attributable to a drafting oversight. As explained in the previous section of this Report, section 33(5) of the Waste Management Act 1996 enables local authorities to make arrangements for other local authorities to collect waste on their behalf. It would be anomalous if the Act enabled local authorities to collect waste on behalf of another local authority but restricted local authorities from directly collecting waste within their own functional areas. However, this ambiguity in the legislation could be utilised by opponents of remunicipalisation to assert that local authorities are not expressly empowered to collect household waste directly. Moreover, in *Nurendale v Dublin City Council*, obitar dicta statements by McKechnie J suggest that both the permitting requirements for waste collection operators and the limited nature of the mandatory obligation on local authorities to collect household waste suggests that the Waste Management Act 1996 seems “to contemplate that operators, other than local authorities, would be active in the collection of household waste”.[98] At the very least McKechnie J infers that local authorities would not be the only providers of household waste collection services. However, it should be noted that the issue of the statutory power of local authorities to directly collect household waste has not yet been the subject of litigation.

Despite the fact that local authorities directly provided household waste collection services for many years the ambiguity in the legislation could create a problem in relation to local authorities reasserting their role in the sector. Accordingly, the direct collection of household waste by local authorities might not provide the most reliable legal basis for the remunicipalisation of the household waste collection sector. It is also suggested that the Waste Management Act 1996 be amended to expressly empower local authorities to directly provide household waste collection services even where the mandatory obligation does not apply.

3.5 Summary

It is clear that the mandatory obligation on local authorities to collect or arrange for the collection of household waste is significantly restricted by the application of three exemptions that must be disapplied in order to engage this obligation. Moreover, there is also considerably uncertainty in relation to identifying the thresholds concerning the adequacy and availability of services and the reasonableness of costs. Accordingly, it is suggested that the mandatory obligation on local authorities to provide household waste collection services should be clarified and strengthened through legislative reform to ensure that all households have access to a waste collection service.

There is also significant ambiguity surrounding the power of local authorities to directly collect household waste. This

[96] Local Government Act 2001 Schedule 2, and Schedule 6 Part 1 Chapter 1 provided that the following towns were administered by borough corporations; Clonmel, Drogheda, Kilkenny, Sligo, and Wexford.

[97] Waste Management Act 1996 section 33(2).

[98] Nurendale (n 10) at [71].

uncertainty could undermine attempts to remunicipalise household waste collection sector. Accordingly, it is suggested that legislative reform is introduced to expressly state that local authorities are empowered to directly collect household waste even in circumstances where a mandatory obligation does not exist.

In the absence of legislative reform, the most reliable legal means of local authorities re-entering the household waste collection sector is through the discretionary power vested in local authorities pursuant to Section 33(5) of the Waste Management Act 1996. This provision enables local authorities to arrange for the collection of household waste and would provide local authorities with greater control in relation to the treatment of waste.

Finally, it should be noted that within the present legal framework, the economic viability of remunicipalisation in the household waste collection sector could be undermined by aggressive pricing strategies employed by some private operators who seek to target the most profitable collection routes while declining to provide services to less profitable areas. In many European countries the household waste collection sector is structured on the basis of a single service provider model thereby maximising economic efficiency in the sector and ensuring good service coverage. Accordingly, this Report will now examine the implications of competition law on the implementation of a single service provider model in Ireland.

Part IV – Competition Law Restrictions

4.1 Introduction

The purpose of this section is to examine how competition law may impact on the introduction of a single service provide model in the Irish household waste collection sector. To undertake this inquiry, it is necessary to examine both EU and Irish competition law to consider what obstacles and opportunities might exist to facilitate the remunicipalisation of the household waste collection sector through the exclusive delivery of services.

An attempt has previously been made to remunicipalise household waste collection services on this basis in the Dublin region through the waste management planning process. The *Nurendale v Dublin City Council*[99] case considered this attempt, thereby clarifying a number of issues in relation to how competition law impacts on remunicipalisation of waste collection services. Moreover, at EU level, the conflict between environmental standards, and competition policy has come to head in a number of important EU cases, and these matters will be examined below.

4.2 Irish Competition Law and *Nurendale*

The CCPC has explained that the household waste collection sector exhibits characteristics of a natural monopoly, meaning that efficiency is enhanced where services are provided by a single operator.[100] As explained in section 2.3 of this Report, the Irish household waste collection sector is atypical in a European context by not providing for a single service provider model (See also Annex I of this Report).[101] While the remunicipalisation of household waste collection services may seek to establish a more efficient service model based on the delivery of services by a single provider, such a policy is likely to be opposed private waste collection operators who may assert that their exclusion or restriction from the market infringes competition law. Sections 4, and section 5 of the Competition Act 2002, govern, respectively, agreements between undertakings that seek to restrict competition, and abuse of a dominant position. As the analysis below will illustrate, the *Nurendale* case demonstrates a number of legal obstacles that are likely to be faced in relation to the remunicipalisation of household waste collection services on the basis of a single service provider model.

<u>Nurendale (Panda Waste and Greenstar) v Dublin City Council</u>

This case concerned two separate complaints brought against the four Dublin local authorities by private waste collection companies Panda Waste, and Greenstar. These proceedings contained many similarities, and the key questions they posed were the same, so it is useful to consider them in tandem. The primary issue at hand was the agreement between the four Dublin local authorities to vary the Dublin Waste Management plan to provide for exclusive waste collection rights to local authorities.

[99] Nurendale (n 10).
[100] CCPC Report 2018 (n 2) at [5.5].
[101] Ibid at [3.11-3.17], [5.4].

Continued.

This variation would, in effect, exclude private waste collection companies from the provision of household waste collection services in the Dublin region, save for those operators who successfully tendered with the local authorities for the work. Justice McKenchie was asked to consider the competition law implications of excluding private entities from the waste collection sector, who had already developed a significant share in the market.

The *Nurendale* case provided a number of important conclusions for the purpose of this report:

1. Local Authorities, seeking to regulate the waste collection market, are subject to competition law (The Competition Act 2002).

2. The Local Authorities' agreement breached s.4 of the Competition Act, and no justification existed under s.4(5) such as to obviate that breach.

3. The Variation amounted to an abuse of a dominant position (as per s.5 of the Act)

In order to assess the Panda and Greenstar cases from a competition law perspective, Justice McKenchie was required to analyse the facts of the case under a number of key questions:

(i) Can local authorities be considered undertakings within the definition of the Competition Act?

(ii) If so, would a Variation (such as that contested in the Panda case) be contrary to section 4 of the Competition Act 2002? If so, is there an objective justification which would save the Variation under section 4(5) of the Competition Act 2002?

(iii) Are the local authorities dominant in their respective areas? If so, does re-municipalisation result in the abuse of a dominant position within the meaning of section 5 of the Competition Act 2002?

These issues will now be now be examined in turn having particular regard to the findings in *Nurendale*.

4.2.1 The Concept of "Undertakings"

A consideration of whether or not local authorities should be construed as undertakings and, therefore subject to competition law requires an examination of the nature of the regulatory functions that are exercised by local authorities within the household waste collection sector. Should the regulatory functions of a local authority fall within the category of an "economic activity" within the meaning of the Competition Act 2002, then that local authority may be considered an undertaking. Section 3 of the Competition Act 2002 provides that an undertaking is

> "an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service."

Furthermore, the Supreme Court has developed the definition of "for gain" as referring to

> "an activity carried on or a service supplied ... which is done in return for a charge or payment."[102]

[102] Deane v VHI [1992] 2 IR 319 at p 322.

While it is clear in that the provision of household waste collection services by local authorities amounts to an economic activity, there exists some potential for a local authority to distinguish the exercise of a regulatory function from its economic function. As explained in *Nurendale*, a local authority could be considered both an undertaking, and not an undertaking depending on the nature of the action they are conducting. Quoting the Advocate General Opinion in *Fenin,*[103] McKenchie J concluded that it was;

> "quite possible for an entity to be treated as an undertaking as regards some of its activities, while others fall outside the sphere of competition law."[104]

The High Court in *Nurendale* concluded that, given the Variation to the waste management plan for the Dublin region was "aimed at directly affecting the market for domestic waste collection",[105] the Variation was thereby an economic activity rather than an administrative activity. Accordingly, the Court held that the local authorities were undertakings for the purpose of competition law. A number of relevant cases were cited by the High Court in support of its conclusion (*MOTOE, Ryanair, and Wouters*),[106] and these cases provide guidance at EU level for assessing whether the exercise of regulatory powers is in fact economic in nature. *MOTOE* concerned an organisation involved in both economic and regulatory activities. The fundamental ruling relied on by the High Court in *Nurendale* that emerged from this case was that when a body,

> "which has public powers, operates on the same or on a connected market, and where, if its actions on the market are sufficient to render it an undertaking, the fact that it exercises public powers, which could be described as non-economic, will not deprive it of the status of an undertaking."[107]

The *Nurendale* case, and the clear economic consequences of remunicpalisation, are likely to apply to any future attempts by local authorities to exert greater control over the household waste collection sector by excluding or restricting participation by private operators. Accordingly, any such attempt by local authorities to exercise their regulatory functions in this way is likely to see them classified as undertakings and thereby render them subject to the rules of competition law.

4.2.2 Agreements and Concerted Practices

Following the classification of a local authority as an undertaking within the meaning of competition law, the court will then analyse the implications of section 4 of the Competition Act 2002. The purpose of section 4 is to regulate and restrict:

> "all agreements between undertakings, decisions by associations of undertakings and concerted practices

[103] Case C-205/03 P Federación Española de Empresas de Tecnología Sanitaria (FENIN) v Commission of the European Communities [2006] ECR I-06295, Opinion of AG Maduro.
[104] Nurendale (n 10) at [42].
[105] Ibid at [63].
[106] Case C-49/07 Motosykletistiki Osmospondia Ellados NPID (MOTOE) v Elliniko Dimosio [2008] ECR I-04863; Case T-196/04 Ryanair Ltd v Commission for European Communities supported by Association of European Airlines [2008] ECR II-03643; and Case C-309/99 Wouters v Algemene Raad van de Nederlandse Orde van Advocaten (Raan van de Balles van de Europese Gemeenschap intervening) [2002] ECR I-01577.
[107] Nurendale (n 10) at [59].

> which have as their object or effect the prevention, restriction or distortion of competition."

"Agreement" has been interpreted by the Courts broadly and such agreement "need not be written or binding."[108] Likewise, the term "concerted practice" is broad enough to encompass any form of collusion between undertakings which is anti-competitive.[109] With this threshold likely to be met by any local authorities seeking to reassert control over the household waste collection service through a regional waste management plan, it will be for the courts to decide if the agreement has, (a) as its object or effect, the prevention, restriction, or distortion of competition; and (b) If so, then the court may consider whether or not this restriction is justified under section 4(5) of the Competition Act 2002, as an objective justification. These issues will now be considered in turn.

(a) <u>Object or effect</u>

Provided that the standard for "agreement" is reached, the court will then examine the object or effect of such agreement. This examination is objective in nature, involving consideration of both the intended result of the agreement, and the ancillary effects that such an agreement may have on competition. Any attempt by a local authority to narrow the field of entry into the household waste collection market may be construed to restrict competition under section 4 of the Competition Act 2002. The view of the Court in *Nurendale* was that, given that the Variation sought "to remove private operators from a market in which there is currently competition",[110] and thereby introduce a single provider service model for particular areas as designated by the local authority, there was a "patent" restriction of competition.

(b) <u>Objective Justification (section 4(5) of the Competition Act 2002)</u>

Section 4(5) of the Competition Act 2002 seeks to ameliorate the application of competition law to restrictive practices where such a restriction

> "contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress."

Given the analysis in relation to the availability of household waste collection services and the environmental performance of the household waste collection sector in Part II of this Report, the objective justification may provide a substantial defence upon which to mitigate the application of the Competition Act 2002 to the remunicipalisation of household waste collection services. The key balance that must be struck in satisfying the criteria of section 4(5) of the Act is that, while improving the provision of the service, the parties to the agreement must also ensure that they are "allowing consumers a fair share of the resulting benefits", and, not imposing "terms which are not indispensable to those objectives."

Analysis of the scope of the benefits to consumers attributed to remunicipalisation of household waste collection services is beyond the scope of this report, but it is clear that a strict standard is applied to the objective justification under section 4(5) of the Competition Act 2002. Not only must the agreement that restricts competition sufficiently improve the delivery of the service, it must do so without engaging any

[108] Ibid at [79].
[109] Ibid.
[110] Ibid at [81].

dispensable terms in the process. Each element of the agreement must be considered by the Court to be indispensable to the aims of the agreement, and the restriction in competition that results must be compensated by a clear indication that benefits will be passed on to the consumer. The Court in *Nurendale* explained that improvement to household waste collection services must be measured against the system's current operation. Furthermore, the burden is on the proponents of such an agreement to establish that the benefits accrued from the agreement could not be achieved by any less restrictive measures.

4.2.3 Abuse of a Dominant Position

Section 5 of the Competition Act 2002 addresses the issue of dominance, and abuse of a dominant position within markets. The issue of whether local authorities are dominant in the household waste collection market and, and whether an increase in municipal control would amount to an abuse of a dominant position will now be examined. In *Nurendale* Justice McKenchie, assessed the dominance of the Dublin authorities by examining:

(a) the relevant market;

(b) the individual dominance of each authority;

(c) whether collection dominance exists between all four of the Dublin authorities.

In a general sense, an assessment guide for dominance from a competition perspective may be taken from EU Law. In *Aéroports de Paris v. Commission*,[111] the concept of "dominance" was described as

> "a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market."[112]

This position of strength is supplemented by statutory powers of local authorities as regulators in the waste collection sector. It was established by the High Court (and approved by the Supreme Court) in *Donovan v ESB*[113] that ESB's position of dominance was as a result of their power to

> "determine the conditions under which the supply of electricity will be given to customers of electrical contractors, and so, in effect, will determine what customers of electrical contractors will obtain electrical power and which will not."[114]

Furthermore in *Nurendale*, Justice McKenchie explained that the key question in relation to the identification of dominance is whether the undertaking;

> "is capable of acting independently of its competitors, consumers and customers, either by virtue of its economic power and influence, i.e. market share, or by virtue of some other reason, i.e. regulatory power."[115]

Therefore, an assessment of the dominance of local authorities' in the household waste collection sector, is likely to consider, not only the market share of the local authority, but also its ability to act independently of the market through its regulatory powers.

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[111] Case T-128/98 Aéroports de Paris v Commission [2000] ECR 2000 II-03929.
[112] Ibid at [3].
[113] Donovan v ESB [1994] 2 IR 305
[114] Ibid at p 318.
[115] Nurendale (n 10) at [132].

Once dominance has been identified, a Court will then proceed to examine whether there has been an abuse of a dominant position pursuant to section 5 of the Competition Act 2002. The Act itself provides a non-exhaustive list of what may constitute an abuse, including:

> "(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
>
> (b) limiting production, markets or technical development to the prejudice of consumers,
>
> (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
>
> (d) making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts."

An assessment of the existence of "abuse" of a dominant position within the meaning of section 5 of the Competition Act 2002 may be influenced significantly by the conclusions of the court in relation to section 4 of the Competition Act 2002 (See section 4.2.2 of this Report). The relevance of this connection was highlighted in *Nurednale*, which held that as the "agreement" between the Dublin authorities amounted to a restriction on competition that breached section 4 of the Competition Act 2002, then it follows that if the relevant authority is in a position of dominance, they have also "abused" that dominant position thereby infringing section 5 of the Competition Act 2002.

In the absence of a conclusion by the Court that there has been a breach of section 4 of the Competition Act 2002, then there are a number of other tests through which they may assess the "abuse" of a dominant position. It was held in *Aérport de Paris,*[116] and affirmed in *Nurendale,* that abuse will be held to exist where "an undertaking influences the structure of the market or seeks to strengthen its position on that market."[117] Furthermore, the activities that constitute abuse may be considered so regardless of how they are implemented, and irrespective of any fault.[118] Abuse of a dominant position has no objective statutory justification (akin to section4(5) of the Competition Act 2002), however, the ECJ and EU Commission have shown reverence for proportionality, and objective justification approach to this issue (in relation to Article 101 Treaty on the Functioning of the European Union).[119]

4.3 EU Competition Law (Article 101 – 106 TFEU)

Sections 4 and 5 of the Irish Competition Act 2002 are mirrored at EU level by Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).[120] These provisions offer support at EU level for the restrictions on anti-competitive agreements, and market dominance that are well established in Irish law. It should be noted, however, that

[116] Aérport de Paris (n 111).
[117] Nurendale (n 10) [170].
[118] Ibid at [138].
[119] Ibid at [139] – see cases Case 27/76 United Brands Company and United Brands Continentaal BV v Commission of the European Communities Chiquita Bananas [1978] ECR 207; Case T-30/89 Hilti AG v Commission of the European Communities [1991] ECR II-01439; Case 311/84 Centre Belge d'Etudes du Marché-Télémarketing (CBEM) v. CLT SA [1985] ECR 3261.
[120] Treaty on the Functioning of the European Union [2012] OJ C 326. See also Consolidated Version of the Treaty on European Union [2008] OJ C115/13 article 3(3) in relation to the promotion of social objectives.

remunicipalisation of the Irish household waste collection sector on the basis of a single service provider model is not specifically prevented by the requirements of EU law. The Waste Directives recognise the sovereign right of Member States to determine the organisation of their own waste management systems.[121] Indeed, in most Member States, household waste collection services are provided or controlled by public bodies (See Annex I of this Report).

Under EU regulation, the collection of waste is recognised as a service of "general economic interest" meaning that local authorities may obviate European competition law pursuant to Article 106 TFEU to the extent that this is necessary for them to perform their functions.[122] However, this exception to EU competition law is premised on the existence of a mandatory obligation on local authorities and a consequent absence of a "margin of manoeuvre" in discharging such an obligation.[123]

Furthermore, it is worth noting the reverence the ECJ has shown to the improvement of environmental standards, and how this improvement may offset competition law restrictions in some cases. Objective justification falls under Article 101(3) of the TFEU, and the criteria with which this is assessed mirrors that which is applied in relation to Section 4(5) of the Competition Act 2002 (See section 4.2.2 of this Report). The EU Commission's 1995 Competition Policy Report states that;

> "when the Commission examines individual cases, it weighs up the restrictions of competition arising out of an agreement against the environmental objectives of the agreement and applies the principle of proportionality in accordance with [ex] Article 85(3)."[124]

This statement accords with the integration principle embodied in Article 11 of the TFEU (ex Art 6 of TEC). It is worth noting that a number of EU cases on this topic have highlighted the Commission's willingness to view the relationship between economic benefits and environmental benefits as one of symbiosis, rather than adversary. In the *Carbon Gas Technology* case,[125] the Commission, having regard to the promotion of technical progress, granted an exemption in respect of an agreement concluded between a number of German companies aimed at developing a process for coal gasification, noting that;

> "using the resulting gas in the conversion process of power stations should be more efficient and less harmful to the environment than direct combustion of coal".[126]

In the *BBC Brown Boveri* case,[127] the Commission, approved an agreement between rival companies which related to the joint development of high-performance batteries for use in electrical vehicles, on grounds that the agreement promoted technical or economic progress. The Commission noted

[121] Waste Directive 2018 preamble [7].
[122] Nurendale (n 10) at [72].
[123] Ibid. See also Commission Communication of the 26th April 2006, COM (2006) 177 (Implementing the Community Lisbon programme: Social services of general interest in the European Union); and the Commission Staff Working Document, "Annexes to the Communication from the Commission on Social services of general interest in the European Union - Socio-economic and legal overview" at p 22 available at < http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2006/sec_2006_0516_en.pdf> (date accessed 2nd May 2019).
[124] XXV Report on Competition Policy (1995)
[125] Commission Decision 883/669, [1983] OJ L376/27.
[126] Ibid.
[127] Commission Decision 88/541, [1988] OJ L301/68.

the close link between that ground and the resultant benefits to consumers. The rationale for the exemption was explained on the basis that the co-operation agreement facilitated;

> "improvement of the quality of life of consumers through the development of batteries for vehicles."[128]

In addition to economic benefit, it should also be noted that the Commission has shown regard to the environmental benefits accrued by the consumer as a result of certain anti-competitive agreements. In the *Exxon/Shell* case, the Commission considered the environmental benefits of a joint venture

> "in assessing the benefit to consumers, stating that the avoidance of certain environmental risks 'will be perceived as beneficial by many customers at a time when the limitation of natural resources and threats to the environment are of increasing public concern."[129]

4.4 Summary

From both a national, and EU competition law perspective, it is clear from the foregoing analysis that there are likely to be significant legal issues regarding attempts by local authorities to remunicipalise household waste collection services by restricting the presence of private operators within the sector. The Courts have held that local authorities are "undertakings" and are thereby subject to competition law rules relating to agreements, concerted practices, and abuse of a dominant position. Accordingly, the ability of local authorities to exclude or restrict the participation of private operators within the household waste collection sector is significantly curtailed by the requirements of competition law. While it could be argued that local authorities are enabled in limited circumstances to restrict the participation of private operators in the market on the basis of objective justifications (See section 4.2 and 4.3 of this Report), this approach is circumstance specific, and might not provide a reliable basis for the implementation of general policy. Given the current legal framework, the re-entry of local authorities to the household waste collection sector will most likely have to be on the basis of participation in the present "side by side" competition model.

However, it should be noted that the remunicipalisation of the Irish household waste collection sector on the basis of a single service provider model is not specifically prevented by the requirements of EU law. The Waste Directives recognise the sovereign right of Member States to determine the organisation of their own waste management systems.[130] As explained in section 2.3 of this Report, the Irish model of household waste collection is atypical in the European context, with most Member States providing for the delivery of household waste collection services by or on behalf of public bodies. Under EU regulation, the collection of waste is recognised as a service of "general economic interest" meaning that local authorities may obviate European competition law pursuant to Article 106 TFEU to the extent that this is necessary for them to perform their functions. Accordingly, legislative reform could be initiated to enable the introduction of a single provider model for the delivery of household waste collection services in Ireland without infringing EU competition law. Such reform could ensure the economic viability of remunicipalisation in the longer term and thereby assist the implementation of remunicipalisation as a general policy.

[128] Ibid.
[129] Commission Decision 94/322, [1994] OJ L144/20.
[130] Waste Directive 2018 preamble [7].

Part V – Implementation of Remunicipalisation through Public Procurement

5.1 Introduction

As explained in section 3.2 of this Report, local authorities are vested with a discretionary power to arrange for the collection of waste on their behalf. This Report identifies such an approach as the most reliable basis for the re-entry of local authorities to the household waste collection sector having regard to the present legal framework (See Part III of this Report). The arrangement of waste collection services would involve a procurement process being undertaken local authorities which almost inevitably come within the scope of public procurement law. Moreover, if the direct provision of waste collection services was pursued by local authorities, then the acquisition of fleet and equipment would be required, and this would also be likely to come within the scope of public procurement law. Accordingly, public procurement law will be examined to assess how procurement processes could be utilised to enhance environmental and social standards in the household waste collection sector.

Public procurement law establishes a framework for contracting authorities to procure supplies, services and works in a manner that does not distort competition. This framework sets out a number of options for conducting procurement procedures which can be designed to meet the needs of contracting authorities. Public procurement can also be undertaken strategically to incorporate environmental, social and labour policy objectives thereby ensuring that public standards are observed in relation to activities such as household waste collection. Moreover, the incorporation performance clauses into contracts can provide contracting authorities with additional control over services.

In contrast to Ireland, the experience in many countries has been to favour a competitive tendering process for the household waste collection market. This approach takes advantage of the efficiencies associated with single server provision while ameliorating any possible monopoly effects.[131]

5.2 General Rules of Public Procurement

Local authorities are vested with a general power to enter contracts for the supply of goods and services under section 229 of the Local Government Act 2001.[132] Moreover, section 33(5) of the Waste Management Act 1996 specifically empowers local authorities to make arrangements for the collection of waste within their functional areas or part thereof. Any such contract would come within the scope of Directive 2014/24/EU (the Public Authorities Contracts Directive) where the contract has an estimated value above €207k.[133] This Directive has been transposed in Ireland through the European Union (Award of Public Authority Contracts)

[131] CCPC Report 2018 (n 2) at [2.14] Countries such as Estonia, Finland, France, Italy, Latvia, Lithuania, Poland, Slovakia, Sweden, and the United Kingdom employ some form of competitive tendering in the delivery of household waste collection services.

[132] Local Government Act 2001 section 229 as amended by the Local Government Reform Act 2014 section 5(1) and schedule 1 part 1.

[133] Parliament and Council Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC [2104] OJ L 94 article 4(c). See also European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016) reg. 5(c).

Regulations 2016.[134] It is likely that the value threshold will be reached in most circumstances where local authorities procure waste collection supplies and services having regard to the general costs involved. However, where a local authority seeks to acquire waste collection supplies or services with a contract value below €209k then they must comply with the national guidelines for sub-threshold procurement.[135] The national guidelines set out more informal procedures, however, purchasers are required to test the market, and an open procurement procedure must be undertaken for procurements with an estimated value or between €25k and €209k.[136]

Contracting authorities are prohibited from designing procurement procedures with the intention of avoiding procurement rules, or for the purpose of artificially narrowing competition.[137] Competition will be considered to be artificially narrowed where the design of a procurement procedure intentionally favours or disadvantages some economic operators.[138] It is a principle of public procurement law that contracting authorities must act transparently and proportionately, and that they must treat all economic operators equally, without discrimination.[139] To give effect to these principles, various requirements have been established in relation to the publication of notices, invitations to candidates, availability of procurement documents, and informing candidates of decisions.[140] It is also a principle of public procurement law that environmental, social and labour law rules must observed in the performance of public contracts.[141]

It is important that procurement processes are managed effectively. For example, in Estonia there has been experience of some municipalities lacking the capacity and resources to properly manage the procurement of waste collection services.[142] If a tender decision is overturned by a legal challenge, the delivery of services could be disrupted.[143] While the Netherlands provide that the former contract holder continues to deliver services in the interim this approach could incentivise an unsuccessful tenderer to institute a legal challenge.[144] However, provided that procurement procedures are designed effectively, and tender documents accurately describe the needs of the contracting authority then public procurement processes should be legally sound and should not result in the distortion of competition.

[134] European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016).
[135] Office of Government Procurement, "Public Procurement Guidelines for Goods and Services Guidelines Version 2 " (2019) at p 36 available at < https://ogp.gov.ie/public-procurement-guidelines-for-goods-and-services/> (date accessed 14th May 2019).
[136] Ibid. at p 35.
[137] 2016 Public Authority Contracts Regulations (n 134) reg. 18(2); 2014 Public Authority Contracts Directive (n 133) article 18(1).
[138] 2016 Public Authority Contracts Regulations (n 134) reg. 18(2)-(3); 2014 Public Authority Contracts Directive (n 133) article 18(1).
[139] 2016 Public Authority Contracts Regulations (n 134) reg. 18(1); 2014 Public Authority Contracts Directive (n 133) article 18(1).
[140] 2016 Public Authority Contracts Regulations (n 134) reg.48-55; 2014 Public Authority Contracts Directive (n 133) articles 48-55.
[141] 2016 Public Authority Contracts Regulations (n 134) reg. 18(4), schedule 7; 2014 Public Authority Contracts Directive (n 133) preamble [40], article 18(2), Annex X.
[142] Organisation for Economic Co-operation and Development, "Environmental Performance Reviews: Estonia" (2017) at pp 30-31.
[143] Ibid at p 31.
[144] Ibid at p 146.

5.2.1 Public Procurement and Household Waste Collection Services

There are a number of procedural options that can be utilised to conduct a procurement procedure.[145] The choice of procedure will depend on a number of factors such as the needs of the contracting authority and the current availability of solutions within the market.

The public procurement framework facilitates aggregated procurement, which may be pertinent to the procurement of household waste collection services.[146] For example, a "framework agreement" could be utilised by one or more local authorities, or alternatively on a regional or national basis to procure household waste collection services. A "framework agreement" is an agreement between one or more contracting authorities and one or more economic operators which establishes the terms that will govern the contracts to be awarded to such operators within a specified time period.[147] This affords contracting authorities both flexibility and certainty by identifying suitable suppliers that can meet their needs over a period of time.[148]

Framework agreements could also be subdivided into lots for which operators would be required to tender.[149] The geographical demarcation of lots could be tailored to ensure a balance between low and high profitable areas for the collection of household waste. This approach could improve the coverage of waste collection routes thereby enhancing the availability of services for householders.

5.2.2 Exclusion of Operators from Public Procurement Processes

Procurement law enables contracting authorities to exclude operators from a procurement process to ensure the observance of the environmental, social and labour law and other legal requirements.[150] Exclusion grounds may be mandatory[151] or non-mandatory,[152] and verification procedures are also set out to ensure accountability for exclusions. The exclusion of candidates must be proportionate[153] and time limitations are placed on the consideration of offences and wrongdoing.[154] Moreover, candidates must also be given the opportunity to demonstrate

[145] The 2016 Public Authority Contracts Regulations (n 134) reg. 27-32 provides a number of options for contracting authorities such as; an open procedure; a restricted procedure; a competitive procedure with negotiation; a competitive dialogue; or an innovation partnership procedure; and a negotiated procedure without prior publication.

[146] See 2016 Public Authority Contracts Regulations (n 134) reg. 33; 2014 Public Authority Contracts Directive (n 133) article 33-39. Other techniques for aggregated procurement include; dynamic purchasing systems; electronic auctions; electronic catalogues; centralised purchasing; occasional joint procurement; joint procurement with contracting authorities from other Member States.

[147] 2016 Public Authority Contracts Regulations (n 133) reg. 2, 33. The maximum period is 4 years.

[148] See 2014 Public Authority Contracts Directive (n 133) preamble [60]-[61].

[149] 2016 Public Authority Contracts Regulations (n 134) reg. 46.

[150] 2014 Public Authority Contracts Directive (n 133) preamble [40].

[151] 2016 Public Authority Contracts Regulations (n 134) reg 57. Mandatory exclusion grounds include inter alia; participating in a criminal organisation; corruption; fraud; terrorist offences; child labour and human trafficking and non-compliance with taxation and social security obligations.

[152] Ibid reg. 57. Non-mandatory grounds include not complying with environmental, social and labour law in the performance of a public contract; is bankrupt or subject to insolvency or winding-up proceedings; is guilty of grave professional misconduct; has engaged in uncompetitive behaviour; conflicts of interest cannot be remedied effectively; where the operator has been significantly or persistently deficient in performing substantive requirements under a prior public contract resulting in sanctions; where the operator has been guilty of serious misrepresentation; or where the operator has tried to unduly influence a procurement process undertaken by the contracting authority.

[153] Ibid reg. 57(7); 2014 Public Authority Contracts Directive (n 133) article 57(3).

[154] 2016 Public Authority Contracts Regulations (n 134) reg. 57(3), 57(19); 2014 Public Authority Contracts Directive (n 133) article 57(2).

their capacity to perform the contract notwithstanding the commission of previous offences or wrongdoing.[155] Where an economic operator provides sufficient evidence that it has taken measures which demonstrate its reliability, then the contracting authority shall not exclude that operator.[156]

The performance of public contracts must comply with all the requirements of environmental, social and labour law. This includes all applicable obligations established by national law, EU law, collective agreements and also the international environmental, social and labour law instruments which are listed in Schedule 7 of the 2016 Public Authority Contracts Regulations.[157] Accordingly, compliance with the requirements of Waste Management Act 1996 by private operators is necessary. Moreover, the social and labour standards that must be complied with include a number of International Labour Organisation (ILO) Conventions which require that workers have the right to join organisations of their own choosing without previous authorisation of their employer;[158] and that workers shall be free from acts of anti-union discrimination.[159] Moreover, workers must not be required to relinquish their trade union membership, or be dismissed or otherwise prejudiced by reason of union membership where their employers are performing public contracts.[160]

Accordingly, public procurement law provides a number of grounds to justify the exclusion of unsuitable operators from being awarded public contracts. Given that some operators in the Irish waste collection sector have accumulated a number of convictions in relation to environmental offences in recent years (See section 2.5 of this Report), it is possible that some current operators could be excluded from the delivery of waste collection services on behalf of local authorities. Such exclusions could have a stronger deterrent effect than the financial penalties imposed by the Courts thus far, and thereby motivate greater compliance with environmental, social and labour standards in the Irish waste collection sector.

5.2.3 Exclusion of Abnormally Low Tenders

Procurement law also seeks to prevent private operators from submitting abnormally low tenders which may be based on unsound assumptions or unsustainable practices.[161] Accordingly, where an operator has submitted an abnormally low tender that does not comply with environmental, social or labour law then the contracting authority must reject the tender.[162]

There is evidence of aggressive pricing in the waste collection industry. For example, in 2016 the attempted introduction of mandatory "pay by weight" (PBW) charging for household waste collection services was undermined by the aggressive pricing strategies of a number

[155] 2016 Public Authority Contracts Regulations (n 134) reg. 57(12)-(16); 2014 Public Authority Contracts Directive (n 133) article 57(6).
[156] Ibid.
[157] 2016 Public Authority Contracts Regulations (n 134).
[158] ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise Article 2.
[159] C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Article 1-2.
[160] C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Article 1(2)(b)
[161] 2014 Public Authority Contracts Directive (n 133) preamble [103].
[162] 2016 Public Authority Contracts Regulations (n 134) reg. 69; 2014 Directive (n 13) Article 18(4), 69(3). An abnormally low tender must also be rejected where it is established that the low price is a result of the operator obtaining State aid which is incompatible with internal market.

of waste collection operators in Dublin.[163] The mandatory requirement that contracting authorities must reject abnormally low tenders where an operator does not provide a satisfactory explanation for the price, could help prevent a "race to the bottom" whereby some waste collection operators might attempt to compete on the basis of unsustainable practices and pricing.

5.3 Strategic Public Procurement

The European Commission has estimated that public procurement expenditure in the EU constitutes 14% of GDP.[164] Accordingly, public procurement has the ability to significantly influence production and consumption trends, where "green public procurement" (GPP) or "socially responsible public procurement" (SRPP) practices are implemented.[165] A constitutional basis for the use GPP is provided by the "integration principle" as set out in Article 11 of the Treaty on the Functioning of the European Union (TFEU).[166] This principle provides that environmental protection requirements must be integrated into the implementation of EU policies and activities for the purpose of promoting sustainable development.

5.3.1 Green Public Procurement

The Commission has defined "Green Public Procurement" as;

> "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured."[167]

Accordingly, it can generally be stated that GPP is a voluntary process whereby contracting authorities consider both the economic and environmental costs of procurement for the entire life cycle of the supplies, services, and works.[168]

The Commission has established a number of GPP Criteria to enable contracting authorities to formulate technical specifications and award criteria for tenders without negatively impacting on competition.[169] The Commission has addressed 19 "priority" areas of activity including *inter alia*; cleaning products and services; electricity; food and catering services; road transport; road lighting and traffic signals; textiles; and waste water infrastructure. [170]

The relevant GPP category for the procurement of waste collection supplies and services is the GPP Criteria for Road Transport

[163] KHSK Economic Consultants, "Report to Department of Communications, Climate Action & Environment: Review of the Obstacles that Hindered the Planned Introduction of Pay by Weight Charging in July 2016 Final report" (2017) at p 41, at [6-7] p ii.available at <https://www.dccae.gov.ie/en-ie/environment/publications/Documents/41/Review%20of%20the%20Obstacles%20to%20PBW%20Final%20Report.pdf > (date accessed 27th January 2019).
[164] European Commission, "Strategic Public Procurement: Facilitating Green, Inclusive and Innovative Growth" 12(3) European Procurement & Public Private Partnership Law Review (2017) at p 219.
[165] Commission Communication of the 16th July 2008, COM (2008) 0400 (on procurement for a better environment) at [1.1].
[166] TFEU (n 114).
[167] Commission Communication on Procurement 2008 (n 165) at [3.1].
[168] Environmental Protection Agency, "Green Procurement: Guidance for the Public Sector" (2014) at p 2 available at < http://www.epa.ie/pubs/reports/other/corporate/olg/greenprocurementguidanceforthepublicsector.html> (date accessed 25th February 2019).
[169] Commission Communication on Procurement 2008 (n 165) at [2] and [3.2].
[170] European Commission, Environment, GPP Criteria. Available at < http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm> (date accessed 20th February 2019).

which addresses the purchase or lease of waste collection vehicles, and the acquisition of waste collection services.[171] This Criteria seeks to promote lower emissions and noise impacts through the incorporation of tailored technical specifications and award criteria. The Criteria distinguishes between "core" and "comprehensive" criteria which respectively delineate key and enhanced levels of environmental performance. The core criteria ensure basic legal compliance while limiting the verification burden and additional costs on contracting authorities.[172] The comprehensive criteria sets out options for enhanced levels of environmental performance which may result in higher costs and an additional verification burden on contracting authorities relative to other purchase options with the same level of functionality.[173] The Commission's GPP Criteria in relation to both the purchase or lease of waste collection vehicles;[174] and the provision of waste collection services,[175] are set out in Annex III of this Report.

Accordingly, the remunicipalisation of household waste collection services either directly by local authorities, or on behalf of local authorities creates significant opportunities to improve environmental performance in the sector through strategically applying GPP standards.

5.3.2 Socially Responsible Public Procurement

The Commission has observed that there is a growing concern in some countries that the traditional mechanisms for promoting social justice and cohesion are not adequate.[176] Accordingly, the Commission has suggested that Socially Responsible Public Procurement (SRPP) could be a useful mechanism in the advancement of sustainable development.[177] The rationale underpinning SRPP is that public spending power can be utilised to influence supply chains by incentivising private operators to develop "socially responsible management".[178] In particular, SRPP can be an effective tool where budgetary constraints on public authorities limit their ability to pursue direct intervention to achieve social objectives.[179]

The Commission defines SRPP as

> "procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labour rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility (CSR), while observing the principles enshrined in the Treaty for the European Union (TFEU) and the Procurement Directives."[180]

In 2010, the Commission published *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement* which

[171] European Commission, "Revision of the EU Green Public Procurement Criteria for Transport" (2019) available at < http://ec.europa.eu/environment/gpp/pdf/criteria/eu_gpp_transport_technical_report_final.pdf> (date accessed 17th February 2019).
[172] Ibid. at p 7.
[173] Ibid.
[174] Ibid. at p 69.
[175] Ibid. at p 76.
[176] European Commission, "Buying Social A Guide to Taking Account of Social Considerations in Public Procurement" (2010) p 9 available at < https://europadecentraal.nl/wp-content/uploads/2013/01/Handbook-Buying-Social.pdf> (date accessed 17th February 2019).
[177] Ibid. at p 7.
[178] Ibid. at p 5.
[179] Ibid. at p 10.
[180] Ibid. at p 7

seeks to assist contracting authorities in integrating social and labour considerations into their procurement practices.[181] Such considerations may include; the creation of employment opportunities,[182] promoting "decent work";[183] promoting compliance with 'social and labour rights;[184] social inclusion;[185] accessibility and design for all;[186] ethical trade;[187] corporate social responsibility;[188] human rights;[189] promoting small and medium enterprises;[190] and wider compliance with social standards.[191] However, the Commission has noted that the status of these social policy objectives differs across Member States,[192] and this probably explains why the Commission has not yet published a specific criteria detailing technical specifications or award criteria in relation to the advancement of social and labour objectives.

The Commission has stated that contract performance clauses are generally the most appropriate stage of procurement for the incorporation of SRPP considerations.[193] Moreover, the 2014 Public Authority Contracts Directive identifies a number of examples of social considerations that can be included as this stage of the procurement process such as; the promotion of equality of women and men in the workplace; increased participation of women in the labour market; the reconciliation of work and private life; and compliance with International Labour Organisation (ILO) Conventions.[194] The Commission has observed that some contracting authorities have begun to include clauses relating child labour into their contract performance clauses.[195] For example, Paris City Council has incorporated fundamental labour rights into its contract performance requirements for the acquisition of clothing for staff.[196]

Accordingly, SRPP could assist in the advancement of certain social objectives and improve the working conditions for employees in the waste collection sector. It could empower employees in the exercise of their rights such as participation in trade unions, and thereby assist employees in obtaining better job security and pay.

5.4 Summary

The forgoing assessment of public procurement law and policy demonstrates the opportunities that would available upon remunicipalisation to advance environmental,

[181] Ibid. at p 5
[182] Ibid. at p 7. Employment opportunities may include; the promotion of youth employment; the promotion of gender balance; measures to address sectoral and occupational segregation; opportunities for the long-term unemployed and for older workers; diversity policies; employment opportunities for people with disabilities.
[183] Ibid. at pp 7-8.
[184] Ibid. at p 8. Social and labour rights can include; compliance with domestic law and collective agreements that comply with EU law; compliance with gender equality; compliance with occupational health and safety law; non-discrimination.
[185] Ibid. Social Inclusion can include; non-discrimination between types of firms; promoting supportive environments for people with disabilities.
[186] Ibid. at p 9. Accessibility and design for all can include; technical specifications to procure goods and services that are accessible to all.
[187] Ibid. at p 9.
[188] Ibid. Corporate social responsibility involves companies voluntarily going legal requirements in pursuit of environmental and social objectives.
[189] Ibid.
[190] Ibid. Small and medium enterprises may enjoy greater access to public procurement by reducing the costs and the burdens of participating in public procurement processes.
[191] Ibid. at p 5.
[192] Ibid. at p 9.
[193] Ibid. at p 44. The SRPP Guide explains that the inclusion of social objectives in contract performance clauses must be linked to performance of the contract; must be included in the contract notice; and must not breach internal market rules.
[194] 2014 Public Authority Contracts Directive (n 133) preamble [98].
[195] Commission Buying Social Guide 2010 (n 176) at p 47.
[196] Ibid. at p 47.

social and labour policy through the procurement of waste collection supplies and services. The setting of technical specifications and awards criteria could raise environmental standards in the industry by favouring more sustainable practices. Moreover, contract performance clauses could help to regulate the environmental performance of waste collection operators and also ensure that employees are not prejudiced in the exercise of their rights under labour law.

The ability to exclude poorly performing operators from procurement procedures could also operate as a powerful deterrent in motivating regulatory compliance. Such exclusions could have grave financial consequences for waste collectors and might thereby operate as a stronger deterrent than the financial penalties which have been imposed by the Courts against some waste collection operators thus far. Accordingly, public procurement rules together with strategic implementation has the potential to significantly improve the environmental and social performance of the Irish household waste collection sector. However, it should be noted that public procurement processes must be designed effectively, and tender documents must clearly describe the requirements of contracting authorities in order to ensure that such processes are legally and procedurally sound.[197]

[197] Commission Strategic Public Procurement 2017 (n 164) at p 219.

Part VI – Accountability in the Local Government Sector

6.1 Introduction

As explained in Part II of this Report, there are significant problems regarding the compliance of some waste collection operators with their environmental obligations and this could be undermining the capacity of the State to achieve is national and EU environmental objectives.[198] Household waste represents around 10% of the total waste generated in Ireland,[199] and therefore effective household waste collection is an important element in Ireland achieving its environmental objectives and targets under laws recently adopted by the EU (See section 2.2 of this Report). The approach in many EU countries has been to ensure that public control over the household waste collection sector is maintained at local level (See Annex I of this Report). Accordingly, this Report will now examine how governance at local level in Ireland could instil greater accountability in the household waste collection sector and thereby assist the State to achieve its environmental objectives and targets.

Local authorities are subject to a number of processes which instil democratic, environmental and financial accountability in the local government sector. Local authorities are held accountable by the elected members, the electorate, central government, financial auditors, oversight bodies, independent governmental agencies, the Ombudsman and also through the media.[200] Accordingly, the remunicipalisation of household waste collection services could translate the application of these accountability mechanisms into the household waste collection sector.

6.2 The Local Government Sector

The overarching purpose of local government has been described as the promotion of

> "the wellbeing and quality of life of citizens and communities, through effective, accountable and democratic representation, and efficient performance of functions and delivery of services at the local level."[201]

Local authorities have been conferred with a wide range of functions which they are required to carry out.[202] They are also empowered to carry out any ancillary functions that are necessary, advantageous or desirable towards the performance of the functions conferred on them.[203]

The benefits of performing governmental functions and delivering services locally is recognised in the Government's *Putting People First: Action Programme for Effective Local Government* which sets out a number of objectives and principles for reform.[204] For example, the Action Programme provides for the principle that subsidiarity at local level should be enhanced by devolving more decision-making, thereby providing local communities with more control over a greater

[198] CCPC Report 2018 (n 2) at [5.9].
[199] EuroStat Waste Generation Statistics 2016 (n 8).
[200] Callanan 2018 (n 31) at p 214.
[201] Department of the Environment, Community and Local Government, "Putting People First: Action Programme for Effective Local Government" (2012) at p 1 available at < https://www.housing.gov.ie/sites/default/files/publications/files/putting_people_first_-_action_programme_for_effective_government.pdf> (date accessed 11th May 2019).
[202] Local Government Act 2001 section 63(1)(b).
[203] Local Government Act 2001 section 63(1)(c)-(d), 65.
[204] Action Programme for Effective Local Government 2012 (n 201).

range of matters.[205] The Programme seeks to ensure that a wider range of functions are discharged at local level thereby reversing the trend of local government being "bypassed" in Ireland.[206] The Programme states that it is a principle of reform that the first port of call should be to solve problems at local level.[207] The Action Programme notes that this approach does not imply fragmentation as local authorities have a strong capacity to collaborate and are capable of adhering to wider norms in the delivery of services.[208]

In contrast to approach of the Action Programme, the CCPC has recommended that a national waste regulator be established which would be empowered to administer a system of economic licensing for household waste collection services including the power to grant exclusive licences in specified geographic areas, and the power to determine collection routes.[209] However, it is suggested that the CPCC proposal is contrary to the policy "vision for local government" contained in the Action Programme for Effective Local Government which commits to ensuring that

> "No separate structures or organisations of public service or administration will be established outside of the local government system unless necessitated by clearly demonstrated exceptional circumstances"[210]

While there are a number of problems in the household waste collection sector (See Part II of this Report), it is unlikely that these matters could not be addressed appropriately at local level through greater control by local authorities. Some of the most relevant accountability mechanisms in the local government sector will now be examined.

6.3 Democratic Accountability

The Constitution recognises the role of local government in providing a forum for the democratic representation of local communities.[211] Moreover, Section 64 of the Local Government Act 2001 provides that it is a reserved function of local authorities to appropriately represent the interests of the local community, providing a forum for democratic representation and civic leadership.[212] Rationales for local government include facilitating the right of citizens to express their views on governmental decision-making, and also that participation in decision-making leads to better decisions and greater ownership of policies within local communities.[213]

The democratic accountability of local authorities to the electorate and the Elected Members would provide scrutiny of environmental performance and could also assist in identifying publicly acceptable standards. As explained in Part V of this Report, strategic public procurement enables the incorporation of environmental, social and labour standards into procurement processes. It is suggested that policy in relation adopting enhanced standards in the delivery of household waste collection services could be assisted through the democratic process at local level,[214] particularly through the advisory support of local authority Environmental Strategic Policy Committees.[215] Moreover,

[205] Ibid pp 5-6.
[206] Ibid.
[207] Ibid.
[208] Ibid at p 2.
[209] CCPC Report 2018 (n 2) at [5.25]
[210] Action Programme for Effective Local Government 2012 (n 201) at pp 2-3.
[211] Bunreacht na Eireann Article 28A.
[212] Local Government Act 2001 section 63(1)(a), 64.
[213] Callanan 2018 (n 31) at pp 198-199.
[214] Local Government Act 2001 section 130.
[215] Local Government Act 2001 section 48.

waste charge waiver schemes might better respond to social needs through deliberation and adoption locally.

6.4 Environmental Accountability

Section 59 of the Waste Management Act 1996 provides that each local authority is individually responsible for the supervision and enforcement of the relevant provisions of the Act within their functional areas.[216] However, while local authorities are generally independent in the performance of their functions,[217] under certain statutes such as the Waste Management Act 1996 the performance of such functions remains primarily the responsibility of the Minister.[218] Accordingly, the Minister for Communications, Climate Action and Environment may issue policy directions to local authorities which must then have regard to such directions in the performance of their functions under the Waste Management Act 1996.[219] However, it should be noted that the Minister is not empowered to intervene in relation to the performance of local authority functions in particular circumstances.[220] Accordingly, the Minister's power only relates to policy oversight of local authorities in the performance of their waste management functions.

The environmental performance of local authorities is also overseen by the EPA.[221] The EPA is vested with powers to request information from local authorities,[222] conduct assessments of environmental performance by local authorities,[223] issue advice and recommendations; and provide assistance and guidance to local authorities.[224] Moreover, where the EPA is not satisfied with the performance of a local authority it may issue a direction to that local authority.[225] The oversight provided by the EPA should ensure that local authorities would be held accountable for their environmental performance on their re-entry to the household waste collection sector.

The performance of local authorities in relation to the delivery of services is also reviewed by the National Oversight and Audit Commission (NOAC).[226] The NOAC independently reviews the performance of local authorities across a number of service

[216] The National Waste Collection Permit Office (NWCPO) which is operated by Offaly County Council is responsible for the administration of the waste collection permitting system on behalf of all local authorities.
[217] Local Government Act 2001 section 63(3).
[218] Local Government Act 2001 section 63(2)(a), Schedule 12.
[219] Waste Management Act 1996 section 60(1)-(2).
[220] Waste Management Act 1996 section 60(3) as inserted by the Minister for the Environment and Local Government (Performance of Certain Functions) Act 2002 section 3. Where the Minister issues a policy direction to a local authority then such direction must be laid before each House of the Oireachtas, and a notice of giving the direction must be published in the Iris Oifigiuil.
[221] Environmental Protection Agency Act 1992 section 63 as replaced by the Protection of the Environment Act 2003 section 13.
[222] Environmental Protection Agency Act 1992 section 63(1) as replaced by the Protection of the Environment Act 2003 section 13. Local authorities must comply with such requests.
[223] Environmental Protection Agency Act 1992 section 63(2) as replaced by the Protection of the Environment Act 2003 section 13. Local authorities are obliged to co-operate with the EPA in relation to such assessments.
[224] Environmental Protection Agency Act 1992 section 63(3)(a)-(b) as replaced by the Protection of the Environment Act 2003 section 13.
[225] Environmental Protection Agency Act 1992 section 63(3)-(8) as replaced by the Protection of the Environment Act 2003 section 13. Where a local authority fails to comply with such direction, then the local authority will be guilty of an offence.
[226] Local Government Act 2001 section 126A-126L as inserted by the Local Government Reform Act 2014 section 61.

sectors including waste management.[227] The NAOC publishes performance indicator data in relation to local authorities services which enables comparisons and benchmarking between the performance of local authorities.[228]

Accordingly, local authorities are subject to considerable oversight in relation to their environmental performance which would be transferred to the household waste collection sector upon remunicipalisation. This oversight could ensure scrutiny of the household waste collection sector and thereby facilitate the review of environmental performance towards the achievement of national and EU waste management targets and objectives.

6.5 Financial Accountability

Local authorities are subject to a significant level of financial accountability which could help to ensure that the public gets value for money in relation to the delivery of household waste collection services upon remunicipalisation.

Local authorities are subject to audit by the Comptroller and Auditor General in relation to monies provided by the Oireachtas through the Local Government Fund.[229] This review mechanism seeks to ensure that Oireachtas funds are used for the purpose for which they were provided.[230] Local authorities are also financially accountable to Central Government Departments which are themselves subject to audit by the Comptroller and Auditor General.

The National Oversight and Audit Commission may also review the financial performance of local authorities having regard to their available resources with a view to ensuring that local authorities provide value for money in the delivery of services.[231] In relation to the procurement of supplies, services and works, local authorities must be able to justify their decision-making.[232] Moreover, the Local Government Audit Service also undertakes external auditing of local authorities thereby providing an independent assessment and appraisal of the local authority functions.[233]

Lastly, in recent years there has been an increased emphasis on governance and risk management in the local government sector.[234] Staff at senior management level are responsible for ensuring that procedures are in place to safeguard local authority assets and ensure that financial information is reliable.[235] This approach to service delivery could ensure effective financial management in the delivery of household waste collection services.

[227] Local Government Act 2001 section 126B-126C(1)(a) as inserted by the Local Government Reform Act 2014 section 61. See also National Oversight and Audit Commission, "Local Authority Performance Indicator Report 2017" (2018) p 22 available at < http://noac.ie/wp-content/uploads/2018/09/NOAC-Performance-Indicators-Report-2017.pdf> (date accessed 12th May 2019).
[228] Callanan 2018 (n 31) at p 218.
[229] Comptroller and Auditor General (Amendment) Act 1993 section 3.
[230] Office of the Comptroller and Auditor General, "Report on the Accounts of the Public Service 2017" at pp 33, 39 available at < https://www.audit.gov.ie/en/Find-Report/Publications/Report%20on%20the%20Accounts%20of%20the%20Public%20Services/Report%20on%20the%20Accounts%20of%20the%20Public%20Service%202017.html> (date accessed 12th May 2019).
[231] Local Government Act 2001 section 126C(1)(a) as inserted by the Local Government Reform Act 2014 section 61.
[232] Office of Government Procurement Guidelines 2019 (n 135) at p 16.
[233] Local Government Act 2001 section 116.
[234] Callanan 2018 (n 31) at pp 217-218.
[235] Ibid.

6.6 Summary

The delivery of services by local authorities is subject to scrutiny by means of a number of processes which instil accountability in the local government sector. These processes ensure that local authorities are democratically, environmentally, and financially accountable in relation to the performance of their functions. The governance function of local authorities could also assist in the identification of acceptable standards in the household waste collection sector *vis a vis* strategic procurement and waste charge waiver schemes. Given the policy commitment of Government to reinvigorate the local government sector through the allocation of increased responsibilities to local authorities it is suggested that remunicipalisation could be a viable policy option, particularly in light of the more ambitious targets and objectives which have recently been provided for under EU law.

Part VII – Conclusion

Having regard to the deficiencies identified in relation to the environmental performance of some private waste collection operators, and the need to achieve ambitious environmental objectives under recently adopted EU law, it could be argued that local authority control needs to be reasserted over the household waste collection sector. There is evidence that around one quarter of households do not participate in a household waste collection service and this may be attributable to issues regarding the accessibility and affordability of services. In some areas there is poor service coverage by private operators who are only targeting the most profitable collection routes.[236] There has also been a decline in the provision of waste charge waivers to low income households. In contrast, when the Dublin authorities provided household waste collection services 100% of households were provided with a service.[237] The significant level of non-participation in household waste collection services may also be contributing to the associated environmental problems such as illegal dumping, back yard burning, and increased litter. Moreover, the fragmentation of service delivery in the sector can lead to overlapping routes and increased emissions.[238] These consequences of the privatisation of the household waste collection sector could undermine the ability of the State to achieve ambitious environmental objectives and progress to a circular economy. Around 10% of the total waste in Ireland is generated from households,[239] and this waste stream is an important component in the waste management system. Under the revisions to the EU's Waste and Landfill Directives, Member States will be required to achieve more ambitious targets in relation to the reuse and recycling of waste and the reduction of waste disposal at landfill. Moreover, Ireland is under a continuing obligation in relation to the provision of waste treatment facilities which could be frustrated by the inability of local authorities to direct household waste towards certain treatment processes where such waste is not collected by or on behalf of local authorities. There are also significant compliance issues in relation to the environmental performance of some waste collection operators. Some major operators have accumulated multiple convictions over a number of years in relation to environmental offences. The cost of remediation has in some cases has fallen upon the State.[240] Accordingly, it is suggested that the household waste collection sector as it currently exists may not be appropriately structured to achieve the ambitious targets required by EU law and national policy.

The legal basis upon which local authorities may re-enter the household waste collection sector has been significantly curtailed by the requirements of the Waste Management Act 1996 and competition law. Accordingly, legislative reform will probably be required in order to introduce remunicipalisation on a general basis as is the European norm.

The Waste Management Act 1996 places the performance of a number of functions and obligations upon local authorities in relation to the collection of household waste. In certain circumstances local authorities are under a mandatory obligation to provide household waste collection services. This obligation is significantly restricted by the application of three exemptions that must be

[236] CCPC Report 2018 (n 2) at [4.10-4.11].
[237] EPA Unauthorised Waste Activity Report 2005 (n 43) at [6.1].
[238] CCPC Report 2018 (n 2) at [3.17].
[239] EuroStat Waste Generation Statistics 2016 (n 8).
[240] Murtagh 2017 (n 5).

disapplied in order to engage the obligation. Firstly, there must be no adequate waste collection service available to householders. Secondly, the costs of a local authority waste collection service must not be unreasonably high from the perspective of the householder. Thirdly, adequate alternative arrangements must not reasonably be available to the householder. There is considerable uncertainty regarding the thresholds that apply in relation to the concepts of adequacy of services and arrangements and the reasonableness of costs. Therefore, it is suggested that the mandatory obligation on local authorities to provide household waste collection services be clarified and strengthened through legislative reform to ensure that all households have access to a waste collection service.

In relation to the remunicipalisation of household waste collection services more generally, the Waste Management Act 1996 fails to provide a clear expression that local authorities are empowered to directly provide household waste collection services outside the circumstances where the mandatory obligation applies. Illustrating the ambiguity in the legislation, local authorities have however been empowered to collect waste on behalf of each other. While local authorities directly provided household waste collection services for a number of years the uncertainty in the legislation could be raised as an issue by opponents of remunicipalisation. However it should be noted that this matter has not yet been the subject of litigation. Accordingly, it is suggested that legislative reform be introduced which expressly empowers local authorities to directly collect household waste even in circumstances where the mandatory obligation does not apply.

In the absence of legislative reform, the most reliable legal basis for the remunicipalisation of household waste collection services is through the discretionary power vested in local authorities to arrange for the collection of household waste. This power enables local authorities to re-enter the household waste collection sector and would provide them with greater control over the delivery of services through enforceable contracts. The implementation of effective of public procurement procedures could also assist local authorities in the advancement of environmental, social and labour policy. Moreover, the ability to exclude poorly performing operators from procurement procedures could also enhance regulatory compliance in the household waste collection sector, as exclusions could have far graver financial consequences for private operators than the financial penalties which have been imposed by the Courts thus far.

However, it should be noted that the economic viability of remunicipalising the household waste collection sector within the present legal framework could be undermined by competition law restrictions which prevent local authorities from introducing a single service provider model within the sector. As identified by the CCPC the household waste collection sector is a natural monopoly meaning that economies of scale are achieved where services are delivered by a single provider as is the case in other EU countries.[241] However, the *Nurendale* case identified the difficulties that would be faced by attempts to adopt a similar approach in Ireland. While it could be argued that local authorities are enabled in limited circumstances to restrict the participation of private operators in the market on the basis of objective justification, this approach is

[241] CCPC Report 2018 (n 2) at [2.7].

circumstance specific, and is therefore unlikely to provide a reliable basis for the implementation of remunicipalisation generally. Accordingly, the restrictions of competition law thereby mean that the re-entry of local authorities to the household waste collection sector is confined to participating within the present model of "side by side" competition. However, it is suggested that legislative reform could be introduced to enable the introduction of a single service provider model for the delivery of household waste collection services as is the European norm.

Having regard to the policy commitment of Government to ensure greater responsibility and decision making at local level it is suggested that remunicipalisation of the household waste collection sector could be a viable policy option. There are presently a number of environmental and social challenges within the household waste collection sector, which are particularly salient given the more ambitious targets and objectives which have recently been established under EU law. It is suggested that these challenges can be more effectively addressed through the delivery of services by local authorities thereby ensuring democratic, environmental and financial accountability within the household waste collection sector.

While this report has identified a number of possible options for local authorities to reassert their role in the household waste collection sector, such options are subject to legal constraints which would frustrate the implementation of remunicipalisation on a general basis. Accordingly, it is suggested that the most viable pathway to remunicipalisation is through legislative reform which clearly states that local authorities may provide household waste collection services directly, or arrange for the collection of household waste on their behalf. It is also suggested that Ireland adopt a similar approach to other European countries by providing that household waste collection services are delivered on the basis of a single service provider model. This means that household waste collection services could be provided in two ways. Firstly, services could be provided directly by local authorities on an exclusive basis. Secondly, services could be provided on behalf of local authorities by private operators within an exclusive area, with the selection of operators determined by an effective public procurement process.

Annex I - Structure of the Household Waste Collection Sector in Selected Countries

(Unless otherwise stated all data is based on the international survey conducted by the Competition and Consumer Protection Commission in 2018)[242]

Structure of the Household Waste Collection Sector			
“Side by Side” Competition	**Competitive Tendering**	**Competitive Tendering and State Run Monopoly**	**Competitive Tendering and “Side by Side” Competition**
Ireland	Poland	United Kingdom	Finland
	Latvia	Italy	
	Estonia	France	
	Slovakia	Lithuania	
		Sweden	
		*Germany**	
		*Netherlands**	

**** Germany[243]***

**** Netherlands[244]***

[242] CCPC Report 2018 (n 2) at pp 27-28.
[243] See Ramboll Group, “Report of the European Commission: Country Report Germany - Legal Assistance on the Application of Public Procurement Rules in the Waste Sector” (2016) at pp 2-4 available at < http://ec.europa.eu/DocsRoom/documents/21487/attachments/2/translations/en/renditions/pdf> (date accessed 24th May 2019).
[244] See OECD, “Environmental Performance Reviews: The Netherlands” (2015) at p 131.

Annex II – Examples of Non-Compliance by Private Operators

A. Selected Prosecutions

Greyhound Recycling

In 2017, Greyhound Recycling was convicted of five charges relating to inter alia; the transfer of waste to an unauthorised person; failing to keep proper records; and not properly storing waste. Greyhound was fined a total of €25,000 and an award of costs of €50,000 was also made against the company.[245]

In 2016, Greyhound Recycling and its directors were convicted of failing to comply with waste licence conditions on a number of dates resulting in environmental pollution beyond the confines of its facility. The fines imposed against the company and its directors totalled €34,500 and an award of €22,000 in costs was also made against them.[246]

In 2015, Greyhound Recycling was convicted and fined €14,000 for breaching the conditions of its waste licence arising from inter alia; its failure to prevent environmentally harmful emissions from its facilities. An award of €9,373.39 in costs was also made against the company. [247]

In 2013, Greyhound was fined €10,000 and had an order for costs of €27,500 made against it following its conviction for allowing environmentally harmful emissions at its facilities, and for failing to store waste appropriately.[248]

Greenstar

In 2012, Greenstar was convicted for failing to properly manage and inspect waste at its facility, and for failing to ensure that waste at its facility was subjected to initial waste categorisation off site. Greenstar was fined €1,000, and costs of €11,217 were also awarded against the company.[249]

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[245] EPA Prosecutions 2017, available at <http://www.epa.ie/enforcement/prosecute/2017prosecutions/name,63005,en.html> (date accessed 5th February 2019).
[246] EPA Prosecutions 2016, available at <http://www.epa.ie/enforcement/prosecute/2016/name,61849,en.html> (date accessed 5th February 2019).
[247] EPA Prosecutions 2015, available at <http://www.epa.ie/enforcement/prosecute/2015/name,55928,en.html> (date accessed 5th February 2019).
[248] EPA Prosecutions 2013, available at <http://www.epa.ie/enforcement/prosecute/2013prosecutions/name,52693,en.html> (date accessed 5th February 2019).
[249] EPA Prosecutions 2012, available at <http://www.epa.ie/enforcement/prosecute/2012/name,43054,en.html> (date accessed 5th February 2019).

Oxigen Environmental

In 2015, Oxigen Environmental was convicted of holding waste in a manner that was likely to cause environmental pollution and endanger human health. Fines totalling €6,000 were imposed on the company, and costs of €12,000 were awarded to the EPA.[250]

In a second prosecution in 2015, Oxigen Environmental was convicted for failing to *inter alia* ensure that its activities did not cause environmentally harmful emissions or nuisance odours. Oxigen was fined €10,000 and costs of €15,000 were also awarded against the company.[251]

In 2014, Oxigen was convicted as a result of causing; environmentally harmful emissions; and failing to control vermin, birds, flies, flies, dust, litter and odours at its facility. A fine of €1,000 was imposed against the company, and costs of €9,000 were awarded to the EPA.[252]

In 2013, Oxigen was convicted of failing to transfer waste to an appropriate facility. A fine of €2,500 was imposed, and costs of €9,500 were awarded to the EPA.[253]

In 2012, Oxigen was convicted on indictment for breaches of conditions of its waste licence which had resulted in a nuisance over the course of 78 weeks. The Court of Appeal imposed fines totalling €50,000 on both Oxigen and Cavan County Council. An award of costs totalling €40,000 was also made against the defendants.[254]

Ferry's Refuse Collection

One of the most prominent examples of environmental pollution in recent years relates to operation of Ferry's Refuse Collection where waste was improperly stored on site leading to the bleeding of pollutants into a stream that flows into Lough Swilly.[255] Moreover, when WERS Waste Management took over the Ferry's Refuse Collection operation, it did not at that time have a permit for the relevant waste facility.[256]

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[250] EPA Prosecutions 2015, available at <http://www.epa.ie/enforcement/prosecute/2015/name,56964,en.html> (date accessed 5th February 2019).
[251] EPA Prosecutions 2015, available at <http://www.epa.ie/enforcement/prosecute/2015/name,57961,en.html> (date accessed 5th February 2019).
[252] EPA Prosecutions 2014, available at <http://www.epa.ie/enforcement/prosecute/2014prosecutions/name,53667,en.html> (date accessed 5th February 2014).
[253] EPA Prosecutions 2013, available at <http://www.epa.ie/enforcement/prosecute/2013prosecutions/name,50881,en.html> (date accessed 5th February 2019).
[254] EPA Prosecutions 2012, available at <http://www.epa.ie/enforcement/prosecute/2012/name,43058,en.html> (date accessed 5th February 2019).
[255] Peter Murtagh, "A 'most revolting' case of illegal waste in Co Donegal" Irish Times 4th August 2017, available at <https://www.irishtimes.com/news/environment/a-most-revolting-case-of-illegal-waste-in-co-donegal-1.3175935> (date accessed 10th February 2019).
[256] Peter Murtagh, "Company that took over illegal dump firms is operating unlawfully" Irish Times 7th August 2017, available at <https://www.irishtimes.com/news/environment/company-that-took-over-illegal-dump-firms-is-operating-unlawfully-1.3179552> (date accessed 10th February 2019).

Country Clean

In 2015, Country Clean Recycling was convicted of failing to ensure that its activities did not give rise to environmentally harmful emissions; failing to properly store waste; and failing to control dust and odours. Fines totalling €12,000 were imposed on the company, and costs of €9,545.50 were awarded to the EPA.[257]

B. EPA Non-Compliance Notices

The following chart details the issuance of non-compliance notices by the EPA's Office of Environmental Enforcement to private operators holding waste and industrial emissions licences since 2013. The list is dominated by waste collection operators, with Greyhound Recycling receiving the most notices of any operator.

EPA Non-Compliance Notices Issued to Private Operators in respect of Waste and Industrial Emissions Licences 2013-2018[258]		
Licence	**Operator**	**Number of Non-Compliance Notices**
W0205-01	GREYHOUND RECYCLING & RECOVERY	129
W0144-01	OXIGEN ENVIRONMENTAL	81
W0152-03	OXIGEN ENVIRONMENTAL	75
W0147-01	ASHGROVE PLANT LTD., T/A ASHGROVE RECYCLING	66
W0208-01	OXIGEN ENVIRONMENTAL	60
W0217-01	KILLARNEY WASTE DISPOSAL LIMITED	57
W0201-03	BORD NA MONA PUBLIC LIMITED COMPANY	55
W0192-03	RILTA ENVIRONMENTAL	50
W0165-02	GREENSTAR RECYCLING HOLDINGS LIMITED	44
W0107-01	WASTE RECOVERY SERVICES (FERMOY) LIMITED	28
W0267-01	HI-VOLT IRELAND LIMITED	25
W0113-04	KMK METALS RECYCLING LIMITED	25
W0227-01	LAWLOR BROTHERS WASTE DISPOSAL LTD	24
W0082-03	STARRUS ECO HOLDINGS LIMITED	24
W0249-01	ACORN RECYCLING LIMITED	23
W0257-01	COUNTRY CLEAN RECYCLING	23

[257] EPA Prosecutions 2015, available at <http://www.epa.ie/enforcement/prosecute/2015/name,55870,en.html> (date accessed 5th February 2019).
[258] Source: RTE Investigation.

Annex III – Green Public Procurement Criteria

A. Purchase or Lease of Waste Collection Vehicles

European Commission's GPP Criteria Road Transport (2019) pp 40-44[259]

Technical Specifications

<table>
<tr><td colspan="2">GHG Emissions</td></tr>
<tr><td>Core Criteria</td><td>Comprehensive Criteria</td></tr>
<tr><td>TS1. Technological options to reduce GHG emissions
The vehicle must be equipped with one of the following technologies:
• Hybrid vehicles, both diesel and natural gas
• Vehicles equipped with energy accumulation/recovery systems
• Vehicles equipped with load-sensing hydraulic systems
• Vehicles equipped with electric bin lifts
• Plug-in hybrid: Vehicle equipped with a battery pack which can be charged from the grid and provides the energy for the electrical drive of the body and lifter
• OEM dual-fuel natural gas vehicle with a gas energy ratio over the hot part of the WHTC test-cycle of at least 50 %.
• High pressure direct injection natural gas vehicles
• Full electric vehicles
• Hydrogen fuel cell electric vehicles.
• Dedicated natural gas vehicles under the conditions set in the note below.

Note: The contracting authorities may include dedicated natural gas vehicles</td><td>TS1. Technological options to reduce GHG emissions
The vehicle must be equipped with one of the following technologies:
• Plug-in hybrid: Vehicle equipped with a battery pack which can be charged from the grid and provides the energy for the electrical drive of the body and lifter
• OEM dual-fuel natural gas vehicle with a gas energy ratio over the hot part of the WHTC test-cycle of at least 50 %.
• High pressure direct injection natural gas vehicles
• Full electric vehicles
• Hydrogen fuel cell electric vehicles.
• Dedicated natural gas vehicles under the conditions set in the note below.

Note: The contracting authorities may include dedicated natural gas vehicles if they have a supply of renewable methane meeting at least 15 % of their demand.

Verification:
The tenderer must present the technical sheet of the vehicle where these technology specifications are stated.</td></tr>
</table>

[259] European Commission, "EU green public procurement criteria for road transport" (2019) at pp 40-44 available at <http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm> (date accessed 15th May 2019).

if they have a supply of renewable methane meeting at least 15 % of their demand. ***Verification:*** *The tenderer must present the technical sheet of the vehicle where these technology specifications are stated.*	
TS2. Auxiliary units (Same for core and comprehensive) The vehicle's emissions from the separate engines for auxiliary units (e.g. compactor, lifter, etc. to be defined by the contracting authority) must meet the exhaust emission limits according to Regulation (EU) No 2016/1628, Stage V. **Verification:** The tenderer must present either a type approval certificate, or a test report from an independent laboratory according to Regulation (EU) No 2016/1628.	

TS3. Air pollutant emissions performance (Same for core and comprehensive) N3 vehicles and N2 vehicles with a reference mass1) exceeding 2 610 kg must meet Euro VI. N2 vehicles with a reference mass1) not exceeding 2 610 kg must comply with the TS2 Air pollutant emission performance of category 1 (Section 3.2). **Verification:** The tenderer must present the vehicle's certificate of conformity. For those vehicles having achieved the standard mentioned above following a technical upgrade, the measures must be documented and included in the tender, and this must be verified by an independent third party.

Award Criteria

Air Conditioning Gases **Award Criteria**	
Core Criteria	**Comprehensive Criteria**
	AC1. Air conditioning gases Points will be awarded to those vehicles equipped with an air conditioning system that uses a refrigerant whose global warming potential (GWP), as a factor of CO_2 and over a time horizon of 100 years, is below 150. **Verification:** The tenderer must provide the name, formula and GWP of the refrigerating gas used in the air conditioning system. If a mixture of gases is used (n number of gases), the GWP will be calculated as follows: GWP= Σ(Substance X1 % x GWP(X1)) + (Substance X2 % x GWP(X2)) + … (Substance Xn % x GWP(Xn)) where % is the contribution by weight with a weight tolerance of +/- 1% GWP of gases can be found in Annexes I and II of Regulation (EU) No 517/2014 (http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri= uriserv:OJ.L_.2014.150.01.0195.01.ENG)

Electrification of Auxiliary Units **Award Criteria**	
Core Criteria	**Comprehensive Criteria**
	AC2. Electrification of auxiliary engines Points will be awarded to those vehicles equipped with electric auxiliary units. **Verification:** The tenderer must present the technical sheet of the vehicle where this information is stated.

<table>
<tr><td colspan="2">Improved Air Pollutant Emissions Performance</td></tr>
<tr><td>Core Criteria</td><td>Comprehensive Criteria</td></tr>
<tr><td>AC3. Improved air pollutant emissions performance
N3 vehicles and N2 vehicles with a reference mass exceeding 2 610 kg:

Points will be awarded to the following technologies:
• natural gas
• plug-in hybrid electric vehicles (PHEV)2)
• battery electric vehicles (BEV) and
• hydrogen fuel cell electric vehicles (FCEV).(to be detailed to which extent more points will be attributed to zero tailpipe capable vehicles, i.e. plug-in hybrid electric vehicles (PHEV), battery electric vehicles (BEV), and fuel cell electric vehicles (FCEV. Zero tailpipe emissions capable vehicles must be given more points than natural gas vehicles).

N2 vehicles with a reference mass not exceeding1) 2 610 kg: the formula of the AC3 Improved air pollutant emissions performance and AC4 Zero tailpipe emission capability of category 1 (Section 3.2) will be applied.

Verification:
The tenderer must provide the vehicle’s certificate of conformity.

For those vehicles having achieved the standard mentioned above following a technical upgrade, the measures must be documented and included in the tender, and this must be verified by an independent third party.</td><td></td></tr>
</table>

B. Waste Collection Services

European Commission's GPP Criteria Road Transport (2019) pp 45-50[260]

Technical Specifications

GHG Emissions *(These criteria apply only if the operators owns or leases the service fleet)*	
Core Criteria	**Comprehensive Criteria**
TS1. Technological options to reduce GHG emissions **Option 1** The waste collection route/s [the contracting authority will insert the identification of the route/s] must be operated using vehicles [the contracting authority will choose one of the following]: (a).Equipped with one of the eligible technologies listed among the core TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2). (b).Equipped with the technology X [the contracting authority will select the technology among the eligible technologies listed as one of the core TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2)] **Option 2:** The fleet must be composed of the following shares of vehicles equipped with one of the eligible technologies listed among the core TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2): 2018: 12 % 2019: 20 % 2020: 28 % 2021: 36 %	**TS1. Technological options to reduce GHG emissions** **Option 1** The waste collection route/s [the contracting authority will insert the identification of the route/s] must be operated using vehicles [the contracting authority will choose one of the following]: (a).Equipped with one of the eligible technologies listed among the core TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2). (b).Equipped with the technology X [the contracting authority will select the technology among the eligible technologies listed as one of the core TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2)] **Option 2:** The fleet must be composed of the following shares of vehicles equipped with one of the eligible technologies listed among the core TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2): 2018: 24 % 2019: 32 % 2020: 40 % 2021: 48 %

[260] EU GPP Criteria 2019 (n 258) at pp 45-50.

<table>
<tr><td>The tier applicable will correspond to the year that the call for tender is launched.

Verification: same as the core TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2) together with the list and technical sheets of the whole fleet.</td><td>The tier applicable will correspond to the year that the call for tender is launched.

Verification: same as the TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2) together with the list and technical sheets of the whole fleet.</td></tr>
<tr><td colspan="2">TS2. Tyre Pressure Monitoring Systems (TPMS) (Same for core and comprehensive)
All the vehicles must be equipped with systems compliant with TS1 on TPMS as defined in Section 10.2 of Common criteria for vehicle categories.

Verification:
Same as TS1 on TPMS in Section 10.2 of Common criteria for vehicle categories together with the list and technical sheets of the whole fleet.</td></tr>
<tr><td colspan="2">TS3. Vehicle tyres — rolling resistance (Same for core and comprehensive)
All the vehicles must be equipped with tyres compliant with TS2 on vehicle tyres as defined in Section 10.2 of Common criteria for vehicle categories.

Verification:
Same as TS2 on vehicle tyres in Section 10.2 of Common criteria for vehicle categories together with the list and technical sheets of the whole fleet.</td></tr>
<tr><td colspan="2">TS4. Fuels (Same for core and comprehensive)
Note: this criterion is applicable only if the contracting authority qualifies dedicated natural gas vehicles as eligible technology and the tenderer offers dedicated natural gas vehicles to comply with TS1 (see above). The contracting authority may set higher percentages of renewable fuel supply according to the available supply in their national or regional market. At least 15 % of the methane supply must be renewable methane.

Verification:
The tenderer must provide a copy of the contract(s) that has (have) been signed with the supplier(s) and the description and technical specifications of the production and the dedicated fuel supply system.</td></tr>
<tr><td>TS5. Air pollutant emissions
All HDVs used in carrying out the service must meet at least Euro V.
2018: 40 % of HDVs must meet Euro VI.
2019: 48 % of HDVs must meet Euro VI.
2020: 56 % of HDVs must meet Euro VI.
2021: 64 % of HDVs must meet Euro VI</td><td>TS5. Air pollutant emissions
All HDVs used in carrying out the service must meet at least Euro V.
2018: 60 % of HDVs must meet Euro VI.
2019: 68 % of HDVs must meet Euro VI.
2020: 76 % of HDVs must meet Euro VI.
2021: 84 % of HDVs must meet Euro VI</td></tr>
</table>

The tier applicable will correspond to the year that the call for tender is launched. Where vehicles are not certified as meeting Euro V or higher, but technical after-treatment has achieved the same standard, this should be documented in the tender. **Verification:** The tenderer must present the list of vehicles of the service fleet and their certificates of conformity. For those vehicles having achieved the standard mentioned above following a technical upgrade, the measures must be documented and included in the tender, and this must be verified by an independent third party	The tier applicable will correspond to the year that the call for tender is launched. Where vehicles are not certified as meeting Euro V or higher, but technical after-treatment has achieved the same standard, this should be documented in the tender. **Verification:** The tenderer must present the list of vehicles of the service fleet and their certificates of conformity. For those vehicles having achieved the standard mentioned above following a technical upgrade, the measures must be documented and included in the tender, and this must be verified by an independent third party.

Award Criteria

GHG Emissions *(These criteria apply only if the operators owns or leases the service fleet)*	
Core Criteria	**Comprehensive Criteria**
AC1. Technological options to reduce GHG emissions (Same for core and comprehensive) *Points will be awarded to tenders offering:* **Option 1:** more routes than the ones set by the TS1 (see above) to be operated with vehicles compliant with core TS1 Technological options to reduce GHG emissions of category 5 (Section 7.2). **Option 2:** fleet to be used under the contract with the proportion of vehicles (%) larger than the TS1, in proportion to the excess over the TS1 (see above). **Verification:** See TS1 above	
AC2. Air pollutant emissions (Same for core and comprehensive) Points will be awarded to the fleet to be used under the contract with the proportion of vehicles used in carrying out the service (%) larger than TS5, 49 in proportion to the excess over the TS5 (see above), or if the vehicles comply with the AC3 Improved air pollutant emissions performance of category 5	

(Section 7.2) (to be detailed to which extent points will be attributed to higher percentages, improved performance and zero tailpipe vehicles. Zero tailpipe emissions capable vehicles must be given more points than natural gas vehicles) **Verification:** See TS5 above
AC3. Auxiliary units (Same for core and comprehensive) Points will be awarded based on the proportion of vehicles that comply with the TS2 Auxiliary units of category 5 (Section 7.2) **Verification:** See TS2 of category 5 (Section 7.2)

Noise Emissions *(These criteria apply only if the operators owns or leases the service fleet)*	
Core Criteria	**Comprehensive Criteria**
	AC4. Noise emissions Points will be awarded to those tenders offering a service fleet totally composed of vehicles compliant with the AC1 on vehicle noise emissions set in Section 10.2 of Common criteria for vehicle categories. **Verification:** The tenderer must present the list of vehicles of the service fleet and their certificates of conformity

Contract Performance Clauses

New Vehicles
CPC1. New vehicles (Same for core and comprehensive) If a vehicle of the service fleet is replaced, the new vehicle must help in keeping or improving the service fleet features (composition and technologies) in terms of GHG emissions and air pollutant emissions as it was offered in the tender. The contractor will keep records which must be made available to the contracting authority for verification purposes. The contracting authority may set rules for penalties for non-compliance.