

Guidance notes for Local Authority users

These guidance notes are designed to prompt you to consider particular factors when looking to contract with a private waste company, on a temporary basis. These are designed to be read before applying for resources.

1. Procurement Rules
2. General Operational Considerations
3. Commercial Collections
4. Materials Management
5. Communications

1. Procurement rules

Local Authorities are reminded to seek their own procurement and legal advice prior to entering into a contract with any service provider.

England, Wales and Northern Ireland

The Public Contracts Regulations 2015, with some fairly minor exceptions, apply to England, Wales and Northern Ireland but **not** to Scotland.

[The Public Contracts Regulations 2015](#) r32(2)(c) provides guidance on the specific cases and circumstances where contracting authorities may award public contracts by a negotiated procedure without prior publication.

One of the situations where this is allowed is where *“for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with”*. In addition, the regulations state *“the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority”*.

In England: the recently issued [Information Note PPN 01/20 Responding to COVID-19](#) states that *“in these exceptional circumstances, authorities may need to procure goods, services and works with extreme urgency. Authorities are permitted to do this using regulation 32(2)(c) under the Public Contract Regulations 2015”*.

In Northern Ireland: No Procurement Guidance Note (PGN) analogous to PPN 01/20 has yet been issued. The latest PGN published is PGN 01/20 - <https://www.finance-ni.gov.uk/publications/pgn-0120-supplier-relief-due-covid-19>

In Wales: further information will be available shortly.

Scotland

Scottish Government has issued a policy note on public procurement during the COVID-19 crisis, [Scottish Policy Note SPPN 4/2020](#), which lays out a set range of circumstances under which urgent procurement may be used:

- call off contract from an existing framework agreement/Dynamic Purchasing System
- modification of an existing contract
- new procurement procedure – using accelerated timescales

- direct award of a new contract
- contract awarded under the light-touch regime
- using the small lots option available in the regulations

Full guidance is provided in the policy note in respect of the steps that should be followed by Local Authority in exercising urgent procurement measures for each of the above and the legislative basis for the advice contained within the policy note is found in [The Public Contracts \(Scotland\) Regulations 2015](#). The relevant provisions are very similar to those contained in the regulations in England, as they also derive from [European Directive 2014/24/EU](#) on public procurement:

r33 (1)(c) of the 2015 Regulations:

“where (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for open procedure, restricted procedure or competitive procedure with negotiation cannot be complied with”

r33(3) of the 2015 Regulations:

“For the purposes of paragraph (1)(c), the circumstances invoked to justify extreme urgency must not, in any event, be attributable to the contracting authority”.

All of these tests must be considered carefully by parties to an emergency procurement process to avoid subsequent challenge – clearly, the longer the pandemic lasts, the less likely it will be that the events could be construed as “unforeseeable”.

By contrast to the position in England, lower-value contracts (£50,000 goods/services £2,000,000 works, per the [Procurement Reform \(Scotland\) Act 2014](#)) are also regulated, by the [Procurement \(Scotland\) Regulations 2016](#).

R6(1)(c) of the 2016 Regulations provides that:

“where (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the authority considers it must proceed to award a contract without delay”, a contracting authority may award a public contract without seeking offers in relation to the proposed contract (provided also that the circumstances invoked to justify extreme urgency are not attributable to the LA).

This allows for expedited provision of low-value contracts, a position which is reflected by the Scottish Policy Note.

2. General Operational Considerations

1. Commercial waste companies (CWCs) have indicated they would prefer to supply a package of vehicle and crew to undertake a specific task. CWCs are less likely to provide staff as you would typically obtain from a recruitment agency. Instead, flexibility will be required to make the most of the CWC resources available.
2. Consider how you can redeploy your existing staff to free up whole collection rounds or how you might provide an existing member of staff to work on a round with a CWC crew to help navigate.

3. It is unlikely CWCs will be able to collect segregated recycling streams, so LA crews should prioritise segregated collections and allow CWCs to collect streams with a single bodied vehicle e.g. residual, garden waste. Some CWCs may be able to adapt vehicles to allow some segregation so flexibility in terms of your requests is recommended.
4. If the CWC will be collecting dry mixed recycling, consider stipulating the compaction ratio. Refer to Defra's [guidance](#) on prioritising waste collection services during coronavirus (COVID-19) pandemic.
5. A CWC may be seeking a minimum three-week minimum contract term. Consider a day rate for kerbside rounds and price per lift for communal containers. They may need to bring staff off furlough, and if this is the case, it will need to be agreed how these costs will be covered. Mobilisation could take up to a week.
6. A CWC crew may not be able to achieve the same pass rate as the incumbent. Pass rates may be affected by excess waste presented, and in addition, a CWC's use of trade lifts will be slower than split bin lifts. They will also be slower to complete rounds to begin with as routes are unfamiliar so again it would be better for them to work with an existing LA operative where possible. This should be considered when calculating resource requirements.
7. Consider moving your existing crews on to your more challenging kerbside rounds (e.g. mix of property types, harder to access, high volume of assisted collections etc) as they will be more familiar with property types in your borough. Consider putting CWC crews on the more straightforward rounds, where possible. Chargeable garden waste rounds may take longer as CWCs will need to work off a property list, rather than a road list.
8. If requesting a CWC to collect from communal properties, consider whether they will need keys or codes for bin stores or gates. You will need to provide detailed location information so again this may be one that it is better for existing staff to service.
9. Consider your approach to missed bins. You may have temporarily stopped collections of missed bins due to the Covid-19 emergency. However, this may need to be reviewed if the use of CWCs results in an increase in the number of missed bins. CWC crews may not have dealt with the public and so won't be seasoned in the same way LA crews will be. Conflict resolution rules and coaching will need to be considered, especially given current lockdown pressures. Whilst the use of LA operatives alongside CWC crews will help mitigate against this, consider what action you might take in the event that it becomes a problem.
10. Do you currently co-collect materials in a split-back vehicle or use pods (e.g. residual and recycling)? If such a vehicle was unavailable to put onto a round, would you consider collecting the materials separately? If you collect any recyclables via two-stream or multi stream collections (kerbside, flats and bring), what materials could you be collected in a single stream (i.e. mixed) if specialist vehicles are unavailable? Allow flexibility for CWCs to offer solutions to the problems that you are facing.
11. If you intend to continue to enforce your contamination policy, consider how a temporary crew will record and report contaminated containers. If you intend to leave contaminated containers

unemptied, consider the wording of the communications as 'contamination' will have different connotations at the current time.

12. If any of your communal or bring sites require specialist lifts e.g. paladin or underground bins, consider redeploying your own staff to use your vehicles and using CWCs on other rounds.
13. Most vehicles have in cab technology, although this is something the LAs should check and confirm when contracting. You may want to include the requirement for CWC vehicles to be provided empty and clean and also consider vehicle maintenance.
14. You will need to consider operator's licence and insurance if CWC vehicles are to be parked at LA depot. You will also need to consider welfare facility arrangements for CWC staff.
15. All staff will need a thorough induction and you will need to ensure compliance with all health & safety regulations (including your Covid-19 policies). Training should cover off any policies on side waste, addressing contamination (if appropriate), provision of information on assisted collections etc. Consider whether you will expect the CWC to wear council branded clothing and/or provide their own PPE.

3. Commercial Collections

1. Do you co-collect from household and commercial premises? If you hand over a normally co-collected round to a CWC, consider whether you would be happy for them to collect from your commercial customers.
 - a. This would allow for key efficiencies, however, is a potential risk to your future commercial business and therefore you will need to consider appropriate non-disclosure agreements / contract clauses.
 - b. Allowing a CWC to co-collect sacks which are presented on a high street would minimise this risk, particularly if you operate a clear-all policy for all sacks.
 - c. Would you want a CWC to collect from any customers that have container collections? You would need to share customer names and addresses and would need to ensure compliance with General Data Protection Regulation.
2. Would you consider allowing a CWC to collect from their own commercial waste customers, if that customer was on one of the routes they were covering?
 - a. This would allow for key efficiencies
 - b. Consider how this could impact on your reported waste volumes and disposal contracts.
 - c. The CWC would need to have appropriate onboard weighing systems and data logging software.

4. Materials Management

1. Some CWCs have indicated they could have spare treatment capacity – would you allow them to direct deliver your waste (residual, recycling, food, garden or other) to their sites?
2. Would you consider mixing recyclables that are currently collected separately, to allow these items to still be collected? What can you be flexible on? What disposal arrangements would you need to make (i.e. MRF contracts)?

5. Communications

1. If you employ a CWC on a temporary basis, consider how you will communicate this to residents through:
 - a. Council communications – will you promote that you are utilising external resource? If utilising temporary staff and/or vehicles on recycling, you may need to reassure your residents that the material will still be recycled. Liaise with your corporate communications team to maximise the positives in the use of CWCs. Public and private sectors working together is a good news story that they will want to promote.
 - b. Operatives – residents may ask operatives if they work for the council if they are in a CWC vehicle during collections – consider providing all temporary crews with a laminated council-headed letter to carry with them, to prove they are working on the council's behalf. They need to adhere to social distancing, so they should show care when presenting a resident, the letter.
2. Ensure the CWC is provided with the relevant council service leaflet for the materials they are collecting.