



National Audit Office

Report

by the Comptroller
and Auditor General

Department for Environment, Food & Rural Affairs

Oversight of three PFI waste projects

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Department for Environment, Food & Rural Affairs

Oversight of three PFI waste projects

Report by the Comptroller and Auditor General

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Comptroller and Auditor General
National Audit Office

12 June 2014

This report examines how the Department for Environment, Food & Rural Affairs oversees the PFI waste projects run by Norfolk County Council, Surrey County Council and jointly by Herefordshire Council and Worcestershire County Council.

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Contents

Summary 4

Part One

The roles of the bodies involved, and the three PFI waste contracts 8

Part Two

The Department's oversight of the three PFI waste projects 14

Appendix One

Our audit approach 25

Appendix Two

Summary of the three contracts 26

Appendix Three

Changes to grants for Herefordshire and Worcestershire and Surrey 30

Appendix Four

The Department's Waste Infrastructure Delivery Programme 33

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Summary

Background

1 In 1999, the European Union (EU) issued a directive which set targets for reducing the amount of biodegradable municipal waste (hereafter referred to as waste) sent to landfill in the UK. The government has divided the UK target into individual targets for England, Wales, Scotland and Northern Ireland. The Department for Environment, Food & Rural Affairs (the Department) has overall responsibility for ensuring that England diverts sufficient waste from landfill to enable the UK to meet these targets. Prior to 2001, responsibility for this policy objective rested with the then Department for the Environment, Transport and the Regions.

2 Local authorities have statutory responsibility for municipal waste disposal. In July 2006, the Department established the Waste Infrastructure Delivery Programme (the Programme) to encourage and accelerate the development of local authority waste infrastructure by providing support, guidance and funding to local authorities undertaking waste projects through Private Finance Initiative (PFI) contracts.¹ We describe the Programme in more detail at Appendix Four.

3 Through the Programme, the Department is overseeing the allocation of £1.7 billion of 'Waste Infrastructure Credits' (credits) to 28 local authorities in England with a PFI waste project. These credits are the Department's commitment to pay a fixed amount of money to a local authority over the life of the PFI contract. In effect, the Department partially funds the project, which reduces the amount that a local authority itself has to pay its contractor. However, once paid, the Department's funding is not ring-fenced, so a local authority does not have to spend the money on its waste contract.

4 As local authorities are responsible for disposing of local waste and are the signatories to the PFI contracts part-funded by the programme, they are responsible for ensuring that their waste contracts represent value for money. The Department, in providing central government funding to the local authorities, is responsible for ensuring that the money it pays over is spent in accordance with the terms and conditions of the funding agreement it has with the local authority. It is also responsible for ensuring that its provision of funds to local authorities represents value for money. The Department has chosen to discharge these responsibilities by overseeing its allocation of funds, which includes scrutinising local authorities' plans, and offering local authorities support and guidance.

¹ The Department also provides guidance to local authorities undertaking Public Private Partnership (PPP) projects that are solely funded by the local authorities.

Scope of our work

5 Over the last 18 months, we have received a large amount of correspondence from members of the public relating to three local authority PFI waste contracts (the contracts) within the Programme, and we decided to investigate the Department's oversight of these particular contracts. The three contracts are:

- Surrey County Council's (Surrey's) integrated waste management services' contract under which the 'Charlton Lane Eco Park' project near Shepperton is proposed;
- Herefordshire Council and Worcestershire County Council's (Herefordshire and Worcestershire's) joint integrated waste management services contract under which the 'EnviRecover' project in Hartlebury, Worcestershire is proposed; and
- Norfolk County Council's (Norfolk's) residual waste treatment contract under which the 'Willows Power and Recycling Centre' project near King's Lynn was proposed.²

6 The correspondence covered a wide range of issues associated with waste infrastructure projects, including project governance, planning, environmental concerns, financial and commercial considerations and technical challenges. Some of these issues, such as the nature of the Department's support for, and challenge to, local authorities, were common to the correspondence for all three projects. In the case of Norfolk, there were particular concerns associated with planning permission and the impact of the Department's decision to withdraw funding support. In the case of Surrey and Herefordshire and Worcestershire, correspondents raised issues such as the nature of the funding agreements between the Department and the local authorities, and the former's decisions to change its funding support.

7 It was clear from the correspondence we received that there was a lack of clarity over both the facts and figures relating to these three projects and the roles and responsibilities of the parties involved. This report is therefore divided into two parts. In Part One, we set out the principal roles of the Department, local authorities, and other central government departments in relation to these three contracts. In Part Two, we examine those issues over which the Department has direct influence or involvement, specifically:

- the support and guidance the Department has offered to the local authorities; and
- how the Department has monitored the local authorities' progress and managed changes to its funding allocations to them.

² Residual waste is what is left over after all possible recycling has been done and is the waste which would, without further treatment, go to landfill.

Limitations on scope

8 It is important to note that we have not sought to conclude on the value for money of the three contracts, nor have we audited each local authority's implementation of its project; these matters are for local authorities' external auditors to consider in the first instance. In addition, some other issues raised in the correspondence, such as the potential environmental impact of different waste disposal technologies, fall outside our remit.

9 This report does not examine the value for money of the Programme overall; we reported in 2009 on the Department's progress in implementing the Programme, and on its work to reduce the reliance on landfill in England. The UK met the 2010 EU target for reducing the amount of waste going to landfill, and the Department believes it is on track to meet the 2020 target. This report relates to three contracts which have not yet delivered all of their planned waste infrastructure and those contracts may not therefore be representative of the 28 PFI projects that make up the overall programme. Details of our audit approach are set out at Appendix One.

Key findings

10 Our key findings on the Department's oversight of the three projects we looked at are as follows:

- a** The three projects we looked at have all experienced significant delays resulting from a range of problems, such as difficulties in obtaining planning permission, opposition from local groups, complex commercial considerations and uncertainties over technology (paragraphs 1.9 to 1.23).
- b** The Department is prohibited from intervening in the quasi-judicial central planning process that is overseen by the Department for Communities and Local Government. However, the Department for Environment, Food & Rural Affairs has nonetheless attempted to mitigate the risk of planning delays by providing guidance to local authorities on planning issues (paragraphs 1.8 and 2.4 to 2.5).
- c** On the nature of the funding agreements between the Department and the local authorities:
 - In the case of Surrey and Herefordshire and Worcestershire, the funding agreements inherited by the Department required grant payments to start as soon as the contractors began to provide services under the contracts, irrespective of whether all of the planned infrastructure had been delivered. This made it difficult for the Department to withdraw or amend its financial support for these contracts even when significant infrastructure had not been delivered as planned. Until 2012-13, the Department paid each of the planned grant payments for these two contracts in full (paragraphs 2.21 to 2.23).

- The Department's funding agreement with Norfolk included stricter terms and conditions than earlier agreements. Norfolk's breach of one of these terms caused the Department to review its allocation of credits to the Norfolk project. The Department subsequently revoked its funding allocation because ministers judged it sufficiently likely that the 2020 target for diverting waste from landfill could be met without any contribution from the Norfolk project (paragraph 2.24).
- d The Department put in place a system of active support and guidance for the local authorities, which is good compared to the activities of other departments across government that support PFI contracts (paragraphs 2.2 to 2.9).
 - e On sharing information, the Department has acted on our previous recommendations and compiled a range of information, including benchmarked costs of waste infrastructure, to help local authorities plan projects and evaluate different types of bids (paragraphs 2.10 to 2.14).
 - f The Department's scrutiny has improved the local authorities' contracts although in some cases this scrutiny took a long time, reflecting the quality and complexity of local authorities' proposals and external factors such as an alleged breach of procurement rules (paragraphs 2.15 to 2.20).
 - g The Department's negotiations with Surrey to re-profile its funding support means Surrey's cash flow in the three years 2013-14 to 2015-16 is expected to be lower than it would have been under the original agreement, although the total amount the Department will pay over the full term of the agreement remains unchanged.³ In 2011-12, Surrey established a sinking fund into which it deposited a proportion of the waste grant it had received. Surrey intends to use the fund to manage the temporary cash flow impact of the re-profiling of its grant (paragraphs 2.29 to 2.31).
 - h Herefordshire and Worcestershire's negotiations with the Department over their proposal to vary their contract led them to conclude that the best solution was to deliver their remaining infrastructure without funding support from the Department. The local authorities believe that by borrowing capital themselves rather than using private finance, as originally anticipated, they will generate sufficient savings to offset the majority of the £30 million reduction in the Department's funding (paragraphs 2.32 to 2.35).
 - i In April 2014, Norfolk decided to terminate its contract with Cory Wheelabrator, at an estimated cost of £33.7 million, as a result of the failure to secure planning permission and the reduction in value for money caused by delays. Norfolk has stated that the Department's withdrawal of its funding support was also a factor in its assessment of the savings to Norfolk taxpayers from the project (paragraphs 2.36 to 2.44).

³ Provided that the planned waste infrastructure is built, the project continues to meet the terms and conditions of the original award, and the contract remains in line with the Treasury's principles of 'PFI' support.

Part One

The roles of the bodies involved, and the three PFI waste contracts

1.1 This part of our report sets out the principal roles of the Department for Environment, Food & Rural Affairs (the Department), local authorities, and other central government departments in relation to the Waste Infrastructure Delivery Programme (the Programme) because it was clear from the correspondence we received that there was a lack of clarity over both the facts and figures relating to these three projects, and the roles and responsibilities of the parties involved. We also provide background information on each of the three contracts. Summary details of the contracts are set out in Appendix Two.

Roles

Local Authorities

1.2 Local authorities in England have the statutory responsibility for disposing of municipal waste and are responsible for ensuring that their arrangements to do so represent value for money. This includes choosing the type of waste treatment technology to be used, which is a key driver of project cost, risk and environmental impact.

The Department for Environment, Food & Rural Affairs

1.3 The Department is responsible for ensuring that England diverts sufficient waste from landfill to enable the UK to meet targets introduced under the European Union Directive 1999/31/EC. The Directive requires all member states to reduce the amount of biodegradable municipal waste (waste) sent to landfill.

1.4 The Department inherited responsibility for ensuring England diverts sufficient waste from landfill to enable the UK to meet the EU targets together with responsibility for allocating Waste Infrastructure Credits (credits) from the Department for Environment, Transport and the Regions in June 2001.⁴ Responsibility for managing the PFI grant budget and for making the grant payments to local authorities transferred from the Department for Environment, Transport and the Regions to the Department for Transport, Local Government and the Regions, then to the Office of the Deputy Prime Minister, then to the Department for Communities and Local Government and finally to the Department for Environment, Food & Rural Affairs in April 2011.

1.5 In 2006, the Department established the Waste Infrastructure Delivery Programme (the Programme) to provide funding and specialist support to local authorities wishing to use a PFI contract to deliver their waste infrastructure.⁵ The aim of the Programme was to accelerate the development of waste infrastructure to ensure local authorities in England commissioned sufficient infrastructure to meet the European Union (EU) targets.

1.6 Under the Programme, the Department entered into agreements with local authorities that commit the Department to providing funding support for waste contracts in the form of credits.⁶ In 2001, when the Department inherited responsibility for the targets, it also took on some older funding agreements signed by its predecessor. These included the funding agreements relating to the Surrey County Council (Surrey) and Herefordshire Council and Worcestershire County Council (Herefordshire and Worcestershire) contracts.

1.7 Having allocated credits, the Department is responsible for ensuring that the local authorities comply with the terms and conditions of the relevant funding agreement. It is also responsible for ensuring that its provision of funds to local authorities represents value for money. The Department has chosen to discharge these responsibilities by overseeing its allocation of funds, which includes scrutinising local authorities' plans, and offering local authorities support and guidance.

4 PFI credits for waste projects were renamed 'Waste Infrastructure Credits' in 2011. Credits are paid to local authorities in the form of a grant (Appendix Four, paragraph 6).

5 The Department also provides guidance to local authorities undertaking Public Private Partnership (PPP) projects that are solely funded by the local authorities.

6 The documents that confirm the allocation of credits have varied in name, scope and content over time but typically took the form of a 'promissory note' or a 'Waste Infrastructure Credit letter'.

Planning permission

1.8 Securing planning permission is a vital stage in the process of delivering waste infrastructure projects, but as we noted in our 2009 report on the Programme, it can be difficult to achieve.⁷ Reviewing planning applications and deciding whether to grant planning permission is the responsibility of local authorities in the first instance. Where applications are contentious or nationally important, the Secretary of State for Communities and Local Government can choose to step in. This is known as ‘calling in’ an application. In this event, the Planning Inspectorate usually holds a public inquiry on behalf of the Secretary of State. The appointed inspector will make a recommendation to the Secretary of State on whether or not to grant planning permission. The Secretary of State then makes the final decision.

The three local authority contracts

1.9 The three contracts we looked at have all experienced significant delays resulting from a range of problems, such as difficulties in obtaining planning permission, opposition from local groups, complex commercial considerations and uncertainties over technology.

Surrey

1.10 In June 1999, Surrey signed a 25-year integrated waste contract,⁸ worth an estimated £740 million, with contractor SITA Surrey.⁹ The contract requires the contractor to meet performance targets for the recycling and recovery of waste through recycling and the provision of residual waste treatment plants. These were originally expected to include two energy-from-waste plants. The Department committed to pay £204.7 million towards the contract. The funding agreement aligned the start of grant payments with Surrey’s payments to the contractor. The nature of the contract meant that Surrey started to pay the contractor once the latter began to provide services under the contract, irrespective of whether all of the planned infrastructure had been delivered. Therefore, for the first 15 years of the contract (up to 2012-13), the Department paid each of the planned grant payments in full even though not all of the planned facilities had been built. The Department’s payments to Surrey totalled £124 million to 31 March 2014.

⁷ Comptroller and Auditor General, *Managing the Waste PFI Programme*, HC 66, Session 2008-09, National Audit Office, January 2009, recommendation II, pp 24–27, paras 2.25–2.35, available at: www.nao.org.uk/wp-content/uploads/2009/01/080966.pdf

⁸ Integrated waste contracts are contracts for a range of waste services including recycling, residual waste treatment and disposal.

⁹ Surrey estimated the contract value was likely to be around £740 million but could range between £666 million and £897 million depending on circumstances.

1.11 The Surrey contract has experienced extended problems securing planning permission. A planning application for a site in Redhill failed because Surrey County Council's Planning Committee rejected it, and the planning consent, which had been granted for a site at Capel was subsequently reversed following a judicial review. Two new planning applications for plants at Capel and Trumps Farm were subsequently made. Planning consent for the plant at Capel was granted but subsequently reversed following a judicial review of the Surrey Waste Plan. The planning application for the plant at Trumps Farm was not pursued.

1.12 As a result of these planning difficulties, and because of changing waste patterns caused by increased recycling levels, Surrey County Council undertook a further review of its waste strategy. In the absence of the planned waste treatment infrastructure, Surrey signed a contract with Allington Waste Ltd in January 2009 as an interim measure to dispose of over 100,000 tonnes of its residual waste a year outside the county. The contract includes break clauses but is scheduled to last until March 2019.

1.13 In February 2010, Surrey agreed a new waste management strategy involving the construction of a single waste management facility at Charlton Lane in Shepperton, which includes an anaerobic digester, a recycling bulking facility, a public recycling centre and a 'gasifier'.¹⁰ To reflect its revised plans Surrey amended its original contract with SITA Surrey. This facility is expected to begin processing waste in 2016-17. In 2013, the Department concluded negotiations with Surrey to re-profile its funding support to reflect the fact that the main waste infrastructure expected under the contract had not been built. The revised payment profile does not reduce the overall amount of funding support from the Department¹¹ but it reduces the annual amount paid from 2013-14 until 2015-16. This profile assumes the gasifier will begin to process waste in early 2016-17 (Appendix Three). The grant will continue to be proportionately lower until the gasifier starts processing waste.

¹⁰ Gasifier plants heat, rather than burn, waste. This turns the waste into a fuel, which can be used to generate energy.

¹¹ Provided that the planned waste infrastructure is built, the project continues to meet the terms and conditions of the original award, and the contract remains in line with the Treasury's principles of 'PFI' support.

Herefordshire and Worcestershire

1.14 In December 1998, Herefordshire and Worcestershire jointly signed a 25-year integrated waste management contract with the contractor Mercia Waste Management (Mercia) worth approximately £680 million. The Department's predecessor, the Department for the Environment, Transport and the Regions, committed to make grant payments of £143 million towards the contract. Under the funding agreement, grant payments started as soon as Herefordshire and Worcestershire started to pay their contractor. The nature of the contract meant that Herefordshire and Worcestershire started to pay the contractor once the latter began to provide services under the contract, irrespective of whether all of the planned infrastructure had been delivered. Therefore, for the first 15 years of the contract up to March 2014, the Department and its predecessors paid each of the planned grant payments in full even though the planned energy-from-waste facility had not been built. The Department's payments to Herefordshire and Worcestershire totalled £89.5 million to 31 March 2014.

1.15 The location of the energy-from-waste plant was originally proposed for a site near Kidderminster but the planning application for that plant failed. In 2006, the local authorities acquired a site at Hartlebury for the purposes of residual waste disposal, having proposed a new approach to treating the waste known as autoclaving. Negotiations with Mercia about autoclaving broke down in 2007, however, due to uncertainty about the end market for the process by-product. A satisfactory end market was a planning requirement.

1.16 In 2009, Herefordshire and Worcestershire reviewed their joint waste management strategy and asked the contractor to develop a solution for disposing of the authorities' residual waste.¹² The contractor recommended an energy-from-waste plant at the Hartlebury site as the preferred option. Worcestershire County Council resolved to grant planning permission for the plant in March 2011. However, the Secretary of State for Communities and Local Government called in the planning decision. He granted planning permission in July 2012.

1.17 However, by this time, the delay in building the plant meant the project was unable to secure the financing necessary for construction of the plant. Having explored various options for the project with the contractor from July 2012 onwards, Herefordshire and Worcestershire concluded that continuing with the existing contract remained the best available option. In December 2013, they began negotiating changes to the contract with the contractor and reached agreement on the changes on 21 May 2014.

¹² The revised strategy was published in 2011 following full approval by both local authorities and all of the waste collection authorities in Worcestershire.

1.18 Herefordshire and Worcestershire explored a number of options to address the problem of sourcing financing for the project. The local authorities have now agreed to act as the sole source of finance for the construction of the proposed energy-from-waste facility at Hartlebury. The local authorities will raise the finance through 'prudential borrowing' and then lend it to the contractor in the form of a loan.¹³ This unusual approach presents a number of risks to Herefordshire and Worcestershire, including the need to manage two separate, and potentially competing, relationships with the contractor – one as its sole investor, and the other as the contracting authority.

1.19 Following the local authorities' proposal to change the financing arrangements for the energy-from-waste facility, the Department agreed with Herefordshire and Worcestershire in December 2013 that it will reduce its overall funding support for the project from £143 million to £113 million.

Norfolk

1.20 In 2012, Norfolk County Council (Norfolk) signed a 25-year residual waste treatment contract worth approximately £582 million with the contractor Cory Wheelabrator to build an energy-from-waste facility.¹⁴ The Department allocated £91 million of credits for the contract. The announcement of a shortlist of bidders for the contract and the subsequent confirmation of the site at the Willows Business Park near King's Lynn, generated significant local opposition and difficulties in obtaining planning permission at both the local and national levels. The project has experienced major delays as a result.

1.21 In August 2012, the Secretary of State for Communities and Local Government called in the planning application. The planning inquiry concluded in May 2013. However, the Secretary of State's review has yet to be concluded. The Department for Communities and Local Government told us that the planning application raises complex issues that require careful consideration and this has led to the delay in completing the quasi-judicial decision-making process in this case.

1.22 Norfolk's failure to secure planning permission by its planning deadline of 10 June 2013 meant it breached one of the conditions of its funding agreement with the Department. This caused the Department to review its allocation of funding to the contract. Following its review, the Department notified Norfolk in October 2013 that it was revoking its funding allocation. Later that month, Norfolk's Cabinet decided to continue with the project, stating that the contract still represented value for money despite the withdrawal of government funding.

1.23 The decision of the Secretary of State for Communities and Local Government was expected on 14 January 2014, but after it was made known that this date would not be achieved and no new date for a decision was given, Norfolk announced on 7 April 2014 its intention to terminate the contract. Norfolk has estimated that it may have to pay around £33.7 million in compensation costs to its contractor.

¹³ Local authorities are permitted to raise finance for capital expenditure without central government consent as long as they can afford to service the debt. This is known as prudential borrowing. Money is borrowed from the National Loans Fund through the Public Works Loan Board.

¹⁴ In October 2013, the adoption of a revised project plan increased the expected value of the contract to £610 million.

Part Two

The Department's oversight of the three PFI waste projects

2.1 This part of the report examines the Department for Environment, Food & Rural Affairs' (the Department's) oversight of the three contracts in terms of the support it has provided to the local authorities; its scrutiny of their plans; the allocation and management of funding for the contracts and the impact of the funding decisions it has made. We have considered these issues because many correspondents raised concerns over the adequacy of the Department's oversight of the three local authority contracts.

Support to local authorities

2.2 From the start of the Programme, the Department recognised there was a risk that local authorities did not have the skills or experience to deliver complex PFI waste infrastructure projects. To mitigate this, the Department published guidance and put in place a system of support for local authorities.¹⁵

Guidance

2.3 The Department has issued guidance to local authorities on subjects such as appraising different procurement and technology options, planning issues and project governance. The Department intends its support and guidance to supplement, rather than substitute for, advice on commercial, technical, financial, legal and other issues provided by local authorities' own staff or their paid advisers.

¹⁵ The published guidance can be found at: <http://archive.defra.gov.uk/environment/waste/localauth/funding/pfi/guidance.htm>

Guidance on planning permission

2.4 All three of the projects we looked at experienced delays because of planning permission difficulties at either the local or central levels, or both. As the central government sponsor of these projects, the Department for Environment, Food & Rural Affairs is prohibited from intervening in the quasi-judicial central planning process that is overseen by the Department for Communities and Local Government. However, the Department for Environment, Food & Rural Affairs has nonetheless attempted to mitigate the risk of planning delays by providing guidance on, and helping local authorities to consider, planning issues such as:

- whether the contractor's proposals are supported by an up-to-date municipal waste management strategy;
- whether there is a local development framework allocating the proposed site(s) for the proposed use;
- issues relating to the purchase of the site, for example whether it is leasehold or freehold and any access issues;
- whether an environmental impact assessment has been completed to support the planning application; and
- whether the local authority or contractor have engaged with the local community.

2.5 In the case of Norfolk County Council (Norfolk), the local authority told us that it had followed the Department's guidance on how long to allow in its timetable for obtaining planning permission. However, the Department noted that the timings in its guidance are described as indicative and need to be interpreted on a project-by-project basis. From 2010, the Department raised specific concerns with Norfolk that its proposed timetable might not be achievable. In the event of a significant delay, Norfolk's contract allowed it to agree a revised plan with the contractor; and the private finance for the project would remain committed. However, to avoid increasing its project costs Norfolk chose not to increase the length of its timetable. The Secretary of State for Communities and Local Government 'called in' the planning application for the project in August 2012 but has yet to make a decision. Although Norfolk terminated the project in April 2014, the Secretary of State is still considering the planning application.

Guidance on choice of technology

2.6 The choice of waste treatment technology affects project cost, risk and environmental impact.¹⁶ For example, new technology might be more environmentally beneficial and cheaper over the life of the project, but it is likely to cost more initially and it carries a higher risk of failure if it relies on less proven technology. The choice is therefore a key driver of value for money for local authorities to consider. The Department restricts its oversight to ensuring local authorities have considered a credible range of technology options. In the case of Norfolk, the Department supplemented its general guidance with specific support to the project team on the need for Norfolk to undertake a more comprehensive appraisal of technology options than the project team was considering. After considering this advice Norfolk undertook a more comprehensive appraisal, and changed the assumption in its business case over which technology it expected to use from mechanical biological treatment, to energy-from-waste.

'Transactor' support

2.7 To support local authorities, the Department uses staff from Local Partnerships and Infrastructure UK (a part of HM Treasury) to act as 'transactors'.¹⁷ These specialists provide expert support to local authority project teams and the Department's Programme team on topics such as planning, PFI contracting, project management and the law. The Department also coordinates regular 'network meetings' for all local authorities to meet their peers to discuss common issues and share solutions.

2.8 Staff from the local authorities we spoke to said that, for the most part, the written guidance, transactor support and network meetings were all helpful in overcoming project difficulties and managing risks to delivery. Although the Department has produced a significant amount of guidance, there were areas where they felt the Department could have provided additional or more timely guidance. For example, Norfolk told us that it would have been helpful to have guidance on energy-from-waste technology sooner. The Department published a guide on energy-from-waste in 2013, in order to supplement its existing guidance. Producing this guidance was a key action arising from its 2011 review of waste policy. The Department does not believe that publishing the guide sooner would have affected Norfolk's decision, in November 2010, to appoint its preferred bidder whose proposal involved energy-from-waste technology.

¹⁶ A variety of technologies is available for waste treatment. These range from non-thermal treatment processes such as autoclaving systems and mechanical biological treatment, to thermal processes such as gasification and energy-from-waste incineration. Contractors can combine some of these processes, but many projects receiving waste infrastructure credits have chosen to use energy-from-waste incineration plants.

¹⁷ Infrastructure UK is a unit within HM Treasury that works on the UK's long-term infrastructure priorities and seeks to facilitate private sector investment in infrastructure. Local Partnerships is jointly owned by the Treasury and the Local Government Association. It provides commercial expertise on infrastructure, legal and contractual issues.

2.9 The Treasury believes that the Department's support to local authorities is good compared to the activities of other departments across government that support PFI contracts. In 2010, we reported on the performance of departments' private finance units, setting out our view of good practice, including in the area of support and advice to projects. Based on this work, we concur with the Treasury's assessment.¹⁸

Sharing information

2.10 In our 2009 report on the Programme, we made a number of recommendations to the Department about compiling and sharing information with local authorities.¹⁹

Figure 1 sets out the Department's actions in response to our recommendations and shows that the Department has acted on them.

Figure 1

The Department's response to our 2009 recommendations about compiling and sharing information

Information that we recommended the Department should compile and share

Cost benchmarks for different types of waste infrastructure

The internal and external resource requirements for different types and size of project, including appropriate budgets for the use of external advisers

A standard set of assumptions for authorities to use in project plans on key variables such as waste growth. Local authorities may still wish to carry out sensitivity analysis based on alternative assumptions

Information on how to coordinate the different processes involved within the waste management system where waste collection is excluded from the PFI contract

The Department's actions since 2009

The Department has produced a range of indicative costs and benchmarks which it has published or made available to local authorities where commercial considerations permit. It has also produced an annual survey showing benchmarks for the incremental cost of treating a tonne of residual waste, known as 'gate fees', using different technologies

The Department has produced financial data for all projects covering the costs agreed at financial close; and information on the capacity, capability and cost of advisers covering the procurement, planning, construction and commissioning phases. The Department has made this available to local authorities on request

The Department has shared the methodology and assumptions used in its waste infrastructure capacity model (see paragraphs 2.11–2.14)

In May 2009, the Department published specific guidance on methods for joint working between two authorities where one is collecting waste and the other disposing of it

Source: National Audit Office review of Department for Environment, Food & Rural Affairs data

¹⁸ Comptroller and Auditor General and HM Treasury, *Managing complex capital investment programmes utilising private finance*, March 2010, Function 4, p 16, available at: www.nao.org.uk/wp-content/uploads/2010/06/Managing_Complex_PFI_projects.pdf

¹⁹ Comptroller and Auditor General, *Managing the Waste PFI Programme*, HC 66, Session 2008-09, National Audit Office, January 2009, recommendation II, p 8, available at: www.nao.org.uk/wp-content/uploads/2009/01/080966.pdf

Modelling and assumptions

2.11 To inform its decision-making about how much waste infrastructure capacity England needs, the Department has developed a waste infrastructure capacity model (the model). Correspondents and local authorities expressed concerns about the nature of this model and the extent to which the Department has shared it with local authorities.

2.12 When a local authority breaches the terms of its funding agreement, the Department uses the model, along with the Programme team's judgement, to decide whether the infrastructure is still needed to meet the EU targets and therefore whether it should continue to offer funding support to the contract.

2.13 The Department has published on its website, or made available to local authorities, many aspects of the model and the results of external reviews of the model that it has commissioned. The information shared includes the methodology and assumptions on key variables such as waste growth. The Department has not shared the full model, however, because a key input is the Department's own assessment of the likelihood that planned facilities will be built, which it believes is commercially sensitive.

2.14 By sharing its assumptions, the Department gave local authorities the opportunity to use them as a starting point for their own assumptions if they wished. However, the model is only intended to forecast waste capacity at the national level (because the EU targets are applied on a national basis). The Department recognises that individual regions may vary from the national picture and local authorities may need to consider local circumstances if undertaking their own forecasts. For this reason it does not require local authorities to use its assumptions in their own modelling. This is borne out by Norfolk, and Herefordshire Council and Worcestershire County Council (Herefordshire and Worcestershire), who do not think that the Department's national assumptions accurately reflect the factors that influence waste levels in their regions, such as population growth and housing growth. These local authorities have therefore chosen to use different assumptions to plan their services, and the Department has agreed this approach as part of its scrutiny of the local authorities' business cases.

Management of funding allocations

Scrutiny of local authorities' plans

2.15 Some correspondents expressed concern that the Department may have exercised insufficient scrutiny of their local authority contracts, leading to contracts that were poor value for money.

2.16 The Department reviews regular reports by the transactors and its programme team scrutinises individual contracts. The scrutiny of each project varies over time according to the type and stage of the project, but there are a number of fixed scrutiny points, including the outline business case, final business case and 'financial close' stages of the contracting process.

2.17 It is important for long-term contracts such as PFI waste contracts that key contract documentation is retained for future reference. The Department does not hold an original business case for the Herefordshire and Worcestershire contract. Herefordshire and Worcestershire told us that they do not believe a business case document was produced. While the Department believes it has sufficient documentation to enable it to assess whether or not the contract is delivering ongoing value for money, not holding a business case makes it difficult for the local authorities and the Department to assess whether the contract is value for money against the original rationale. In addition, the Department does not hold complete records of the scrutiny of the Surrey County Council (Surrey) and Herefordshire and Worcestershire contracts carried out by its predecessors prior to 2001.

2.18 In the case of Norfolk, which is a more recent contract, the Department examined the contract's outline and final business cases, including the Council's approach to securing planning permission, plans for delivery of the proposed facility and the principal aspects of the financing structure and commercial relationship.

2.19 When Surrey and Herefordshire and Worcestershire proposed changes to their contracts, the Department scrutinised and challenged the proposals and continued to scrutinise them as they developed. The local authorities and the Treasury told us that the Department had challenged local authorities' proposed contract changes effectively and that the Department's scrutiny had improved their contracts. For example, the Department's challenge led Herefordshire and Worcestershire to further refine the proposed changes to the financing arrangements within their contract. Surrey told us, however, that the Department did not communicate clearly whether or not it was satisfied with the information the Council had submitted in response to the Department's questions. The Department disputes this view and believes that outstanding issues were made clear in periodic logs and notes, which were shared with the local authorities.

2.20 While they understood the need for the Department's scrutiny, all of the local authorities we spoke to raised concerns over the amount of time and cost the Department's scrutiny has added to their projects. The iterative process of the Department's review of the changes to Surrey's contract lasted over two years. The Department told us that this was due to delays arising from the planning process; an alleged breach of procurement rules; and information required to complete the scrutiny process that Surrey was unable to provide until late in the process, at the end of 2012. The Department's review of Herefordshire and Worcestershire's proposals for making changes to their contract took approximately six months. The Department considers that a good quality business case is necessary to secure the best commercial outcome for the public sector, and local authorities will necessarily incur costs in preparing such a business case. The Department also considers that it is necessary for it to scrutinise local authorities' proposals before funding them. It told us that the time elapsed in the case of all three contracts reflected the quality and complexity of the proposals put forward and the corresponding amount of scrutiny required, and that its scrutiny has not delayed the local authorities' projects.

Nature of the funding agreements

2.21 The Surrey and Herefordshire and Worcestershire contracts were among the first PFI waste contracts in the UK. Older PFI waste contracts such as these tended to provide for a suite of integrated waste services such as recycling and residual waste disposal. By contrast, more recent contracts such as Norfolk's, tend to provide for a single piece of waste infrastructure, such as an energy-from-waste facility.

2.22 In addition, earlier funding agreements (such as those with Surrey and Herefordshire and Worcestershire) tended to impose fewer terms and conditions on local authorities than later funding agreements. Under these early funding agreements, signed by the Department for Environment, Transport and the Regions, grant payments started as soon as the local authority began paying its contractor. The nature of these contracts meant that the local authorities started to pay their contractors once the latter began to provide services under the contract, irrespective of whether all of the planned infrastructure had been delivered.

2.23 The terms and conditions of the funding agreements put in place by the Department for the Environment, Transport and the Regions made it difficult for the Department to amend unilaterally the terms of its funding agreements with Surrey and Herefordshire and Worcestershire. As a result, the Department was aware that any reduction or re-profiling of the payments under these early funding agreements would likely require agreement with the affected local authority.

2.24 As the Programme evolved and the Department for Environment, Food & Rural Affairs gained experience of the issues these projects were likely to encounter, the terms and conditions of its later funding agreements (such as the agreement with Norfolk) became stricter, giving the Department greater scope to reduce or remove funding support.

Review of funding allocations

2.25 In October 2010, as part of its Spending Review 2010 decisions, the Department reviewed its provisional funding allocations to 17 local authority projects still in procurement, in order to identify ways it could reduce the cost of the programme while still meeting the EU targets. The funding allocation to those projects was only provisional as the local authorities involved had not yet signed their waste contracts. It decided to withdraw the allocations from seven of the 17 projects.

2.26 In 2011, the Department's Programme Board (the Board), made up of senior members of the Programme team and representatives from Local Partnerships, decided to carry out a review of the Programme's older projects. These 'legacy projects' were all integrated waste management contracts where elements of the planned waste infrastructure had not been built but, because the contractor was providing some services under the contract, the Department was making the grant payments in full to the local authorities. The Surrey and Herefordshire and Worcestershire contracts were two of the five contracts included in the 'legacy projects' review. The Department told us that it undertook this review because:

- from April 2011, responsibility for managing the PFI grant budget and for making the grant payments to local authorities transferred from the Department for Communities and Local Government to the Department for Environment, Food & Rural Affairs;²⁰ and
- there was continuing delay in delivery of the key infrastructure.

2.27 In August 2011, the Department consulted the local authorities concerned about its future support to the five 'legacy projects' and, in January 2013, ministers agreed that the Department should seek to negotiate changes to the payment profiles with the local authorities in order to link future payments with the timing of delivery of the planned infrastructure.

Impact of the Department's decisions

2.28 The Department has always said that individual projects should represent value for money for local authorities, regardless of the Department's funding support. As a result, the Department believes that overall programme decisions to re-profile, reduce or withdraw funding should not directly affect a contract's value for money.²¹ However, the Department's decisions to re-profile payments, reduce the funding allocated for a contract or withdraw funding support entirely have had an impact on local authorities' cash flows.

Surrey

2.29 In 2013, following the legacy project review, the Department negotiated a revised payment profile with Surrey, to reflect the fact that all of the waste infrastructure had not yet been built.²² The revised profile does not reduce the overall amount of funding support that the Department will pay to Surrey,²³ but it does reduce the annual amount that will be paid from 2013-14 until the point at which the gasifier plant Surrey now plans to build becomes operational. This is expected to be in 2016-17.

20 For administrative convenience, the Department for Communities and Local Government makes the payments in accordance with the Department for Environment, Food & Rural Affairs' instructions.

21 The term re-profiling refers to changing the amounts of individual, quarterly grant payments but with no increase or decrease in the overall amount of grant paid.

22 Although neither of the originally proposed energy-from-waste plants was built, and the Charlton Lane Eco Park is yet to be developed, the contractor has provided services under the contract and developed some of the planned infrastructure (paragraph 1.10).

23 Provided that the planned waste infrastructure is built, the project continues to meet the terms and conditions of the original award, and the contract remains in line with the Treasury's principles of 'PFI' support.

2.30 The Department's decision to re-profile Surrey's grant payments means the Council's cash flow is £1.5 million lower in 2013-14 than originally expected under the funding agreement and £5.9 million lower in both 2014-15 and 2015-16. Thereafter, Surrey will receive around £1.6 million annually above the original expected grant payments so that the total grant paid by the end of the contract in 2024-25 is unchanged (Appendix Three).²⁴

2.31 In 2011-12, Surrey established a sinking fund into which it deposited a proportion of the waste grant it had received. The purpose of the fund was to meet future waste disposal costs, including development of its waste infrastructure. As at 31 March 2014, the balance of the sinking fund was £14.6 million. Surrey intends to use the fund to manage the temporary cash flow impact of the re-profiling of its grant.

Herefordshire and Worcestershire

2.32 Following the Department's scrutiny of the local authorities' planned changes to the PFI contract, there were two main issues that the Department and the Treasury did not believe were satisfactorily resolved:

- whether Herefordshire Council and Worcestershire County Council needed to act as the sole finance provider for the project, rather than as just one lender alongside a banking group; and
- the valuation of the energy-from-waste facility when the contract ends, given that the contractor will operate the facility for a much shorter period than originally envisaged.

2.33 The local authorities are responsible for ensuring that the contract represents value for money. Understanding the need to seek the Department's prior approval to the proposed energy-from-waste variation, however, they submitted a variation business case to the Department in July 2013. The local authorities decided that the best solution was to deliver the proposed facility using only prudential borrowing and without funding support from the Department, since this option would not meet the requirements for PFI arrangements. This meant that the Department's approval of the local authorities' plans for the facility and their financing approach was no longer required. As a result of these changes, the Department will reduce its annual payment by around £3.1 million from the first quarter of 2014-15 and reduce its overall support to the project by £30 million over the life of the contract (see Appendix Three).²⁵

2.34 The Department has also imposed additional conditions on the local authorities in return for continuing payment of the remaining waste infrastructure grant. These involve the local authorities reporting additional information to the Department annually, and bearing the costs of any EU financial penalties if any of their actions cause or contribute to a breach of EU law.

²⁴ The final payment, in 2023-24, will be £2.0 million above the original expected payment. This profile assumes the gasifier will begin to process waste in early 2016-17. The grant will continue to be proportionately lower until the gasifier starts processing waste.

²⁵ The final annual payment, in 2023-24, will be reduced by £2.2 million.

2.35 The agreed reduction in the Department's funding support means the local authorities have had to find an additional £3 million per year from 2014-15 until 2023-24. They believe that using prudential borrowing, rather than the private finance originally anticipated (paragraph 1.18), will generate a saving sufficient to offset the majority of the reduction in the Department's funding.

Norfolk

2.36 The Department's funding agreement with Norfolk was signed in 2012 and so included stricter terms and conditions than earlier agreements. One of the conditions of the agreement was that the Norfolk project had to secure planning consent for the project by a contractual planning deadline of 10 June 2013, known as the 'planning permission long-stop' date.

2.37 Norfolk did not secure planning permission by the contractual planning deadline and, as a result, it breached one of the terms of its funding agreement with the Department. This caused the Department to review its funding allocation for the contract. To help inform its review, the Department reran the model it uses to forecast how much waste treatment capacity England is likely to deliver. The model indicated that, even without Norfolk's planned capacity, the Department would meet the 2020 EU target with 95 per cent certainty and, on average, would exceed the required capacity by around 25 per cent.²⁶

2.38 The Department engaged with Norfolk to understand their view of the likely impact of any actions the Department might take. In October 2013, ministers decided to revoke the £91 million of waste infrastructure credits allocated to the project. Norfolk has estimated that this amounts to a withdrawal of £169 million in funding over the life of its project.²⁷

2.39 In spite of the Department's decision to revoke its funding allocation, Norfolk's Cabinet decided in October 2013 to proceed with the project, believing it still represented value for money and would achieve planning permission by 14 January 2014, when the Secretary of State for Communities and Local Government's decision was expected. It estimated that the contract would still save the local authority £20 million in waste disposal costs over the life of the contract compared to landfill, although this was considerably less than the figure of at least £200 million it originally expected to save.

²⁶ The model employs Monte Carlo simulation to examine the impact of varying the assumptions made in the model. In the latest run of the model, the average of the capacity forecast in 10,000 simulations was approximately 25 per cent greater than the 2020 target level.

²⁷ The precise amount of support that the Department would have paid would not have been calculated until the plant was operational and Norfolk had started to pay the contractor.

2.40 However, by April 2014, Norfolk felt that the situation had changed, and the Council's Cabinet decided to terminate its contract with Cory Wheelabrator on the grounds that the project had failed to secure planning permission from the Secretary of State for Communities and Local Government by the expected date, and there was uncertainty about when any ministerial planning decision might be forthcoming. The significant delays had caused project costs to rise and the contract payback period to shorten reducing the value for money of the project. By April 2014, Norfolk estimated that the saving it had expected the project to achieve had further reduced to £12 million and was continuing to reduce at a rate of £140,000 per day. This meant that, by June 2014, savings from the project would have fallen to zero. Norfolk has stated that the Department's withdrawal of its funding support was also a factor in its assessment of the reduction in savings to Norfolk taxpayers.

2.41 In April 2014, Norfolk estimated the cost of terminating its contract at £33.7 million. This is made up of:

- £20.3 million to cover the contractor's costs. This is a capped amount under the terms of Norfolk's contract. The contract does not provide a breakdown of the individual elements that make up the total capped amount, but it relates mainly to fees paid by the contractor to secure bank financing for the project. The likely level of these bank fees was estimated at Norfolk's final business case, however Norfolk and the Department told us that this figure remains commercially sensitive;
- £11.8 million to end hedging arrangements which were taken out to mitigate against long-term changes in foreign exchange and interest rates; and
- £1.6 million to cover 90 per cent of the estimated cost to the contractor of participating in the Planning Inspectorate's inquiry.

2.42 Norfolk has already set aside £19 million and says it will fund the remaining shortfall of around £14.7 million by reducing the money available for other council services. The Department engaged with Norfolk prior to making its decision to revoke the funding and was aware that the local authority might terminate the contract and incur termination costs as a result.

2.43 Terminating the contract at this time allowed Norfolk to benefit from a 'breakpoint' in the contract on 1 May 2014. After that breakpoint, a decision to terminate on grounds of planning failure would have cost more. For example, Norfolk has estimated that termination on the same grounds a month later would cause the compensation due to the contractor to increase by around £4.7 million.

2.44 The Department scrutinised the compensation arrangements as part of its review of Norfolk's business case. In light of its concerns about Norfolk's proposed timetable for achieving planning permission, the Department challenged Norfolk over whether it had fully considered the impact of not achieving planning permission on its proposed funding and compensation arrangements. Norfolk confirmed to the Department that it had considered this and expected to achieve planning permission within the proposed timetable. On the basis that this risk was a matter for the Council to judge, since it would bear the consequences, the Department did not challenge this further.

Appendix One

Our audit approach

1 We examined how the Department for Environment, Food & Rural Affairs (the Department) oversees the PFI waste projects run by Norfolk, Surrey and Herefordshire Council and Worcestershire County Council. We reviewed:

- the Department's Waste Infrastructure Development Programme in order to understand the context in which the Department was making decisions on these three projects;
- the Department's support to the four local authorities in implementing their projects; and
- how the Department scrutinised the four local authorities' implementation of their projects under the Programme.

2 We analysed the **Department's data** on the PFI credits it has allocated to the local authorities and the equivalent grant amounts, to assess the scale and profile of the Department's financial support to the three contracts.

3 We **interviewed**:

- current and former members of the Department's Waste Infrastructure Delivery Programme team;
- the four local authorities undertaking the three projects: Norfolk County Council, Surrey County Council, Herefordshire Council and Worcestershire County Council;
- HM Treasury officials;
- the private sector contractor for the Norfolk project; and
- private sector experts on the waste sector to provide perspectives on commercial and economic issues.

4 We also reviewed a **range of documents**, including the Department's programme board minutes; programme guidance; strategic programme information including funding allocations, transactor reports and board minutes; correspondence between various bodies; evidence submitted by the general public; and the Department's waste capacity planning model.

Appendix Two

Summary of the three contracts

Key contract and funding information

	Herefordshire and Worcestershire	Surrey	Norfolk
Contract type	Integrated contract for waste disposal and waste infrastructure	Integrated contract for waste disposal and waste infrastructure	Residual waste facility
Contractor	Mercia Waste Management ¹	SITA Surrey ²	Cory Wheelabrator ³
Contract signed	December 1998	June 1999	February 2012
Contract value (total value of unitary charges over contract life as estimated at financial close)	£680 million	£740 million ⁴	£582 million ⁵
PFI credits originally allocated	£57.4 million	£85.5 million	£91.0 million
Total grant to be paid (original)	£143.0 million	£204.7 million	– ⁶
Date credits withdrawn/reduced	December 2013	– ⁷	October 2013
Total grant to be paid (revised)	£113.0 million	N/A	N/A
Grant paid to date	£89.5 million	£124.1 million	N/A
Principal residual waste project proposed	Envirecover	Charlton Lane Eco Park	Willows Power and Recycling Centre
Proposed site	Hartlebury, Worcestershire	Charlton Lane, Shepperton	Saddlebow, nr. King's Lynn
Residual waste technology chosen	Energy-from-waste plant	Gasifier	Energy-from-waste plant
Project status	Post financial close – with planning consent	Post financial close – with planning consent ⁸	Abandoned

Notes

- Mercia Waste Management is a joint venture between FCC Environment and Urbaser Ltd, owned respectively by two Spanish conglomerates, Fomento de Construcciones y Contratas SA and Actividades de Construcción y Servicios SA.
- SITA Surrey is a wholly-owned subsidiary of SITA UK.
- A consortium comprising Cory Environmental Ltd and Wheelabrator Technologies Inc.
- Expenditure was expected to be around £740 million but could range between £666 million and £897 million depending on circumstances.
- In October 2013, the adoption of a revised project plan increased the expected value of the contract to £610 million.
- The Department does not calculate grant figures until the local authority begins to make payments under the contract. The Department revoked the allocation of credits from Norfolk due to a breach of its funding agreement before the local authority began to make such payments. Norfolk estimates, however, that the grant would have totalled £169 million.
- Although the Department has changed the profile of the individual remaining payments to Surrey, the overall amount remains unchanged provided the planned waste infrastructure is built, the project continues to meet the terms and conditions of the original award and the contract remains in line with the Treasury's principles of 'PFI' support.
- Members of the Council's Planning and Regulatory Committee have resolved to grant an application to vary that consent to take into account the revised gasification technology. As a matter of course, that decision has been referred to the Secretary of State for Communities and Local Government to decide whether he wishes to call in the application for his own determination.

Source: National Audit Office review of departmental and local authority project documentation

Summary contract timelines

Surrey

Date	Event
June 1999	Surrey County Council signs a 25-year integrated waste contract with SITA Surrey which includes two energy-from-waste plants The Department for Environment, Food & Rural Affairs allocates £85.5 million in waste credits to Surrey
May 2000	Local planning applications made for sites at Redhill and Capel
December 2001	Local planning consent granted for Capel but not Redhill
November 2002	Judicial review overturns local planning consent for Capel site
January 2006	Surrey County Council draws up new waste disposal action plan
March 2007	Surrey County Council agrees revisions to contract with SITA Surrey
October 2007	New local planning application made for site at Capel
June 2008	Local planning application made for site at Trumps Farm
October 2008	Surrey County Council grants local planning consent for Capel site
January 2009	Surrey County Council signs contract with Allington Waste Ltd to dispose of 100,000 tonnes of waste a year
March 2009	Successful challenge to High Court forces Surrey County Council to withdraw planning permission for Capel site
June 2009	SITA Surrey withdraws planning application for Trumps Farm site
February 2010	Surrey County Council agrees a new waste management strategy involving waste management facilities within the Charlton Lane Eco Park
October 2013	The Department for Environment, Food & Rural Affairs concludes its negotiations with Surrey County Council to re-profile its funding support

Herefordshire and Worcestershire

Date	Event
December 1998	Herefordshire Council and Worcestershire County Council jointly sign a 25-year integrated waste contract with Mercia Waste Management which includes an energy-from-waste plant The Department for Environment, Food & Rural Affairs allocates £57.4 million in waste credits to the two Councils
November 2000	Local planning application made for an energy-from-waste plant at a site at Kidderminster
July 2002	Local planning application for Kidderminster site failed following an appeal
August 2004	Local planning application made for an autoclaving facility at a new site at Hartlebury
November 2004	Herefordshire Council and Worcestershire County Council publish a Joint Municipal Waste Management Strategy
February 2005	Local planning granted for an autoclaving facility at a site at Hartlebury
March 2006	Worcestershire County Council buys the site at Hartlebury for the purposes of waste disposal
March 2007	Negotiations with Mercia Waste Management about autoclaving break down due to uncertainty about the end market for the process by-product. A satisfactory end market was a planning requirement
2009	Herefordshire Council and Worcestershire County Council review their joint municipal waste management strategy
2009	Mercia Waste Management proposes an energy-from-waste plant at Hartlebury
March 2011	Worcestershire County Council resolved to grant local planning permission for Hartlebury site
May 2011	Secretary of State for Communities and Local Government calls in the planning application
August 2011	Herefordshire Council and Worcestershire County Council publish the revised joint waste management strategy following full approval by both local authorities and all of the waste collection authorities in Worcestershire
July 2012	Secretary of State for Communities and Local Government approves planning decision
December 2013	Herefordshire Council and Worcestershire County Council agree to try to make changes to the existing waste management service contract
December 2013	The Department for Environment, Food & Rural Affairs concludes its negotiations with Herefordshire Council and Worcestershire County Council to reduce its funding support from £143 million to £113 million
February 2014	Herefordshire Council and Worcestershire County Council agree to provide finance to the contractor to build the planned energy-from-waste facility
May 2014	Herefordshire Council and Worcestershire County Council conclude negotiations with Mercia Waste Management and finalise the changes to their waste management service contract to build and operate an energy-from-waste plant at Hartlebury

Norfolk

Date	Event
December 2006	Norfolk County Council publishes its waste management strategy
March 2008	Norfolk County Council buys site at The Willows near King's Lynn
May 2009	The Department for Environment, Food & Rural Affairs writes to Norfolk confirming the provisional allocation of £91 million of credits. Norfolk estimated (in 2014) that this would have been worth £169 million in grant payments over 25 years
April 2009	Procurement process starts
September 2009	Four organisations shortlisted for contract
November 2010	Norfolk County Council appoints Cory Wheelabrator as preferred bidder
June 2011	Cory Wheelabrator submits local planning application for waste treatment and recycling plant at The Willows site
February 2012	Norfolk County Council formally signs contract with Cory Wheelabrator
June 2012	Department for Communities and Local Government directs Norfolk County Council not to grant planning permission without the Secretary of State's authorisation
August 2012	Secretary of State for Communities and Local Government calls in the planning application
February–May 2013	Planning inquiry held by Planning Inspectorate
October 2013	The Department for Environment, Food & Rural Affairs revokes Waste credits on basis Norfolk project no longer necessary for national needs; Norfolk County Council decides project still offers value for money because it will save £20 million in waste disposal costs over life of contract compared to landfill The Secretary of State for Communities and Local Government announces he expects to make his planning decision on or before 14 January 2014
January 2014	Secretary of State for Communities and Local Government writes to Norfolk County Council to say that he will not now make his decision by January 2014; no new date is set
April 2014	Norfolk County Council decides to take steps to terminate its contract with Cory Wheelabrator because of the failure to secure planning permission by the expected date, uncertainty about when any ministerial planning decision might be forthcoming and the reduction in the value for money of the project due to the delays

Appendix Three

Changes to grants for Herefordshire and Worcestershire and Surrey

1 The two Figures in this Appendix show the impact of the Department for Environment, Food & Rural Affairs' (the Department's) decision to re-profile its financial support for the Surrey contract and reduce its financial support for the Herefordshire and Worcestershire contract.

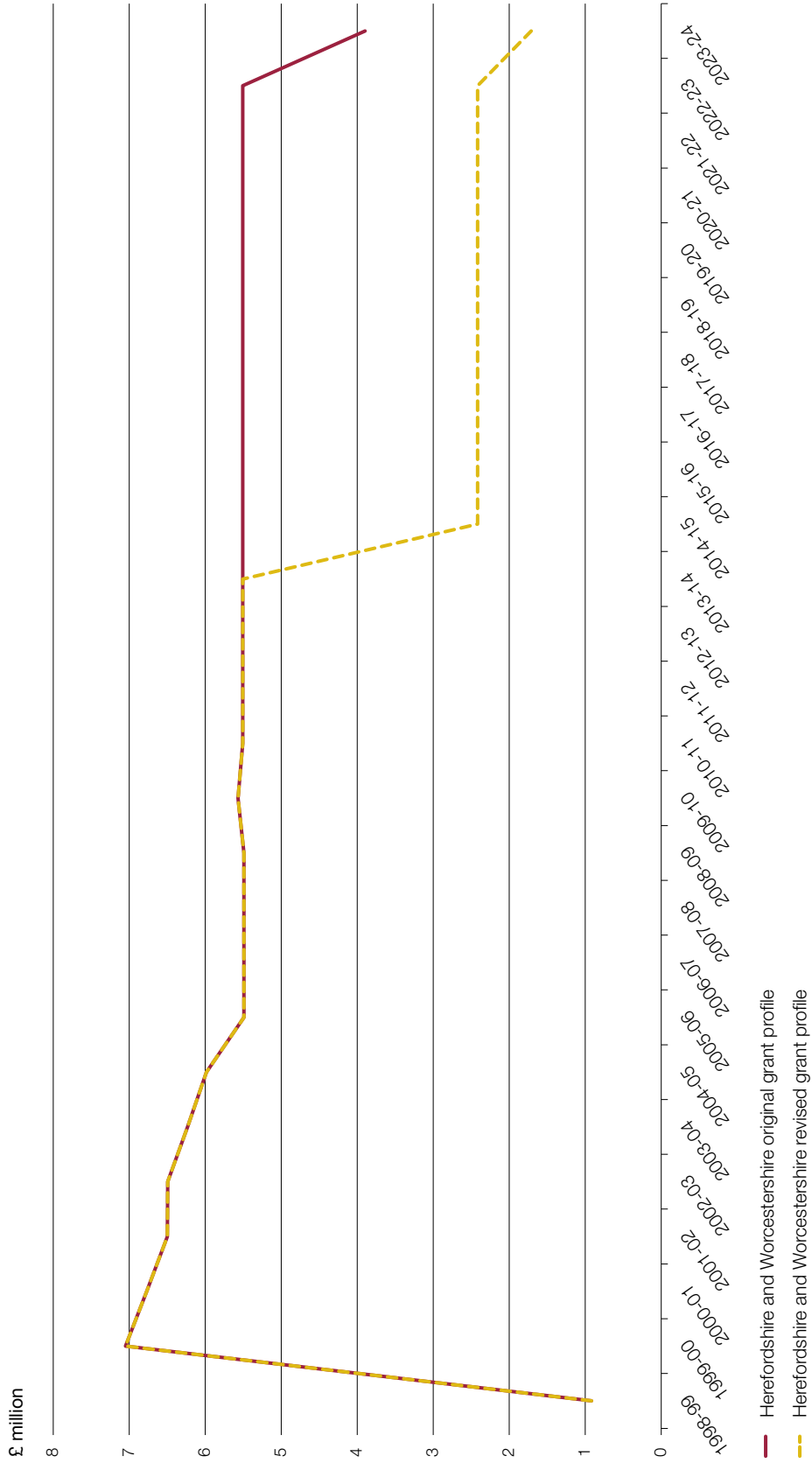
2 **Figure 2** shows how the Department has reduced its funding support to Herefordshire and Worcestershire from the first quarter of 2014-15 in response to the changes the local authorities proposed to make to their PFI contract in 2013.

3 **Figure 3** on page 32 shows that for Surrey the revised profile does not reduce the overall amount of funding support that the Department will pay, but it does reduce the annual amount that will be paid from 2013-14 until the point at which the gasifier plant Surrey now plans to build becomes operational – this is expected to be in 2016-17.²⁸

²⁸ Provided that the planned waste infrastructure is built, the project continues to meet the terms and conditions of the original award, and the contract remains in line with the Treasury's principles of 'PFI' support.

Figure 2
Reduction in Waste Infrastructure Grant for Herefordshire and Worcestershire

The Department has reduced its funding support from 2014-15 in response to the changes the local authorities proposed to make to their PFI contract in 2013



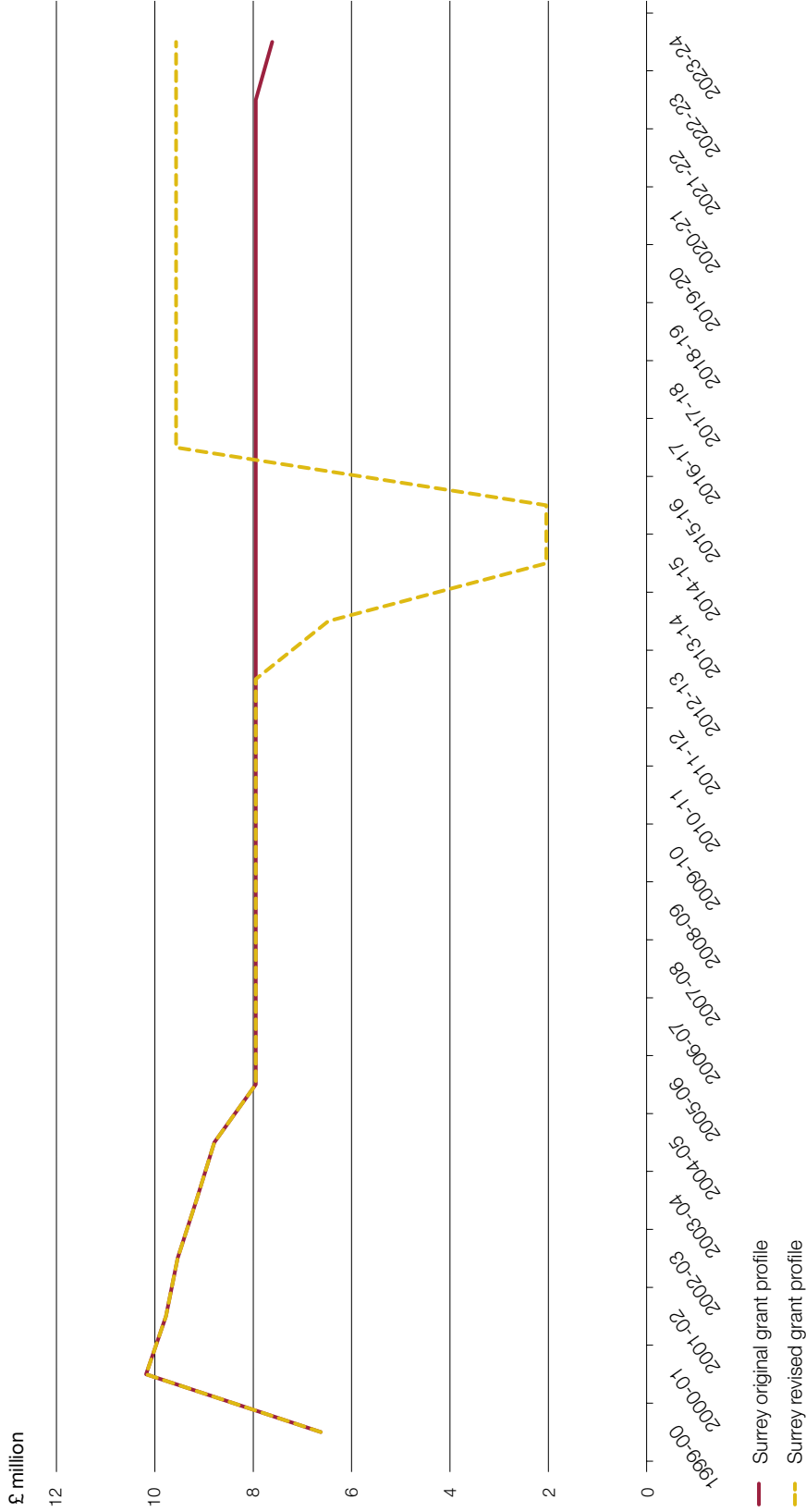
Notes

- 1 The revised profile reduces the annual grant payment by £3.1 million per year from 2014-15 to 2022-23 and £2.2 million in 2023-24.
- 2 The Department apportions the grant and corresponding reduction in a ratio of 25 per cent to Herefordshire and 75 per cent to Worcestershire to match their respective contributions to the funding of the project.

Source: National Audit Office analysis of Department for Environment, Food & Rural Affairs data

Figure 3 Revision to Surrey's Waste Infrastructure Grant payment profile

The revised profile defers £13.3 million of the grant support from the years 2013-14 to 2015-16 until after the gasifier is expected to begin to process waste



Notes

- 1 The revised profile defers £13.3 million of the grant support from the years 2013-14 to 2015-16. The deferred amount is then paid out at a rate of £11.6 million per year over the remaining life of the contract, with the exception of the final year, when £2.0 million is paid out.
- 2 This profile assumes the gasifier will begin to process waste in early 2016-17. The grant will continue to be proportionately lower until the gasifier starts processing waste.
- 3 There is no change overall to the total amount of grant paid over the life of the contract provided that the planned waste infrastructure is built, the project continues to meet the terms and conditions of the original award and the contract remains in line with the Treasury's principles of 'PFI' support.

Source: National Audit Office analysis of Department for Environment, Food & Rural Affairs data

Appendix Four

The Department's Waste Infrastructure Delivery Programme

1 This Appendix sets out the background to the Department for Environment, Food & Rural Affairs' (the Department's) Waste Infrastructure Delivery Programme.

2 In 1999, the European Union introduced Directive 1999/31/EC (the EU Directive) requiring all member states to reduce the amount of biodegradable municipal waste sent to landfill. Biodegradable municipal waste is waste such as food, vegetation and paper that can be broken down by other living organisms. It accounts for 68 per cent of municipal waste.

3 EU member states face fines if they fail to meet their landfill reduction targets for biodegradable municipal waste. The government has divided the UK target into individual targets for England, Wales, Scotland and Northern Ireland.²⁹ The government has met its target to reduce biodegradable waste sent to landfill in 2010. Data on whether it has met the 2013 target are not yet available although the Department told us that 2012 data indicate that it is likely to meet the target. The Department believes it is on course to meet the 2020 target, which requires it to reduce the biodegradable municipal waste annually sent to landfill to less than 10.2 million tonnes by 2020.³⁰

4 The Department must make sure that England diverts sufficient waste from landfill to enable the UK to meet the EU targets. In July 2006, the Department established the Waste Infrastructure Delivery Programme (the Programme) to stimulate and accelerate investment by local authorities in waste infrastructure to ensure England meets its target. The Programme's secondary objectives included ensuring that local authorities had the necessary support to work with industry to implement schemes of the required size, and to stimulate competitive investment in the required waste treatment facilities. We have previously reported on progress in implementing the Programme, as well as on the Department's work to reduce the reliance on landfill in England.³¹

²⁹ The devolved administrations are responsible for meeting the Wales, Scotland and Northern Ireland targets.

³⁰ All of the targets use the level of municipal waste in England sent to landfill in 1994-95 as their baseline.

³¹ Comptroller and Auditor General, *Managing the Waste PFI Programme*, HC 66, Session 2008-09, National Audit Office, January 2009, available at: www.nao.org.uk/wp-content/uploads/2009/01/080966.pdf

5 In the 2007 Comprehensive Spending Review, HM Treasury made an additional £2 billion of PFI credits available to the Department to support waste infrastructure on top of the £1.2 billion it had already allocated, bringing the total credits available for the Programme to £3.2 billion. The Department planned to award £2.8 billion of these credits to 39 local authority waste projects. The Department called these 'Waste Infrastructure Credits' (the credits).

6 Under a waste PFI contract, the local authority pays a private contractor a monthly fee, known as the 'unitary charge', to provide and maintain waste infrastructure and related services. The Department helps local authorities pay the unitary charge by giving waste infrastructure credits to local authorities in equal quarterly instalments over the life of the contract, in the form of a grant. Inflation erodes the value of money over time, so the amount of grant paid needs to be higher than the value of the credit to preserve the original purchasing power of the credits throughout the life of the PFI contract. The Department formally awards the credits and calculates the grant amount when the local authority signs its PFI contract.

7 At the start of the Programme in 2006, most local authorities had developed, or were developing, local waste management strategies showing how they intended to deal with waste. These strategies also set out the requirements for individual waste infrastructure projects. A local authority could choose to build new infrastructure to divert household waste away from landfill, and could opt to do so through a PFI contract. It could then apply to the Department for the credits under the Programme.

8 Having applied for the credits, the local authority then needed to find a suitable site, address planning and environmental issues, select the waste technology it wanted to use, consult with the local community and formulate a procurement strategy. Once the Department was satisfied that these elements were, or would be, in place, it approved the allocation of credits through a funding agreement.³² This agreement represented a firm commitment to pay the credits (via the grant) so long as the local authority met specified conditions.

³² The documents that confirm the allocation of credits have varied in name, scope and content over time but typically took the form of a 'promissory note' or a 'Waste Infrastructure Credit letter'.

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