

CLLS Planning & Environmental Law Committee response to Defra Consultation Questions on the Waste Prevention Programme for England – September 2013

The City of London Law Society (“CLLS”) represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of the Defra Consultation on the Waste Prevention Programme for England has been prepared by the CLLS Planning & Environmental Law Committee.

1 Do you broadly agree with the proposed role for Government?

We believe that the Government has a key role to play in waste prevention. The Government sets the strategic direction regarding waste prevention, for example the Waste and Resources Action Programme (WRAP) has been highlighted a number of times in the consultation, stating that WRAP will provide advice and technical and financial support on waste reduction. It is also stated that through WRAP, the Government is supporting others to change their practices and services, developing opportunities of collective action and delivering training. However, it has also been widely reported that the Department for Environment, Food and Rural Affairs have cut WRAP funding to around £18 million for 2014/15 and cut further for 2015/16 to around £15.5 million. This equates to a reduction of more than 72% over a period of seven years. Therefore, we do have concerns as to how the Government expects WRAP to provide the services it is promoting in the consultation in light of the increasing cuts.

The consultation states that the Government is supporting the development of the Electronic Duty of Care (EDOC) system, which aims to assist businesses in modernising the way waste data is collected in the UK. As EDOC is a voluntary system, we would suggest that businesses need to be encouraged to use this system. The Government may wish to consider rolling out the EDOC system in a similar way to the mandatory Government Buying Standards being introduced.

Article 9 of the Waste Framework Directive 2008 (the Directive) states that by the end of 2014, the Commission shall submit proposals to the European Parliament covering the setting of waste prevention and decoupling objectives for 2020. As mentioned in the consultation, Article 29 of the Directive further provides that Member States must establish waste prevention programmes no later than 12 December 2013. We have concerns that while the waste prevention programme is to be established by the end of 2013, the objectives on waste prevention and decoupling will not be established until the end of 2014.

It appears to be counter intuitive to produce the programme in advance of setting the objectives.

Annex IV to the Directive sets out examples of waste prevention measures referred to in Article 29. It was not clear to us whether the Government is planning on using any of the examples from Annex IV and whether any incentives will be offered to organisations to persuade them to take up such measures.

2 Do you broadly agree with the proposed role for Business?

We are pleased that the principles that have been outlined in the consultation confirm the role of businesses will be critical to the success of the programme. The Government may wish to consider financial support to help businesses who are considering changing their established business practices in light of the programme.

The consultation states that undertaking waste audits demonstrates where savings can be made. We do have concerns that it appears that businesses are expected to cover the costs of these audits themselves and while it is mentioned that organisations such as WRAP can assist, we have concerns regarding WRAP's resources in light of the reduced funding (see above).

The consultation is pushing for businesses to play a key role in exploring more sustainable, durable and longer lasting products. In particular, the consultation is seeking retailers to influence consumers in buying better quality products with longer life spans, or providing longer product guarantees. We consider that some businesses may be reluctant to do this, as realistically it would mean consumers buying fewer products. The Government may wish to consider financial incentives for those businesses that are willing take up the challenges of such schemes. The Government may also wish to consider incentives for retailers and/or suppliers who decide to offer longer guarantees for their products, than are currently considered the 'norm' (we would note there may be consumer protection issues with such guarantees).

3 Do you broadly agree with the proposed role for Local Authorities?

The consultation identifies a key difficulty for local authorities as the lack of data on waste prevention and states that waste audits and effective mobile asset management could help local authorities reduce waste. The Government may wish to consider improving the issue of lack of data in local authorities, for instance by introducing mandatory data controls and/or audits in order to force local authorities to improve their recording of waste prevention. More importantly, the Government may wish to consider making funding available to local authorities in order to improve their data management systems.

The consultation suggests that local authorities should work in partnership with other local authorities, local businesses and others in order to achieve efficiencies and promote the sharing of best practices. The Government may wish to consider how it plans on promoting the sharing of best practices between local authorities, especially in light of the discrepancies between those local authorities who benefit from the measures and those who have to bear the costs of waste prevention, as mentioned in the consultation. The consultation is proposing that local authorities should share best practices and, in light of this, the Government may wish to consider promoting this at central government level.

4 Do you broadly agree with the proposed role for others and individuals?

There is very little information given in the consultation on the role for others and individuals, and therefore it is hard to comment in detail due to the lack of information put forward.

The consultation states that action within the voluntary sector is achieving real benefits in local waste prevention, however very little, if any, support is being offered to this large sector of society in order to promote waste prevention. The Government may wish to consider providing support and assistance for these organisations. In addition, the

Government may wish to consider making funding available for these enterprises who are contributing to local waste prevention.

The report highlights simple practices which contribute to reducing the amount of waste produced, including one example of passing on or selling items which are no longer needed. It is essential to have clearer regulation/guidance on this topic as there is a possibility that selling on used items may actually constitute a sale of waste. It is imperative that individuals know what they are permitted to do in the prevention of waste, without unduly committing an illegal act.

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