



23 September 2013

CONSULTATION ON THE WASTE PREVENTION PROGRAMME FOR ENGLAND
RESPONSE OF THE UK ENVIRONMENTAL LAW ASSOCIATION

INTRODUCTION

1. The UK Environmental Law Association (**UKELA**) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study and formulation of environmental law in the UK and the European Union. UKELA attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Waste Working Party.
3. UKELA makes the following comments on Defra's public consultation on the Waste Prevention Programme for England dated August 2013 (**Consultation Paper**).

BACKGROUND AND GENERAL COMMENTS

4. Article 29 of the Revised Waste Framework Directive (2008/98/EC) (**RWFD**) requires Member States to establish waste prevention programmes by no later than 12 December 2013. These programmes have to include waste prevention objectives and "*evaluate the usefulness of the examples of measures indicated in Annex IV*" [to the RWFD] "*or other appropriate measures*". UKELA also notes that Member States must give stakeholders an opportunity to participate in the development of the waste prevention programme. As such an opportunity, UKELA welcomes the invitation to comment on the Consultation Paper.
5. While the Consultation Paper includes the Annex IV list, in UKELA's view the Consultation Paper itself does not address the full range of measures identified in Annex IV. Accordingly, presently (and although UKELA appreciates this is work in progress) the proposals in the Consultation Paper may not fully address or implement the legal requirements of Article 29 of the RWFD.
6. UKELA believes that the Consultation Paper presently puts undue emphasis on municipal waste and re-use of waste (as opposed to waste prevention), and contains insufficient emphasis on issues of future resource and materials scarcity, and security.
7. Waste prevention is at the top of the waste hierarchy. Achieving the prevention of waste requires a multi-faceted approach across all government departments to lead, encourage and develop the various examples and principles outlined in Annex IV, as well as to lead on the necessary behavioural changes which will be required to achieve such goals. It is not clear from the Consultation Paper to what extent other Government Departments, including DCLG, BIS and HM Treasury, have inputted into this consultation.

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DO YOU BROADLY AGREE WITH THE PROPOSED ROLE FOR GOVERNMENT?

8. UKELA feels that the Government's proposed role as set out in the Consultation Paper does not adequately implement the requirements of Article 29 of the RWFD. The action the Government proposes to take within its own operational sphere (outlined in the Consultation Paper) is acknowledged, as is the work of WRAP. However, more generally the chosen role Government appears to have taken is to encourage others within the UK economy to reduce waste, but it does not provide or refer to any meaningful incentives (outlined in Annex IV).
9. UKELA would like to see (and believes Article 29 requires) more specific proposals and leadership from Government for:
 - (a) planning measures (paragraph 1 of Annex IV);
 - (b) other economic instruments (paragraph 11) to promote the efficient use of resources;
 - (c) the promotion of research and development (paragraph 2);
 - (d) the promotion of eco-design (paragraph 3);
 - (e) the promotion of waste prevention plans (paragraph 7); and
 - (f) the creation of product panels and integrated product policies (paragraph 14).
10. It seems to UKELA that the abolition of Site Waste Management Plans, announced for December 2013, runs contrary to the aims of the RWFD and, specifically, paragraph 7 of Annex IV.

DO YOU BROADLY AGREE WITH PROPOSED ROLE FOR BUSINESS?

11. Business clearly has a significant role to play, but needs strong leadership, support and incentives from Government, to make waste prevention a commercially attractive reality. Step-changes in behaviour and attitudes as to the provision of goods and services are required. This will involve consideration by Government as to how to facilitate new financial models to encourage a fundamentally different approach to the use of resources and promote a move to a more circular economy based on service rather than product sales models, whilst also promoting longevity in use. Such pioneering work needs to be done and led by Government (supported by industry) to drive waste prevention in the medium to long term (with identifiable target dates) on an economically viable basis. Overall, there should be an aim to reach a situation where the cost of waste management is such that it is economically better to keep a product in use and service it.
12. By way of example, it is UKELA's view that requiring a charge of 5 pence for a carrier bag is unlikely to have much impact in waste prevention and in fact runs counter to waste prevention, since many will find it necessary to buy plastic bags for waste paper baskets etc where currently supermarket plastic bags serve this purpose.

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DO YOU BROADLY AGREE WITH THE PROPOSED ROLE FOR LOCAL AUTHORITIES?

13. Local Authorities have a role to play. However, based on existing data, the more significant area of waste arisings is in the field of commercial and industrial waste. Incidentally, the data in the second paragraph of Section Two of the Consultation Paper is confusing. UKELA repeats an extract here, for ease of reference:

“The UK used approximately 470 million tonnes (Mt) material resources in 2010, with over 250Mt of resources becoming waste. In 2010, total waste generation in England was estimated at 177Mt continuing a decrease in waste arisings from 325.3Mt in 2004”.

14. UKELA assumes that the reference to 250 Mt refers to waste arisings in the UK, whereas 177Mt refers to waste arisings in England only. However, SEPA states that waste arisings in Scotland in 2010 amounted to 16.86 Mt and it seems unlikely that waste arisings in Wales and Northern Ireland together amount to the difference, so UKELA questions the figures as presented and supports the need for more and clearer data.

DO YOU BROADLY AGREE WITH THE PROPOSED ROLE FOR OTHER ORGANISATIONS AND INDIVIDUALS?

15. UKELA agrees that voluntary action is achieving some benefits in terms of encouraging local waste prevention and increasing levels of reuse. However, complete community engagement is needed and that will, in UKELA's view, only gain traction if Government provides support as envisaged in paragraphs 8,9,11,12 and 13 of Annex A to the RWFD. An indication of what could be achieved is demonstrated by the effect upon the renewable energy industry of ongoing Government support by way of the Renewables Obligation, Feed-in-Tariffs and Contracts for Difference. Also of note is the support to industry and householders in energy conservation through the Green Deal and the Renewable Heat Incentive.

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