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frESH Law Horizons

April 2021

The government has published a consultation on a proposed new Protect Duty closing 2 July 2021. The Protect Duty would make it a legal requirement for public places to ensure preparedness for, and protection from, terrorist attacks. Drawing on lessons learned from previous terrorist incidents, it is intended to deliver on a manifesto commitment to improve the safety and security of public venues and spaces. The consultation will run for 18 weeks and close on 2 July 2021. It seeks views on who the Protect duty should apply to; what it will require stakeholders to do; how compliance should work; and how the government can support those in scope. It is expected that the duty will apply to specified owners and operators of public venues, large organisations and those responsible for public spaces. This could include sports and music venues, hotels, pubs, clubs, bars, casinos, retail stores and shopping centres, transport hubs, schools and hospitals. The findings and recommendations of the Manchester Arena Inquiry are also likely to be considered as part of the consultation process, with a report expected this summer. Although the Protect Duty is subject to the outcome of the consultation, owners and operators of public venues and spaces should consider how such a duty might impact on their operation, the risks of terrorism in relation to their operation, and appropriate safeguards.

Retailer fined £7.56 million for selling food past its use-by date. The fine, following a guilty plea in respect of 22 charges under the Food Safety and Hygiene (England) Regulations 2013, has been reported by the national press and by food safety publications. The offences related to a number of items that were on sale past the marked use-by date at three stores in Birmingham. As we reported in June last year, an application for judicial review of the decision of the District Judge that expert evidence as to whether the food was, in fact, safe, was inadmissible and was refused by the High Court. The significant fine is a reminder that the Sentencing Guidelines for food safety and hygiene offences (such guidelines also governing health and safety and corporate manslaughter) can result in a very significant fine, particularly for organisations that will be classified as large. For further detail, please see our separate article on this case.

Health and Safety Executive (HSE) recommends written confirmation of gas pipe isolation following fine for fatal gas explosion. The HSE press release related to a prosecution of an asbestos removal contractor, who pleaded guilty to a breach of the Health & Safety at Work etc. Act 1974. The HSE inspector's comments following the imposition of the £150,000 fine also remind contractors that within the asbestos licensing permissioning regime, HSE expects licensed contractors to have adequate management arrangements in place to control non-asbestos risks.

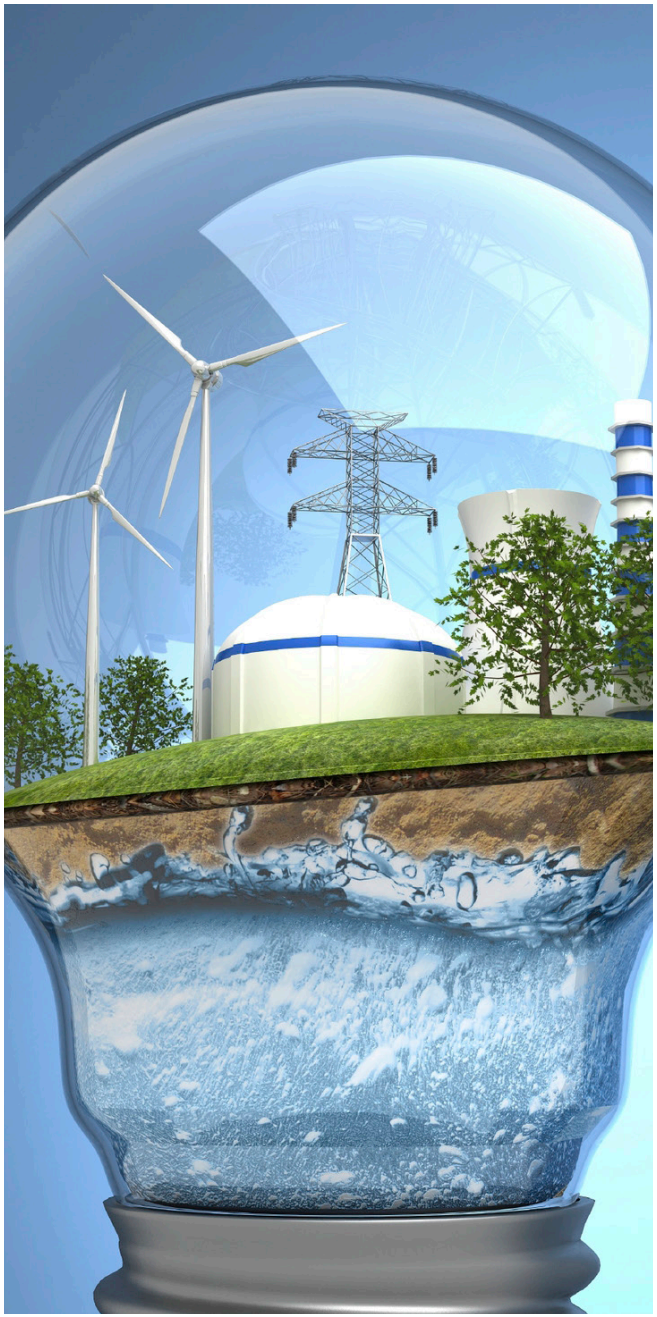
Court rules in favour of Thames Valley police after officer brings negligence claim arguing no safe system of work. In *Holly Galvin v Chief Constable of Thames Valley [2021] CC (Luton) (Judge Bloom)*, a former police officer brought a negligence claim for personal injuries sustained as a result of stepping out of a moving police van. The claimant argued that the driver of the vehicle was negligent in causing her to fall, or alternatively that there was no safe system of work in place for officers decamping from vehicles. The court held that police officers were trained in dynamic risk assessments and had to judge for themselves when it was safe to leave a police vehicle. It also confirmed that there is nothing inherently negligent in driving a police van in a chase with the van doors open. The court considered that allowing individual officers to take decisions on a case-by-case basis was preferable to having different protocols for every risky scenario that front-line officers faced. The case is an interesting one as it demonstrates potential difficulties with written documentation covering every eventuality, and it also demonstrates how health and safety obligations can be relied upon in civil claims for compensation.

Institute for government (IfG) calls on the government to review its policy making processes before limiting the scope of judicial review. The IfG has published a report following concerns raised by ministers in relation to judicial review following Brexit-related challenges and the promise in the Conservative's election manifesto to ensure that judicial review would not be abused for political purposes. The IfG suggests that many concerns could be addressed by considering how policy makers are advised on legal risk and the contribution that such legal advice makes to the policy process. The report begins by examining which government departments face the most judicial reviews (with the Home Office and Ministry of Justice topping the list). It goes on to say that frustration with judicial review would be lessened if ministers and civil servants better understood how to use legal advice. The report recommends that policy officials should engage lawyers as soon as they have identified the options available to them. It warns against the merging of policy advice with legal advice as this might give the impression that policy officials are using the risk of losing a judicial review to delay or block policies. It also advises the government to improve its communication of legal risk appetite, particularly between departments and central government.

Prosecution collapsed because of disclosure failings by the Serious Fraud Office (SFO). A high-profile prosecution of two former directors of outsourcing company Serco collapsed after a judge directed the jury to acquit following admissions of disclosure failings by the SFO. The directors had been accused of defrauding the government out of £12 million by understating the profitability of Serco's prisoner-tagging contract. The SFO said that its prosecution review process had uncovered errors in disclosure, leading the judge to reject an adjournment request because it was not in the public interest.

Suspended prison sentence imposed for breach of a reporting restrictions order in a criminal trial. In *Solicitor General v Mayfield*, a prison sentence of 12 weeks, suspended for two years, was imposed following a finding of contempt of court, for a defendant who posted videos and photographic images on social media, in breach of a restriction order intended to protect the identity of two witnesses. This followed an appeal by the Solicitor General to commit the respondent for contempt of court. The suspended sentence is to be activated immediately if the contemnor re-publishes any of the images in breach of the order.

High Court entitles private prosecutor to recover expenses incurred prior to commencement of criminal proceedings from central funds. In *Football Association Premier League v Lord Chancellor*, the appellant appealed a decision refusing to reimburse a private prosecutor their expenses incurred prior to the commencement of private proceedings under the Prosecution of Offences Act 1985 (POA). The court confirmed that recovering costs incurred "in the proceedings" was capable of including pre-commencement undertaken for the purposes of prosecution.

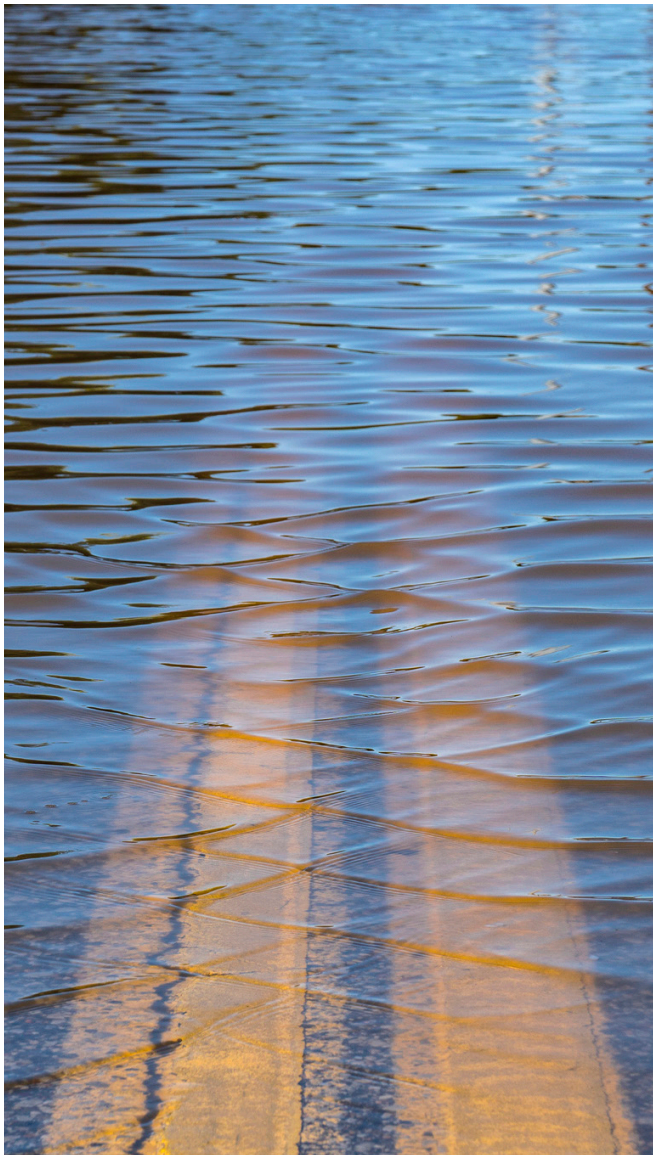


Man jailed for over two years for filling former quarry with dangerous waste. The Environment Agency (EA) has announced that a defendant has been jailed for two years and three months for illegally disposing of 100,000 tonnes of waste in a former limestone quarry in Somerset in 2016. He was also jailed for a further 18 weeks, to be served concurrently, for supplying false information to the EA. The trader's company, M E Foley (Contractors) Ltd, which ran the site under an environmental permit, failed to provide the court with any company accounts and was fined £72,000. The environmental permit only allowed "clean" and "non-hazardous" material, including soil and construction waste for recovery purposes, namely to build bunds and embankments in the quarry. In reality, plastic, metal, foam and other materials were illegally deposited at the site, and subsequent analysis showed that about half the samples were hazardous and either carcinogenic or ecotoxic. The operator was also lying about the amount being received: 95,000 tonnes of waste was deposited, more than double the 44,950 tonnes declared by the company. The EA issued repeated warnings, but eventually served the company with a suspension notice that cancelled its permit with immediate effect and stopped the site from operating. This is an example of the work being done by the EA to stop illegal waste activities.

New carbon targets announced. On 20 April 2021, the government announced the sixth carbon budget, covering the five-year period from 2033 to 2037. This includes a requirement to reduce carbon emissions by 78% by 2035, compared to 1990 levels, taking the UK more than three-quarters of the way to net-zero by 2050, and almost to the level of the previous 2050 target. This is understood to be the world's most ambitious climate change target to be put onto a legal footing (which it should be by the end of June). To compare with what was already in place, the UK was working towards 68% by 2030, compared to 1990 levels, through the UK's latest nationally determined contribution under the Paris Agreement, which the government had already claimed was itself the highest reduction target made by a major economy to date. As well as the large step up in the target, crucially, the sixth carbon budget is the first to include the UK's share of international aviation and shipping emissions, a major change in approach from the government, which sees the reduction of these emissions as an important part of its decarbonisation efforts.

Single-use carrier bag charge increase. The single-use carrier bag charge will increase to 10 pence and will be extended to all retailers in England from 21 May 2021. This includes small, medium and micro retailers (including airport retailers). Biodegradable bags are not exempt from the charge. Businesses with fewer than 250 staff do not have to keep records or report carrier bag use. Fixed and variable penalties can apply for failure to charge for bags appropriately and connected matters, ranging from £100 (fixed) to £20,000 (maximum variable penalty for false or misleading information or obstruction).

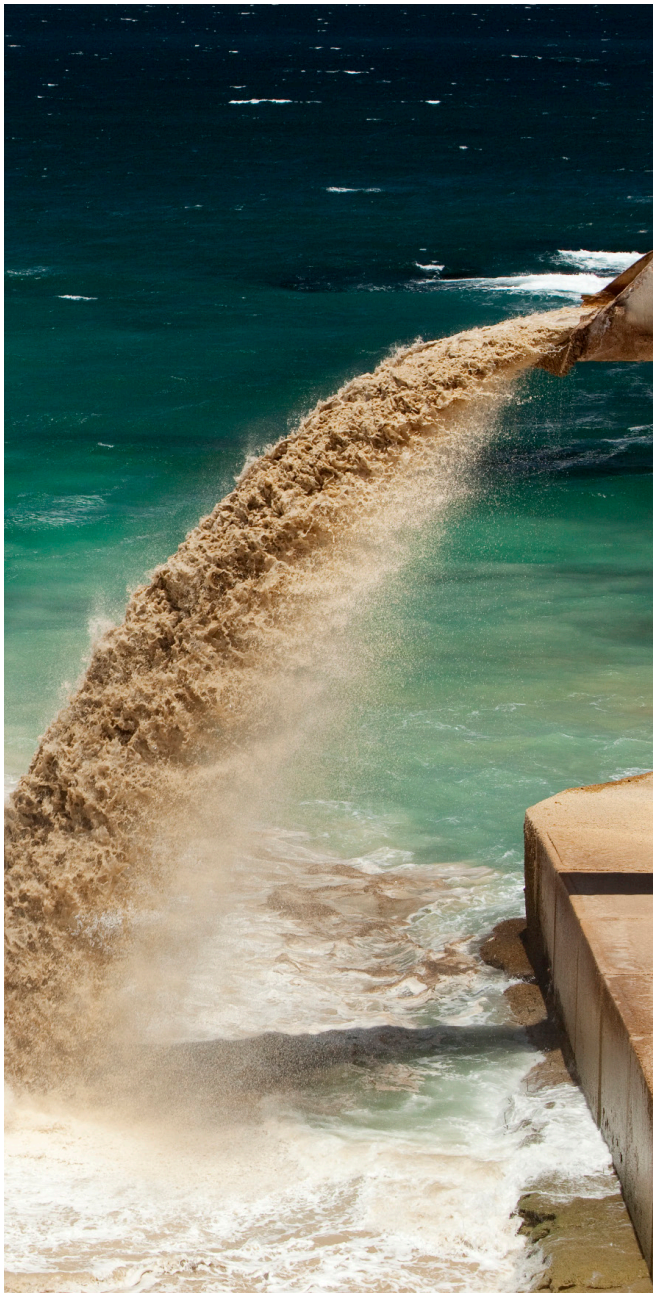
Court of Appeal decision in landfill "fluff" case. Landfill operators place a layer of "fluff" (compacted black bag waste) underneath and on top of the other waste in a landfill cell to protect it from being punctured. In this long-running saga, the question for consideration was whether this was waste (and, therefore, subject to landfill tax). In May 2018, the First Tier Tribunal found that the fluff was waste, and therefore, it was subject to landfill tax. The Upper Tribunal overturned the First Tier Tribunal's decision in January 2020 and held that fluff was not waste. On 22 April 2021, the Court of Appeal overturned this ruling and reverted to the position that fluff is waste. One key point made in the judgment is that even if a material is to be "used" in some way that does not necessarily mean that there is no "intention to discard" it (the test for whether something is waste). It has not yet been announced whether the operators will appeal to the Supreme Court.



The Interim Environmental Governance Secretariat (IEGS) published its first report on complaints. The IEGS is the temporary body that will be replaced by the new Office for Environmental Protection (OEP) when that is formally established later this year. From 1 January 2021, the Interim Environmental Governance Secretariat (IEGS) has received complaints about suspected failures, by public authorities, to comply with environmental law. It covers England, Northern Ireland and UK-wide reserved matters. There are separate arrangements for devolved matters in Wales and Scotland. It received 13 complaints, of which nine were about nature conservation matters, and four about pollution. Three are considered "closed" (do not meet the criteria), seven are "waiting" (IEGS seeking further information from the complainant or public authority) and three are "open" (meet the criteria and are open cases).

The government publishes response on standards for biodegradable, compostable and bio-based plastics. The Department for Business, Energy and Industrial Strategy (BEIS) and the Department for Environment, Food and Rural Affairs (DEFRA) published a response to their call for evidence from July 2019. The response reports mixed views on the potential contribution of bio-based plastics to a more circular economy. There was more consensus on biodegradable plastics, that they have a limited but valid role, primarily where conventional plastic is too contaminated to be reused or recycled. Strong concerns were raised regarding the extent to which plastics marketed as biodegradable actually biodegrade in the open environment, and whether biodegradable plastics could encourage littering. Similar issues were raised in relation to compostable plastics, albeit with recognition that there is a compostability standard. There was a clear consensus on oxo-degradable plastics, that such technologies are unproven and likely to be a source of microplastic pollution. The government also confirmed that the evidence suggests that plastics should not be labelled as "bioplastics" as the term is ambiguous and offers little value to the public, and that labelling should be clear and provide guidance on how to dispose of products, alongside whether they are bio-based and/or biodegradable. The evidence base is still developing in relation to these new types of plastic, but the government's preference remains that most plastics are reusable or recyclable. The government will welcome further research and evidence in this area, and is taking forward a number of policy proposals informed by the evidence received in response to this call (including consultations on extended producer responsibility for packaging and consistent recycling collections). The government is also minded to introduce a ban on oxo-degradable plastics, subject to further evidence and a public consultation.

Case against EA alleging negligent flood modelling continues. In *Anchor Hanover Group (and others) v Arcadis Consulting (UK) Ltd (and others)*, the High Court dismissed the EA's application to strike out a negligence claim brought against it in relation to flooding at a block of sheltered housing. The flooding arose due to heavy rainfall and a blocked culvert. The culvert had been constructed to divert a river in connection with a supermarket development, and the EA had approved hydraulic modelling for the proposed diversion and consented to it going ahead. The presence of a screen on the headwall of the culvert led to debris becoming trapped against the screen, blocking the culvert. The Court held that consenting to the diversion/culvert itself (exercising its statutory duty) was unlikely to give rise to a duty of care towards the claimants, but its involvement in the hydraulic modelling went beyond its statutory powers and might impose a duty of care.



The EA has issued updated guidance and positions on various waste and permitting matters, notably:

- U9 waste exemption: using waste to manufacture finished goods, updated to clarify that waste derived finished goods still need to meet the end of waste test.
- New low risk waste positions: electrical equipment, including constituent parts and accessories, two new low risk waste positions: "Storing hazardous components from WEEE at existing S2 exempt operations: LRWP 81", and "Storing and treating hazardous components from WEEE at existing T11 exempt operations: LRWP 82".
- Deposit for recovery operators: environmental permits, new guidance on how to submit an appropriate environmental permit application for a deposit for recovery operation and what to include in a waste recovery plan.
- Dispose of waste to landfill, updated the section on banned waste, clarifying the rules for waste holders who intend to send gypsum-based waste to landfill.
- Discharges to surface water and groundwater: environmental permits, updated and expanded guidance on when you need an environmental permit to discharge liquid effluent or waste water to surface water or the ground, and how to apply, including new information on effluent discharges and the requirements for standard rules and bespoke applications.

DEFRA requests comments on draft Stockholm Convention proposals for three chemical substances. The UK is a Party to the Stockholm Convention on persistent organic pollutants (POPs), which has a review process for adding new POPs to the Convention. Substances listed in the Convention are generally prohibited from production, marketing or use unless exemptions apply or specific acceptable purposes have been agreed. UV-328, Dechlorane Plus and Methoxychlor have been proposed for inclusion, and the POPs Review Committee (the technical scientific committee of the Stockholm Convention) has requested information on draft risk documentation for these substances as part of its review. DEFRA is, therefore, inviting comments from interested parties.

Meanwhile, the EU has made recommendations for a new POP and indicated support for an already proposed POP. The Commission has issued a proposal for a Council Decision confirming that the EU's position at the 10th meeting of the Conference of the Parties to the Stockholm Convention will be to support the listing of perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds in Annex A to the Convention without specific exemptions. The EU has also issued Council Decision (EU) 2021/592 on the submission, on behalf of the EU, of a proposal for the listing of chlorpyrifos in Annex A to the Stockholm Convention. Although the pesticide chlorpyrifos has been phased out in the EU, it appears that it is still used outside the EU. Due to the potential for long-range environmental transport of chlorpyrifos, the EU considers that measures taken nationally or at EU level are not sufficient to safeguard the high level of protection of the environment and human health.

EA updates Regulators' Code and the Environment Agency guidance on how the EA meets the Regulators' Code. It now has updated links to the EA's five-year action plan (EA2025 creating a better place), which sets out the EA's priorities from 2020 to 2025, as well as updates on how the EA charges for activities that need an environmental permit and the EA's risk-based approach to assessing and scoring environmental permit compliance.

Council serves final injunction on illegal waste site in Kent. As reported in frESH Law Horizons February 2021, Maidstone Borough Council previously secured an interim High Court injunction to prevent further serious harm to a site that is located within an Area of Outstanding National Beauty, a designated Ancient Woodland and covered by a Tree Preservation Order. The Council had been investigating the site for several years and a previous enforcement notice to stop unlawful waste disposal and restore the land had been ignored by the site's apparently reclusive owner. The enforcement notice had required that the land should not be used for residential purposes, stationing of caravans, the storage of motor vehicle/vehicle parts, storage of building materials and waste, highways equipment and domestic items and that these should be removed. In April, Maidstone Council obtained a full injunction, in both prohibitory and mandatory terms. The prohibitory part requires all activities and living on the land to stop with immediate effect, with the mandatory element requiring everything to be removed from the site within six months. Breach of an injunction is prosecutable through committal proceedings in the High Court, which could mean a jail sentence.

Use of "rogue trader" leads to enforcement against landowners. The operators of a "footgolf" venue in Brighton have been served with an enforcement notice by Brighton and Hove Council ordering the removal of waste that a builder apparently deposited on their land. They had agreed that the builder could store, process and bag up chalk on a part of their car park, but the builder deposited several thousand tonnes of material (including road planings, as well as chalk) and then disappeared. The builder has given assurances to the operators that he had the relevant "documents in place" to carry out this activity, and they had taken his word for it. The arrangement also included an agreement that some of the chalk and rubble would be used to improve the site entrance and extend the car park, and it appears that the operators carried out those works after the material had been abandoned, in an effort to make the best of the situation, but which has backfired. The enforcement notice requires them to "completely remove the spoil heaps, aggregate mounds and chalk bunds and newly created car park and hardstanding area" and return the land to its former condition, including reinstating vegetation. The operators are reportedly hoping that a retrospective planning application will be able to regularise the situation, but that alone would not address the potential waste status of the material and its deposit on the land. This is a further cautionary tale to landowners and occupiers about the perils of allowing third parties to handle or deposit waste on their land, without checking the legality of the operation and securing guarantees.

The government explores next steps to clean up tobacco litter in England. A recent DEFRA announcement confirms that tobacco companies may be required to pay for the litter created by cigarettes, to protect the environment and save money for local councils. It is estimated that cleaning up littered cigarette butts currently costs UK local authorities around £40 million per year. Despite smoking rates being at their lowest recorded level, cigarette filters continue to be the most commonly littered item in England. Among the options being considered is a regulatory extended producer responsibility (EPR) scheme for cigarette butts in England, for which there is a new power in the Environment Bill. Like the proposed EPR for packaging, this would require producers to pay the full disposal costs of tobacco waste products. DEFRA says that further research will be undertaken to consider the next steps to tackle smoking-related litter, and that the government will continue to work closely with charities, tobacco product manufacturers and associated trade bodies to address the issue.

Coroner calls for law change after air pollution led to the death of a young girl. As we reported in our frESH Law Horizons December 2020 edition, Southwark Coroner's Court concluded that air pollution exposure was a significant contributory factor to the acute respiratory failure suffered by Ella Adoo Kissi-Debrah, and that she was exposed to nitrogen dioxide and particulate matter in excess of World Health Organization guidelines. Coroner Phillip Barlow has now published a "prevention of future deaths report" urging 14 individual institutions to implement changes to prevent future lives being endangered. The report singles out three central government departments – DEFRA, the Department for Transport and the Department of Health and Social Care – as responsible for addressing the problem. It recommends that the government should set legally binding targets for particulate matter in line with WHO guidelines. Although public bodies are not required to act on the coroner's recommendations, the report places significant pressure on the government to do so. The institutions, including central government, have until 17 June 2021 to respond to the coroner's concerns, including the action they propose to take and when. There are draft air quality targets in the Environment Bill and this is likely to be a topic of further debate when the bill returns to parliament.

European Commission published a consultation on revision of Energy Performance of Buildings Directive (EPBD). This builds on the February 2021 inception impact assessment for the EPBD (see frESH Law Horizons February 2021). The Commission's "Renovation Wave" strategy to boost energy renovation of buildings in the EU contains the goal of at least doubling the annual energy renovation rate of buildings by 2030, which will require an update to the EPBD. This consultation poses questions about decarbonising buildings, reporting whole life-cycle carbon emissions from buildings, mandatory minimum energy performance standards and improving energy performance certificates. The consultation is open until 22 June 2021 and we expect a proposal for a revised EPBD in late 2021.

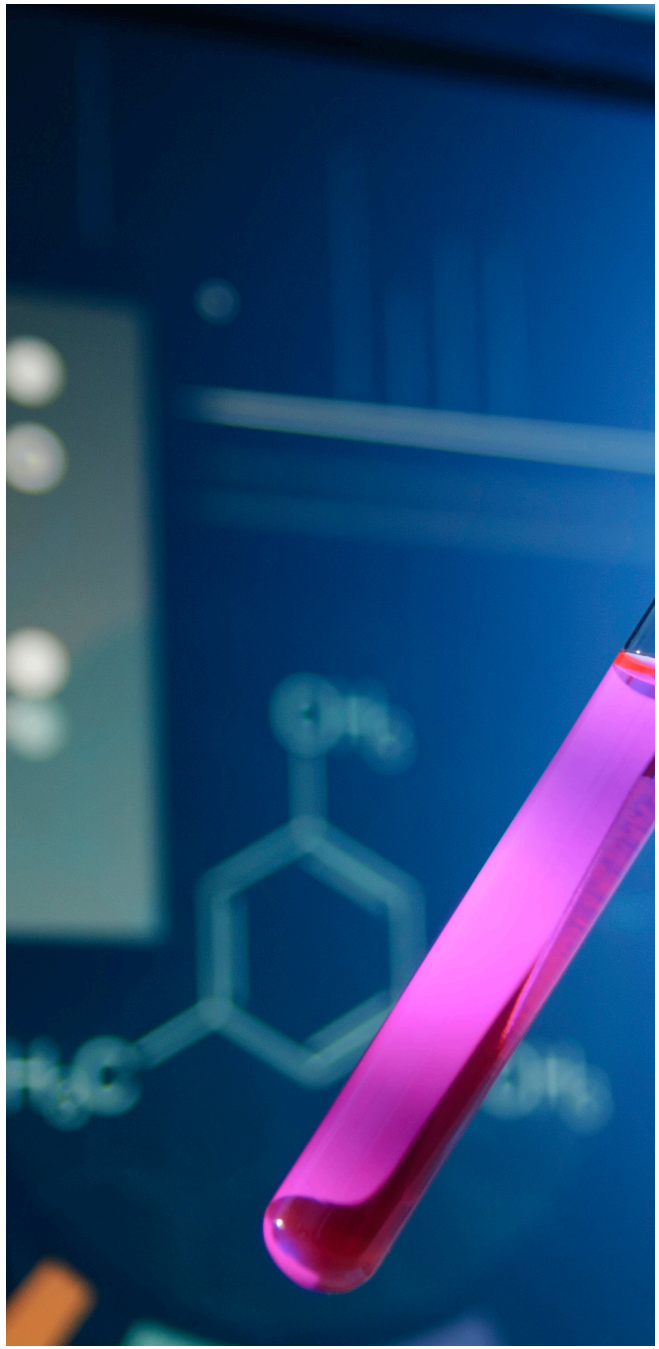
EU co-legislators approve EU-UK trade and cooperation agreement (TCA). After being agreed by negotiators from the UK government and European Commission in December 2020, and provisionally applied since the start of 2021, the European Parliament decided with a large majority to consent to the agreement on the rules for the future EU-UK relationship. After publication in the EU Official Journal, the TCA entered into force on 1 May. The level-playing field (LPF) provisions are a key part of the TCA (Title XI of Part 2). They include a "non-regression" obligation to not weaken or reduce the environment and climate change rules as they applied at the end of 2020 (Title XI, Chapter 7 provides the rules on environment and climate).

EU co-legislators reach provisional agreement on Climate Law. The Council and the European Parliament announced that they have reached a provisional agreement on the Commission's proposal from March 2020 for a Regulation establishing the framework for achieving climate neutrality. This European Climate Law sets the goal to reach climate neutrality by 2050 and the target of reducing net greenhouse gas emissions (i.e. in principle after deduction of removals) by at least 55% by 2030 compared to 1990. The co-legislators agreed to give priority to emissions reductions over absolute removals, by applying a limit of 225 Mt of CO_2 equivalent to the contribution of removals to the net target. Once the European Parliament and Council formally approve the provisional agreement, it will be published in the EU Official Journal and enter into force. The law tasks the Commission with making a proposal for the 2040 target, at the latest six months after the first global "stocktake" under Art. 14 of the Paris Agreement.

European Commission adopts "taxonomy" criteria for sustainable finance, including for chemical recycling. The Commission adopted a package comprised of a delegated act (Annexes 1 and 2) and a proposal for a Corporate Sustainability Reporting Directive (discussed further below), among others. The delegated act provides detailed criteria that economic activities must meet in order to be considered a substantial contribution to climate change mitigation or adaptation, while not doing significant harm to other environmental objectives covered by the Taxonomy Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment. For example, the manufacturing of chemically recycled plastics is only considered a substantial contribution to climate change mitigation if mechanical recycling is not technically feasible or economically viable and the life-cycle GHG emissions of the chemically recycled plastic are lower than from fossil fuel feedstock. Waste-to-energy does not appear in the list of economic activities possibly considered as a contribution to climate change mitigation or adaption. The delegated act will enter into force after being scrutinised by the European Parliament and the Council. The Commission is yet to adopt the criteria for the other environmental objectives. Some elements of the Taxonomy Regulation itself will apply from the start of 2022 or 2023.

EU Commission proposal for a Corporate Sustainability Reporting Directive (CSRD). This proposal aims to improve the flow of sustainability information in the corporate world. It will make sustainability reporting by companies more consistent, so that financial firms, investors and the broader public can use comparable and reliable sustainability information. It expands the scope of reporting beyond the current Non-Financial Reporting Directive's regime, and obligated companies would have to report information on a full range of environmental, social and governance (ESG) issues. The proposal is to apply this regime to all large (€20 million balance sheet/€40 million turnover) companies, whether or not listed, and regardless of employee numbers, and to all listed companies, except micro-size ones. The proposed directive will specify in more detail the information that companies should report, and require them to report in line with mandatory EU sustainability reporting standards. The next stage is for the Commission to engage in discussions with the European Parliament and Council. In parallel, the European Financial Reporting Advisory Group will work on draft sustainability reporting standards, which should be available in mid-2022.

European Chemicals Agency (ECHA) commences study on chemical recycling. ECHA published a support letter to consultant Risk & Policy Analysts (RPA) to conduct a study on chemical recycling for ECHA and a survey to express interest in it. The survey points to a broad range of questions that RPA is interested in, e.g. on the kinds of chemical recycling technologies and processes that are close to market introduction; positive impacts of chemical recycling; waste streams for chemical recycling; main sources contributing to substances of very high concern (SVHCs) in those waste streams; the adequacy of chemical recycling to address them; as well as potential emissions of SVHCs from chemical recycling.



ECHA identifies nearly 300 chemicals for regulatory action. In the third report on its Integrated Regulatory Strategy, ECHA highlighted the reduction of the number of substances listed in the pool of "not yet assigned'' chemicals by 26% compared to 2019. This is the category of substances whose risk could not be properly qualified to allocate them to one of the other pools: "data generation", "regulatory risk management under consideration", "regulatory risk management ongoing" and "currently no further actions proposed". ECHA's aim is to identify all those substances that should be prioritised in terms of regulatory action by 2027, through collaboration with the European Commission and member states. Out of the 1900 substances assessed, ECHA identified a need for further regulatory risk management for 290 substances. ECHA also highlighted that collection of further data is necessary, in order to best evaluate the possibly hazardous nature of such substances, mainly in the form of dossier compliance checks. ECHA's main recommendations include an invitation to the member states to initiate regulatory action where necessary, possibly with enhanced collaboration among them.

ECHA proposes siloxanes for REACH Authorisation List. ECHA proposed to the European Commission to include seven substances in Annex XIV of REACH (substances subject to authorisation). ECHA highlighted D4, D5 and D6 as a priority, due to their hazardous nature, high production volume and wide use, in particular in the production of electronics and in dry cleaners. It noted that the use of cyclosiloxanes is already restricted in most consumer products and most professional uses. The other substances proposed for the Authorisation List are hydrogenated terphenyl, because of the concerns around its effects on the environment, and DCHP, disodium octaborate and TMA, because of their potential effects on human health. The proposal from ECHA will be considered by the European Commission, and its draft scrutinised by the European Parliament and the Council.

ECHA Executive Director calls for occupational safety to be integrated in REACH and maintaining the authorisation system. In an interview with Chemical Watch, Björn Hansen discussed the REACH authorisation system, after an official of the European Commission Directorate-General for Environment (DG ENV) had reportedly stated that the EU executive was "quite open" on whether or not to keep it during the ongoing revision of REACH. Hansen preferred to maintain both authorisation and restriction, even though he recognised some inefficiencies of the authorisation system. One way of rethinking the authorisation system was "rather than us approving risk management that gives proper control, we can set a proper control limit and leave it up to companies themselves to determine what risk management will keep the exposures down and then ask them to monitor. This is effectively what the occupational health and safety legislation says." If ECHA were to go down that route, an integration of occupational safety and health rules into REACH would be necessary.

European Commission sets tasks for ECHA in the framework of the Chemicals Strategy for Sustainability. The Commission sent a note to ECHA, seen by Chemical Watch, on the tasks that ECHA would need to prioritise in the context of the revision of CLP and REACH Regulations, and invited ECHA to indicate the resources it would need to implement them. The deadline for these urgent tasks is June, and they include the development of criteria to categorise substances, including persistent, mobile and toxic, and endocrine disrupting. As far as the revision of REACH is concerned, in order to strengthen the principles of "no data, no market" and "polluter pays", the Commission invited ECHA to support a number of initiatives, including registration to polymers of concern. Additionally, the Commission invited ECHA to establish a multi-year plan for REACH restrictions, by developing proposals to prioritise substances and groups of substances for certain hazard classes.

European Food Safety Authority (EFSA) issues guidance to applicants from the plastic sector, including on new transparency requirements. EFSA issued guidance on the preparation of applications on substances to be used in plastic food contact materials (FCM), as well as for the preparation of applications on recycling processes to produce recycled plastics intended to be used for manufacture of FCM and articles. They address the most relevant changes for applicants, especially during the pre-submission phase, introduced by Regulation 2019/1381 on the transparency and sustainability of the EU risk assessment in the food chain, which came into effect in late March. Besides transparency, the guidance documents cover pre-submission advice, notification of information related to studies commissioned or carried out to support an application, and public consultations on submitted applications.

New court case against rules under the Single-Use Plastics Directive 2019/904 (SUPD). Seven plastic converters announced that they have lodged an action for annulment before the EU General Court against the SUPD Marking Regulation 2020/2151 (Case T-148/21) The Commission adopted that regulation in December last year to implement the SUPD. The co-applicants argue that the marking requirements for beverage cups are unnecessary and unsuitable to achieve the aim of the SUPD, and that the requirement for markings in the official language(s) of the member state where a beverage cup is placed on the market fails to take into account the free movement of products and consumers on the internal market. As noted in the announcement, the action does not have suspensive effect, will not prevent the labelling requirements from taking effect and may take several years to reach a conclusion. This case follows another one on the SUPD, an action for damages relating to the ban on products made of oxo-degradable plastics (Case T-745/20; please see frESH Law Horizons January 2021).

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