

frESH Law Horizons

July 2021





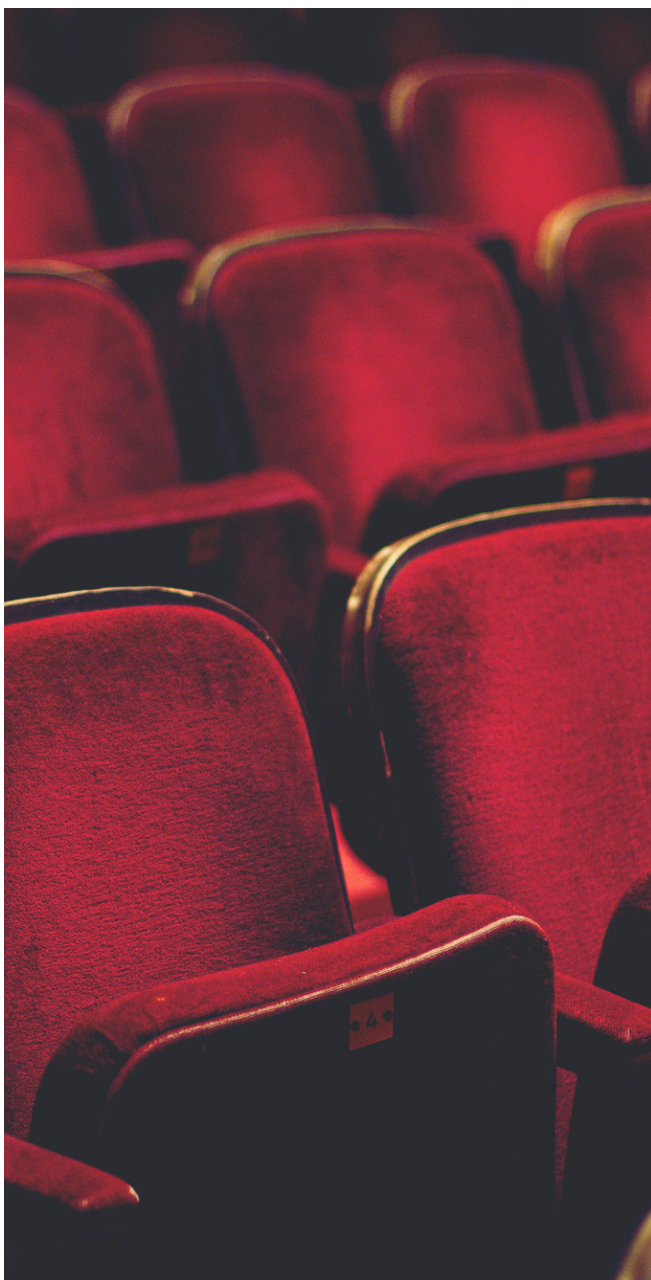
UK

The government has published its COVID-19 summer 2021 road map for England. The government set out [step 4](#) of the road map out of restrictions for England on 5 July. The approach is to replace the rules and regulations with advisory guidance to businesses and individuals. The measures that will be of particular interest to businesses are (i) all settings will reopen, including nightclubs and other large events; (ii) COVID-19-secure requirements on businesses will be lifted; (iii) businesses will be encouraged to display QR codes for customers to check in using the NHS app; (iv) businesses must not require a self-isolating worker to come to work; and (v) businesses will be encouraged to ask staff and customers to clean their hands regularly and clean surfaces that people touch regularly.

The government has also published updated step 4 working safely guidance to apply from 19 July 2021. The [guidance](#), which will be kept under review, has been split into six sector-specific guides covering the main activities, with workplaces such as offices, factories and labs now grouped together. Employers are advised to put measures in place to reduce contact between individuals, such as using fixed teams or using screens or barriers where people are in close proximity. The guidance does not supersede employers' existing legal obligations relating to health and safety, employment and equalities duties in relation to employees, workers and customers. It is also in addition to separate and updated Health and Safety Executive (HSE) [guidance](#) on working safely during the COVID-19 pandemic, which includes guidance on risk assessment; cleaning, hygiene and handwashing; ventilation and air conditioning; providing information to workers; working from home; and vulnerable workers.

The Trades Union Congress (TUC) has issued a letter to ministers to raise safety concerns regarding the return to work. The TUC sent a [letter](#) to ministers on 8 July 2021 to raise concerns to ministers prior to the easing of restrictions on 19 July 2021. One of the main concerns raised was the government's refusal to consult with unions and employers on new guidance. A further concern was in relation to the wearing of face coverings, arguing that not wearing them would undermine worker confidence and risk infection for groups such as immune suppressed, pregnant and unvaccinated workers.

Company is fined £910,000 after a self-employed lorry driver is killed while making a delivery. A self-employed lorry driver, while standing at the rear of his vehicle, was struck by a wheeled shovel loader operating in the yard. On [investigation](#), the HSE found that the company's risk assessments for workplace transport were not suitable or sufficient. This resulted in a failure to identify that pedestrians, including delivery drivers, were at risk of being struck by moving vehicles in the yard. The company pleaded guilty to breaching sections 2(1) and 3(1) of the Health and Safety at Work etc. Act 1974. The HSE noted that had the company identified risks and implemented straightforward control measures and safe working practices, the driver would still be alive.



Cinema chain is fined £750,000 after a man is killed by a reclining seat. The man believed that he had lost his keys and phone, and began to look under his seat once the film had finished. The footrest started to come down quickly, causing him “catastrophic” injuries. An inquest concluded that the seat was missing a bar that would have allowed the man to be released by hand. [Press reports](#) indicate that the cinema admitted to two charges, one under the Health and Safety at Work etc. Act 1974 and another under the Management and Safety of Work Regulations 1999. In 2013, the local authority found similar faults in the cinema chain’s reclining seats in a different cinema location. Those seats had been sent to the cinema where the incident occurred. Birmingham City Council prosecuted the defendant and the case was heard at Birmingham Crown Court. The city council’s [website includes comments](#) from the council’s Chair of the Licensing and Public Protection Committee. It is possible that the premises licence for the cinema could also be reviewed by responsible authorities, on the grounds of public safety.

Vertical farming, glasshouses and energy company has been fined £333,333 after a worker suffered electrical burns. A subcontractor scaffolding worker was unloading some scaffolding poles when one of the poles caught the overhead line. The worker suffered burns to his leg and foot, and was hospitalised. On [investigation](#), the HSE found that operatives were unable to park their vehicles onsite, meaning they had to move their materials to the site by hand. The HSE also noted that there were inadequate controls onsite to warn individuals of the overhead cables. An inspector for the HSE said that “the company should have planned the work to mitigate the risks and had better signage and controls around the site for overhead cables.”

Buildings material manufacturer is fined £282,100 after one worker is diagnosed with hand arm vibration syndrome (HAVS) and another sustained electrical burns. On [investigation](#) by the HSE, it was found that the employee who was diagnosed with HAVS had been using percussive tooling and was regularly exposed to vibrations above the recommended limit. A health assessment in 2012 identified symptoms of HAVS and recommended that the employee should be referred to a physician, but this did not happen until 2016, at which point the employee was diagnosed with late stage two HAVS. The HSE found that there was not a suitable system in place to record results of vibration data and trigger times, which failed to limit the duration and magnitude of vibration exposure. The HSE also found that the company had also failed to ensure that the employee was under suitable health surveillance. In an unrelated matter, a second employee sustained electrical burns to his left arm and the side of his face when installing a temporary cable repair to switchgear. It was found that he was not competent to work on switchgear and did not receive any circuit diagrams or instructions. No job-specific risk assessment or safe systems of work were in place either.

“All proceedings order” is granted to control vexatious litigants in both the civil and criminal courts. A Divisional Court in the case of [HM Attorney General v Millinder](#) granted the Attorney General’s application for an “all proceedings order” under section 42 of the Senior Courts Act 1981 against a litigant who habitually instituted vexatious claims without any reasonable grounds. The respondent, who was also subject to an extended civil restraint order and a general civil restraint order, had attempted to bring numerous prosecutions in civil proceedings and send various threatening and abusive emails to judges. All proceedings orders are the most stringent order available under section 42 and also apply to the criminal courts. This is an unusual case and may be of interest to those who have been prosecuted privately on numerous occasions by the same person.



The UK and the EU have agreed to extend the Northern Ireland Protocol grace period for chilled meat products to 30 September 2021. The agreement will allow Northern Ireland consumers to buy certain meat products from Great Britain while further discussions continue on a more permanent solution. The extension does not require the rest of the UK to align with any changes in EU agrifood rules during the grace period. The UK government's announcement indicates that the UK will aim to introduce product-level labelling as soon as practicable, but businesses will be given time and support to put the arrangements in place.

Court of Appeal held litigation privilege is still maintained even if a third party had misled as to the purpose of their information request. In the case of *Victorygame Ltd and another v Ahuja Investments Ltd*, the Court of Appeal held that a letter before action and response benefitted from litigation privilege and that once established, the privilege is absolute unless waived or overridden by statute, and cannot be overridden by a wider public interest appeal. The claimant sent a letter of claim to its former solicitors, for professional negligence. The claimant, however, did not intend to pursue the claim and the real purpose was to elicit some information, knowing the solicitors would not provide the information voluntarily. Victorygame Ltd later sought disclosure of the letter of claim and response from the claimant and, at this point, legal professional privilege was claimed. The court held that although the form of the request (a letter before action) suggested the information was required for a different purpose, this was only one factor in assessing the "dominant purpose." The court found that, even when a party is induced to provide information that they would not have provided had they known the true purpose of the request, and even if the true purpose was deliberately concealed or suppressed, this did not prevent a party from relying on litigation privilege.

Manufacturing company is fined after workers are exposed to asbestos. A HSE [press release](#) has reported on a company fined for using gaskets within its generator sets that contained asbestos. The company was served with a Prohibition Notice on 26 March 2018 requiring them to stop using the gaskets and ensure that they did not import any asbestos containing material. However, Leeds Magistrates' Court heard that another concern had been received on 21 September 2018 where employees had been asked to work on a generator set that had been imported in breach of the Prohibition Notice. The company pleaded guilty to breaching section 2(1) of the Health & Safety at Work etc Act 1974 and breaching Regulation 9(1) and Schedule 6, part 2 of section 2 of the REACH enforcement regulations 2008. Although the fine in this case was relatively low, it is unusual for the HSE to prosecute under the REACH regulations, albeit alongside other health and safety breaches.

Her Majesty's Prison and Probation Service has adopted a new health and safety policy for the management of accident reporting, recording and investigation. The [new policy](#) standardises the accident and incident management process across The Probation Service. The new arrangement, among other things, hopes to assist with documenting accidents and incidents promptly and accurately, increase the speed of initial reporting and ensure that records and reports are proportionate and relevant to the incident. There will, however, be a degree of flexibility in meeting these requirements dependant on the nature of the incident.



Warehouse management solutions company is fined £180,000 after an employee is killed. The employee was carrying out pre-planned maintenance on an air compressor when he was electrocuted. On [investigation](#), the HSE found that sufficient control measures were not in place which would have prevented contact with electricity during maintenance. The electrical systems had not been tested or visually inspected since installation and an incorrect isolating switch had not been identified. This case serves as a reminder of the importance of control measures prior to carrying out high-risk work.

Part two of the National Food Strategy has been published and sets out a vision and plan for a better food system. The second part of the report includes [14 recommendations](#), including, among others, a sugar and salt reformulation tax, mandatory reporting for large food companies on food waste, an “eat and learn” initiative and extending the eligibility for free school meals. The aim of the report is to improve overall health and protect the environment. [Press reports](#) have given early indications of reactions from businesses and although many of the proposals appear to have been welcomed, a sugar and salt reformulation tax is likely to prove controversial. The document relates to England only.

Utilities company has been fined £100,000 and ordered to pay costs of more than £50,000 after a member of the public dies following a fall into an excavation site. The [utilities company](#) was digging on a footpath to access a stop tap that needed replacing. However, it could not be reached by hand and so plastic barriers cordoned off the area for a period of five days until a deep dig team could attend the site. During that period, a member of the public fell into the excavation site and his body was not found until the next morning. The HSE found that a suitable and sufficient risk assessment had not been completed which would have identified the need for more secure fencing or the covering of the excavation site due to the length of time it would be unattended for.

Department for Environment, Food and Rural Affairs (DEFRA) launches a consultation on the enforcement of poultry meat marketing standards (PMMR). DEFRA and the Welsh and Scottish governments are looking to make legislative amendments to update the approach to the enforcement of PMMR across parts of the supply chain. The purpose of the [consultation](#) is to seek the views of industry on proposed amendments to the regulations in order to make them clearer and remove any ambiguity around implementation.

Waste and recycling sector commits to tackling modern slavery. The Chartered Institution of Waste Management (CIWM) and the Environmental Services Association (ESA) have said that they will [combine their membership](#) to reduce the risk of modern slavery across their membership base, as well as the wider sector. In 2018, almost 7,000 people were identified as being potential victims of modern slavery in the UK, up 300% from 2013. Despite the sector being highly regulated, it is still recognised as capable of being exploited by criminal activity. The first steps that CIWM and ESA will take are to make sure all their operations are compliant with the Modern Slavery Act 2015, collaborate with charities and other stakeholders, share intelligence with other organisations, raise awareness and provide guidance.



HSE announces an increase in worker deaths on the day the English football team competed in the semi-final of the Euros. The [latest figures](#) released by the safety regulator show an increase of 25% in workplace fatalities in 2020 and 2021 despite many workers being on furlough or working from home. However, the number of deaths from the year 2019 to 2020 was lower in comparison to other recent years and, therefore, the HSE says that the number of fatalities has remained broadly level. The [Hazards Campaign](#) says the increase is because the HSE is not carrying out sufficient preventive inspections or holding bad employers to account. Insufficient resources to carry out enforcement is also listed as a concern. The focus of the campaign is to demand that the HSE and other enforcement bodies hold employers to account.

The Sentencing Council publishes its 2020/21 annual report. On 21 July, the Sentencing Council published its [annual report](#), which documents its achievements and outlines its current projects. Key highlights to the report include (i) publishing four sets of definitive guidelines, all of which have come into effect, (ii) revisions to the magistrates' courts sentencing guidelines, (iii) holding consultations on guidelines for sentencing, (iv) guidelines covering modern slavery, and (v) the unauthorised use of trademarks.

The Food Standards Agency (FSA) publishes its revised Food Law Code of Practice. On 29 July 2021, the FSA [published](#) its revised Food Law Code of Practice, which provides statutory guidance to local authorities and port health authorities on the approach they should take to regulate food businesses. Key changes to the code include (i) a modernisation of the qualification requirements by extending the list of "suitable" qualifications to enable local authorities and port health authorities to fully recognise the potential of a wider cohort of environmental health and trading standards professionals; (ii) replacing existing requirements with the Competency Framework that defines competency by activity rather than by role; (iii) necessary editorial revisions brought about by the Official Controls Regulation (EU) 2017/625, which came into effect in December 2019, and EU exit implications; and (iv) a revised structure and format to improve readability and promote consistency in interpretation and implementation.

DEFRA and Natural England launch the biodiversity metric. The Environment Bill contains a new biodiversity net gain condition for planning permissions. To meet this requirement, you will need to measure biodiversity gains using a biodiversity metric. The biodiversity metric is a habitat-based approach used to assess an area's value to wildlife, and uses habitat features to calculate a biodiversity value. The tool can be used by various stakeholders to measure biodiversity gains, and is likely to become an integral part of the planning/development process in due course. The metric has already [come under attack from commentators and ecologists as not being fit for purpose](#).

Vehicles are seized in a multi-agency operation to curtail waste crime. The Environment Agency (EA), together with West Mercia Police and the National Vehicle Crime Intelligence Service, has taken action to curtail the activities of a convicted criminal in Worcestershire, including seizing vehicles worth about £41,000 (identified as stolen). The business owner was sentenced in May 2018 for operating an illegal waste site between 2011 and 2014. This is the latest example of the EA using its additional powers to tackle waste crime, by seizing vehicles associated with it.



Draft UK REACH amendment regulations have been issued. The draft REACH etc. (Amendment) Regulations 2021 were issued with an [explanatory memorandum](#). These will amend the UK retained version of the REACH Regulation, and associated retained versions of implementing decisions, which set out the chemical regulatory regime in Great Britain. The regulation will correct “deficiencies” (such as references to competent authorities of member states), to ensure that the UK chemicals legislation operates effectively, and update some references to medical device legislation to ensure consistency.

The HSE has also announced the opening of Lead Registrant functionality in UK REACH. HSE issued an [eBulletin](#) to notify stakeholders that the functionality in the Comply with UK REACH service to claim the lead registrant is available from 22 July 2021. As with EU REACH, under UK REACH, if there is more than one registrant for a substance, co-registrants should agree between themselves who the “lead registrant” will be. Prospective registrants under UK REACH who want to take the role of lead registrant should take action to “claim the lead” for the substance. They will then be responsible for submitting a lead [joint registration dossier](#) containing the relevant Article 10 information, using the “Comply with UK REACH” service. HSE states that lead registrants should claim the lead within the service once the dossier is ready to be submitted, although the identity of the lead registrant will need to be agreed between the co-registrants beforehand, so that the prospective lead registrant can lead on the preparation of the dossier for submission.

Consultation response confirms the early phase-out of unabated coal generation in Great Britain. The consultation response from the Department for Business, Energy and Industrial Strategy (BEIS) confirms that it will bring forward the phase-out of unabated coal generation to 1 October 2024 (one year earlier than previously proposed). This proposal was part of the government’s drive to go further and faster on decarbonising the power sector, as it works towards net-zero by 2050. It was also aimed at bringing the government’s wider unabated coal phase-out policy in line with the date of application of the carbon emissions limits in the Capacity Market.

Court rules that Heathrow is not a public authority under the Environmental Information Regulations 2004 (EIR). Following earlier court decisions that have confirmed that water utility companies are public authorities for these purposes (notably the [Fish Legal case](#)), this case considered if Heathrow Airport (HA) also fell within the definition (meaning it could be the subject of environmental information access requests under the EIR). The ICO had ruled that HA was a public authority, and HA appealed to the first tier tribunal, which held that the requirements were not met and HA was not a public authority. The court decided that HA was not endowed with powers and duties in the same way as the water companies. In order for a body to be captured by the definition of public authority, that body must both be entrusted with public administrative functions in relation to the environment and be vested with special powers for the purpose of performing those functions, and HA did not meet either aspect. This case demonstrates that the concept of public authority, while broadly defined and interpreted under EIR, does not extend to every body that fulfils a public service.

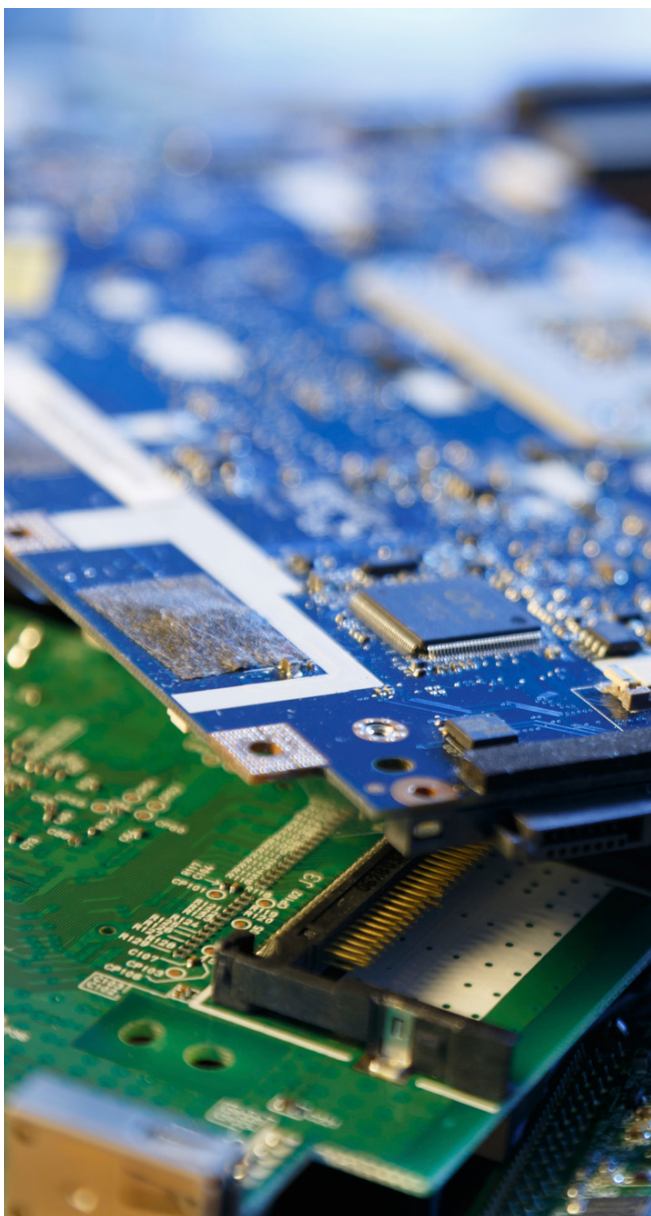


Amendments made to the UK law on waste shipments. [The International Waste Shipments \(Amendment of Regulation \(EC\) No 1013/2006 and 1418/2007\) Regulations 2021](#) come into force on 29 July 2021. The main changes are to set out export control procedures for a new category of sorted, non-hazardous, plastic waste classified as B3011, which has previously been a subset of classification B3010; and to remove defunct references to plastic waste classified as B3010, which is no longer a classification used in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (BC). These amendments implement changes made to the BC in 2019. Further details can be found in the [explanatory memorandum](#) that accompanies the regulations.

BEIS consults on strengthening the Energy Savings Opportunity Scheme (ESOS). This consultation seeks views on proposed measures to improve the uptake of energy efficiency measures, and increase the benefits for participating businesses. Currently, the recommendations of an ESOS audit do not have to be implemented, and it applies to large organisations. Two of the options proposed are extending the scope of the scheme to include medium-sized businesses, and mandating action on audit recommendations. The consultation also seeks views on improving the quality of audits through increased standardisation of reporting requirements, the inclusion of a net-zero element to audits, and requiring public disclosure of high-level recommendations by participants. The first two proposals mentioned, in particular, would be a material step-change in both the coverage and impact of the scheme. The consultation closes on 28 September 2021.

Record £90 million fine for Southern Water following an EA prosecution. Southern Water has been sentenced to pay a record £90 million in fines for widespread pollution after pleading guilty in March 2020 to 6,971 unpermitted sewage discharges that took place between 2010 and 2015. The court was told that Southern Water deliberately presented a misleading picture of compliance to the EA, hindering proper regulation of the company. The offences were found to be caused by deliberate failings, causing major harm (Category 1) to protected areas, conservation sites and oyster beds. In a statement, the CEO of Southern Water apologised for the historic incidents and said that “[w]e have heard what the judge has said today and will reflect closely on the sentence and his remarks. He has rightly put the environment front and centre which is what matters to all of us.” The case, which is the largest criminal investigation in EA’s history, saw pollution offences from 16 wastewater treatment works and one storm overflow brought together in one prosecution at Canterbury Crown Court. Thames Water previously held the record environmental permitting fine, which was £20 million in 2017, so this new fine is a significant increase to the “record”.

Interim Office for Environmental Protection (IOEP) publishes advice to DEFRA on draft environmental principles policy statement. The IOEP provided the advice following a request from DEFRA. While it welcomed the statement, its recommendations include that the government should strengthen the statement in a number of areas to ensure that protecting and enhancing the environment lies at the heart of future policy across government. Key recommendations include looking again at the structure of the policy statement to ensure it avoids any unintended consequences (noting that policymakers should apply the principles in all cases where doing so would be beneficial, and avoid applying them too late in policy development to be effective); revisiting the proposed approach to proportionality to promote a less restrictive approach; and revisiting the approach to the integration principle to ensure it genuinely helps deliver joined-up policymaking and is consistent with the approach taken elsewhere in international and domestic law.



EA publishes new technical guidance for facilities taking non-hazardous and inert waste for treatment or transfer.

The EA consulted last year on the guidance, which applies to existing and new facilities, including household waste recycling centres (civic amenity sites), waste transfer stations, materials facilities, inert waste, aggregate, soil and incinerator bottom ash treatment facilities and treatment facilities for processing waste such as wood, tyres, plastics and mattresses. One notable change from the draft is that the EA was proposing a default requirement for waste storage and treatment facilities to store waste within buildings to “reduce a range of pollutants”. This led to objections from the waste industry, and this proposed requirement has been changed to an “appropriate measure” (meaning that each site must be assessed to establish the measures that are appropriate for that site). It includes general management measures, waste pre-acceptance, acceptance and tracking, waste storage and treatment, emissions control, monitoring and limits, process efficiency, and waste minimisation, recovery and disposal.

The EA has released its annual report on England’s nine water and sewerage companies.

It covers their environmental performance and highlights that while there were improvements in 2020, no single company achieved all the expectations for the period 2015 to 2020. These expectations included the reduction of total pollution incidents by at least one-third compared with 2012 and for incident self-reporting to be at least 75%. The environment minister commented in response to the report that “this report which spans the last 12 months makes for extremely disappointing reading. Even the industry-leading water companies have more work to do, especially on the use of storm overflows.”

EA Waste quality protocols review.

The EA has been reviewing its position on its 13 waste quality protocols (QPs). These documents set out the agreed conditions under which a waste material can be considered to have been recycled and turned into a new product. The EA updated information about the status of the QP reviews. Notably, the updated information shows the initial review of the QP on aggregates from inert waste has been completed, and EA’s conclusion is that it needs to be revised. This revision process requires the establishment of a “task and finish” group, which needs to be set up by 1 December 2021, otherwise the EA will withdraw support for this QP. Industry has to meet the costs of the task and finish group and the review process. Trade bodies involved in this sector have been expressing major concerns about the possible withdrawal of the QP. The updates also confirm that initial reviews of the QPs for processed fuel oil and tyre-derived rubber materials have both begun.

EA consults on appropriate measures for permitted facilities that transfer or treat waste electrical and electronic equipment (WEEE), including waste cooling equipment (WCE).

The EA is inviting comments on proposed new guidance to provide improvements in the operation of permitted facilities in the WEEE treatment sector and make relevant standards clear, consistent and enforceable. The guidance updates and expands on the DEFRA 2006 publication “[Guidance on best available treatment recovery and recycling techniques \(BATRRRT\) and treatment of waste electrical and electronic equipment \(WEEE\)](#).” It also incorporates waste BAT conclusions. Once published, the guidance will apply to new permitted facilities. This will be implemented through the environmental permit application process. The guidance will also be applied to existing facilities through a process of permit review.



Government publishes the [Transport Decarbonisation Plan \(TDP\)](#). The TDP sets out the government's commitments and the actions needed to decarbonise the entire transport system in the UK. It includes the pathway to net-zero transport, the wider benefits net-zero transport can deliver and the principles that underpin the government's approach to delivering net-zero transport. The TDP includes an announcement that there will be a review of the National Policy Statement, which sets out the government's policies on the national road network, which appears to be an acknowledgement that this policy statement, which is the government's planning policy for major new road schemes, is incompatible with net-zero. This contrasts with earlier assertions made by the government in response to previous calls for review of the NPS on climate grounds, so this is an interesting development in itself.

The Department for Transport (DfT) issued a [consultation on ending the sale of new non-zero emission heavy goods vehicles \(HGVs\)](#). This was published together with the TDP, which commits to phase out the sale of new diesel and petrol HGVs by 2040. Options for phase-out dates presented for consideration are 2035 (or earlier, if possible) for vehicles between 3.5 and 26 tonnes, and 2040 (or earlier, if possible) for vehicles over 26 tonnes. The consultation also seeks views on whether to increase the maximum permissible weights for zero emission and alternatively fuelled HGVs completing domestic journeys. The consultation closes on 3 September 2021.

DfT also consulted on a [Green Paper on a new road vehicle CO2 emissions regulatory framework for the UK](#). This was also published alongside the TDP. The Green Paper proposes a new framework for the regulation of CO2 emissions for all new road vehicles, with two options being put forward. Option one would use the current regulatory framework, but make existing regulations stricter to align with the 2030 end to sales of petrol and diesel cars and vans. This would include increasing the CO2 targets for tailpipe emissions. Option two is to have a zero emissions vehicle (ZEV) mandate, which would require manufacturers to meet certain ZEV sales targets, as well as meeting the CO2 tailpipe targets. The Climate Change Committee has recommended option two, and this is the government's preferred approach. The consultation closes on 22 September 2021.

[Waste wood regulatory position statement \(RPS\) withdrawn from 31 July](#). RPS 207 on classifying waste wood from mixed waste wood sources is being withdrawn on 31 July 2021 (this has been planned for some time). It allows treated or mixed waste wood that could be classified as hazardous or non-hazardous and has not been assessed to continue to be classified as non-hazardous. The expiry of this RPS has been extended several times, and the intention was that by the time it expired, the waste wood industry would have published a code of practice that meets the legal requirements for assessing and classifying waste wood. However, it does not appear that any such code has yet been published. The Wood Recyclers Association recently [announced](#) that "we are working hard to get the guidance ready for publication before the two new RPSs come into effect on August 1st." [RPS 249](#) on receiving hazardous waste wood at household waste recycling centres will apply from 1 August 2021 until no later than 1 April 2024. [RPS 250](#) on hazardous waste wood from demolition and refurbishment activities also takes effect on 1 August 2021 until no later than 1 September 2023. These are intended to give the waste wood industry further time to adapt.



New guidance is issued on best available techniques (BAT) for carbon capture. This BAT guidance sets out techniques for preventing or minimising emissions and impacts on the environment from post-combustion carbon dioxide capture. The guidance operates alongside the environmental permits that regulate such facilities. Except where stated, this BAT guidance is not a regulatory requirement, but identifies important environmental issues to address and best practice. One aspects of the guidance states that operators should aim to achieve a design CO₂ capture rate of at least 95%, although operationally this can vary, up or down. This will be important guidance for those operating or planning to build carbon capture equipment.

The Office for Product Safety and Standards (OPSS) issues an alert regarding phthalates exemption expiry.

The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 provided (pursuant to the EU RoHS directive) that the restriction on Bis(2-ethylhexyl) phthalate (DEHP), Butyl benzyl phthalate (BBP), Dibutyl phthalate (DBP) and Diisobutyl phthalate (DIBP) did not apply to certain equipment until 22 July 2021. However, one of the changes discreetly made as a result of Brexit is that this exemption will not automatically expire for products being placed on the GB market – instead, DEFRA intends to publish a consultation on this change in the near future on the expiry of this exemption, so OPSS issued this alert to clarify the position. For Northern Ireland, the exemption expires as for the EU.

EA updates guidance on registration, disposal and labelling of polychlorinated biphenyls (PCBs). The EA has updated this guide to (a) provide new rules on transformers containing PCBs, (b) define “relevant equipment” and what that means for small components of equipment, (c) clarify how to deal with sets of equipment, (d) add text in relation to when someone can take contaminated equipment off the register, and (e) add guidance on the labelling that needs to be provided.

EA further delays the re-opening of the Definition of Waste service. The EA has updated its information about this service, to confirm that it will not re-open until 1 September while the EA finalises changes. This service provides an opinion on whether a material constitutes waste or not. It was initially a free service, but was halted in 2016 and brought back as a paid service in 2018, before being suspended in September 2020 until a date which has now been deferred several times. The expected changes include a new submission form and form guidance, developing a new pre-submission service and changing internal processes to improve service delivery. This is an important service, because while businesses can self-assess this issue, there are often greater risks attached to doing this.



Government consults on the technical details of plastic packaging tax. This tax will start in April 2022 on plastic packaging containing less than 30% recycled content. The technical consultation seeks feedback from stakeholders on the drafting of two statutory instruments to make sure they deliver the policy correctly and effectively. The draft Plastic Packaging Tax (Descriptions of Products) Regulations 2021 remove three categories of products from the meaning of a plastic packaging component ((i) filled packaging components with a primary storage function, (ii) packaging components that are an integral part of the good, and (iii) packaging components designed for re-use in the presentation of goods, which are set aside or designated as such), and add a category of products designed to be suitable for single-use and use by a user or consumer to the definition of a “packaging component”. The draft Plastic Packaging Tax (General [Substantial modification]) Regulations 2021 set out the meaning of “substantial modification” (which is a test for when a plastic packaging component is finished and, therefore, subject to the tax). Any process that changes the shape, thickness, weight or structure of a packaging component will be a substantial modification (e.g. extrusion, moulding, forming, laminating and printing). The following are not substantial modification: blowing or forming a preform, cutting, sealing and labelling. These finer details are likely to be of interest to anyone who believes they may be affected by the tax. The consultation closes on 17 August 2021.

DEFRA is consulting on the establishment of an “environmental review”. This will be the new legal review process available to the Office for Environmental Protection (OEP), and an amendment to the Civil Procedure Rules is required to introduce this new process. The OEP can use environmental review as an enforcement tool where it has issued a decision notice and considers there is a serious breach of environmental law. It is anticipated that the rules for environmental review will substantially mirror the existing rules for judicial review, but the consultation asks for input on a number of specific issues, including costs, interested parties and the definition of “environmental review” itself. The consultation closes on 6 September 2021.

Biffa Waste Services Ltd has been fined £1.5 million for illegal waste exports. Following a similar prosecution in 2019, the latest action also related to waste shipped overseas. Biffa had rolling contracts to send large amounts of waste to India and Indonesia. The waste was described as paper, and Biffa contended that the shipments were 99% pure paper and pleaded not guilty. However, the EA said the shipments had included tins, plastic bags, clothing and nappies. The jury convicted Biffa of four offences of exporting poorly sorted household waste. The sentencing judge described the illegal exports as “reckless, bordering on deliberate”. In addition to the £1.5 million fine, Biffa was ordered to pay costs of £153,827.99, and a proceeds of crime order of £38,388.

Welsh mine remediation company is fined for water pollution. Natural Resources Wales (NRW) prosecuted Tower Regeneration Limited for repeated pollution of the River Cynon. The company was separately prosecuted for both breaching its environmental permit, and carrying out unpermitted activities. Although NRW issued statutory notices to the company to make necessary changes to the surface water infrastructure, the measures were slow to be put in place and the pollution incidents continued. The company was fined £29,990 plus NRW costs of £26,791 for the permit breaches, and fined £8,000 plus NRW costs of £12,849 and a victim surcharge of £170 for the non-permitted activities.

New guidance is issued on noise and vibration management for environmental permits. This new guidance explains how the UK regulators assess noise, legal requirements for managing noise, noise impact assessments and noise management plans. It replaces H3 guidance.



BEIS published a [consultation on reforming the framework for better regulation](#). While this is not specific to environmental, safety and health regulation, this will be part of the proposed reforms. The consultation seeks feedback from interested parties on how the government can reform the UK framework for better regulation. There are to be five underpinning principles for the approach to regulation: a sovereign approach; leading from the front; proportionality; recognising what works; and setting high standards at home and globally. Against that backdrop, the proposals explored in the consultation include the adoption of a less-codified, common law approach to regulation; delegation of more discretion to regulators; a review of the role of regulators; and re-introduction of regulatory offsetting. The consultation is open until 1 October 2021.

Waste and Resources Action Programme (WRAP) announced new climate and waste targets for food. The new targets build on the existing Courtauld Commitment 2025, launched in 2015 and aimed at reducing per capita UK food waste by one-fifth, and help deliver the UN's Sustainable Development Goal to halve food waste. The programme has been expanded and relaunched – it is now called the Courtauld Commitment 2030. It includes a 50% absolute reduction in greenhouse gas emissions associated with food and drink consumed in the UK by 2030, against a 2015 baseline; a 50% per capita reduction in food waste by 2030 vs the UK 2007 baseline. It also sets out to achieve sustainable water management (quality and quantity) in the top 20 most important product and ingredient sourcing areas in the UK and overseas – covering 50% of product ingredients deemed “at risk” from water insecurity.

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Royal Dutch Shell plc (Shell) has [confirmed that it will appeal the Dutch carbon emission ruling](#). The District Court in The Hague decided in May 2021 that Shell must reduce its global net carbon emissions by 45% by 2030 compared to 2019 levels. Shell said: “we agree urgent action is needed and we will accelerate our transition to net zero, but we will appeal because a court judgment, against a single company, is not effective. What is needed is clear, ambitious policies that will drive fundamental change across the whole energy system. Climate change is a challenge that requires both urgent action and an approach that is global, collaborative and encourages coordination between all parties.”

European Commission proposes a landmark “Fit for 55” package of climate and energy legislation. Delivering a key component of the [European Green Deal](#) umbrella policy that it adopted in December 2019, the European Commission [issued](#) 15 legislative proposals, accompanied by three non-legislative communications. With the supporting documents, e.g. impact assessments, the package adds up to around 4,200 pages. It includes the following initiatives:

1. **[Amendment to the Renewable Energy Directive 2018/2001 \(REDII\)](#)** – increasing the overall binding target to 40% of renewables in the EU energy mix.
2. **[Revision of the EU Emission Trading System \(ETS\) Directive 2003/87 and related laws](#)** – increasing greenhouse gas emissions reductions from covered sectors to 61% by 2030.



3. **Regulation** establishing a **carbon border adjustment mechanism (CBAM)** – for imports of iron, steel, cement, fertilisers, aluminium and electricity. The Commission presented it as a measure to ensure that ambitious climate action in Europe does not lead to “carbon leakage” by pushing carbon-intensive production out of the single European market. The CBAM would be gradually phased-in, while free allowances under the EU ETS, which weakened its price signal, are phased-out, and a simplified system would apply in the first years. It would ensure that the same carbon price will be paid by domestic and imported products and would, thus, be non-discriminatory and compatible with WTO rules and other international obligations.
4. **Revision of the Market Stability Reserve (MSR) Decision 2015/1814** – maintaining that 24% rather than 12% of allowances are placed in the reserve after 2023.
5. **Revision of the Effort Sharing Regulation (ESR) 2018/842** – increasing the reduction target for covered sectors by target is 11 percentage points.
6. **Revision of Energy Efficiency Directive 2018/2002 (EED)** – increasing the energy efficiency targets at the EU level and making them binding.
7. **Revision of the Energy Taxation Directive 2003/96** – to align the minimum tax rates for heating and transport fuels with EU objectives, while mitigating the social impact.
8. **Amendment of ETS Directive 2003/87** – regarding aviation.
9. **Amendment of ETS Directive 2003/87** – regarding notifications under Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).
10. **Amendment of the Regulation 2019/631 setting CO2 emission standards for cars and vans** – setting a 100% reduction target for new cars by 2035.
11. **Revision of the Alternative Fuels Infrastructure Directive (AFID) 2014/94** – ensuring the necessary deployment of interoperable and user-friendly infrastructure for recharging and refuelling cleaner vehicles.
12. **Revision of the Land Use, Land Use Change and Forestry (LULUCF) Regulation 2018/841** – setting higher ambitions for the expansion of natural carbon removals.
13. **Proposal for a Social Climate Fund Regulation** – providing dedicated funding to member states to help citizens finance investments in energy efficiency, new heating and cooling systems, and cleaner mobility.
14. **Proposal for ReFuelEU Aviation Regulation** – promoting sustainable aviation fuel blends, as well as synthetic fuels, known as e-fuels.
15. **Proposal for FuelEU Maritime Regulation** – to promote sustainable maritime fuels by imposing a maximum limit on the greenhouse gas content of the energy that ships use.
16. **Strategic rollout plan to support rapid deployment of alternative fuels infrastructure** – supplementing the legislative proposal.
17. **Communication on the New EU Forest Strategy for 2030** – unlocking the potential of forests.



In the [communication](#) accompanying the Fit for 55 package, the Commission explains how it is supposed to deliver the 2030 climate target of reducing net greenhouse gas (GHG) emissions by at least 55%, compared to 1990 levels. The EU has made this target legally binding in its [European Climate Law \(Regulation 2021/1119\)](#), which entered into force in July (please see [frESH Law Horizons June 2021](#)). Stakeholders can submit comments on each legislative proposal until 16 September 2021. The EU co-legislators Council and European Parliament will now start agreeing on their positions on these proposals, in order to enter into inter-institutional negotiations with a view to adopting them. The current Slovenian Council Presidency has already characterised the Fit for 55 package as a legislative “tsunami” and expressed its intent to start the debate on it (please see [frESH Law Horizons June 2021](#)). For more detail on these measures, please see our sister publication [Sustainability Outlook](#).

European countries announce their intention to restrict PFAS. Germany, Denmark, The Netherlands, Norway and Sweden [registered their intention to restrict](#) the manufacture, placing on the market and use of per- and polyfluoroalkyl substances (PFAS) with the European Chemicals Agency (ECHA). The five states have provided an [information document](#) explaining the scope. ECHA also [published](#) their regulatory management option analysis (RMOA) conclusions on PFAS. The [Dutch government explained](#) that the restriction will target all applications of PFAS, with the exception of some that are considered essential. By banning the very large group of PFAS, the EU would prevent one harmful PFAS from being substituted by another that later turns out to be harmful as well. This initial submission includes an [extensive survey in 66 parts](#) open until 19 September 2021. The questionnaire is also intended to provide the respondents with an overview of the information that the five competent authorities currently have on the different uses of PFAS. This follows on a [first call for evidence](#) in 2020 (please see [frESH Law Horizons May 2020](#)). The expected date of the submission of a restriction dossier (i.e. proposal) is 15 July 2022. This broader intention follows [ECHA itself registering its intention to restrict](#) the use of PFAS *in fire-fighting foams*. That restriction proposal is expected in October 2021.

European Commission plans simplification and digitalisation of labelling requirements for chemicals. The Commission issued an [inception impact assessment](#) (IIA) for a proposed regulation on labelling requirements under Regulation 1272/2008 on classification, labelling and packaging of substances and mixtures, the detergents Regulation 648/2004 and the fertilising products Regulation 2019/1009. The IIA notes that the non-REACH REFIT (please see [frESH Law Horizons June 2019](#)) and the evaluation of the detergents Regulation found that chemicals labels are overloaded with information. The evaluations also suggested that communication could be improved by using innovative digital tools for labelling. Policy options include simplifying information and changing the way in which specific information is currently provided (e.g. from the physical label to digital means). Stakeholders can provide feedback on the IIA until 20 September 2021. After the usual stakeholder engagement process, the Commission intends to make a legislative proposal in the first quarter of 2023.



European Commission issues a draft amendment of the REACH authorisation list; does not include BPA. The [draft implementing regulation](#) would introduce five new entries in Annex XIV of REACH, which includes substances of very high concern (SVHCs) that require authorisation. [ECHA had recommended including 18 substances](#) in 2019 (please see [frESH Law Horizons October 2019](#)). The Commission explains in its draft that it postponed the decision on the bisphenol A (BPA) and dechlorane plus, a flame retardant in adhesives and polymers, because other regulatory steps have been taken, in particular by preparing Annex XV restriction dossiers (please see [frESH Law Horizons September 2019](#)). Regarding two skin sensitisers, HHPA and MHPA, the Commission cites difficulties in establishing a safe level of exposure for workers. It has deferred the inclusion of seven lead compounds with reprotoxic properties, as they are mainly present in recycled PVC and cannot be removed with the current technology, but it was working on a regulation to ban their use in PVC articles.

ECHA seeks views on applications for the authorisation process. ECHA opened a [survey](#) on this part of the REACH Regulation. The multiple-choice questions, with the option to comment, cover the value and quality of various elements of the authorisation process, including chemical safety reports and exposure scenarios, analyses of alternatives and substitution plans, socio-economic analyses, comments received during the consultations, additional information requests by RAC/SEAC, applicants' responses to these comments and requests, opportunities for third parties to communicate with the applicant and RAC/SEAC, ECHA's communication with stakeholders, transparency and accuracy of information summaries in RAC/SEAC opinions, conditions and recommendations, and the conclusions of the opinions. REACH allows companies to apply for an authorisation to continue or start using and placing on the market substances that have been included in the Authorisation List (Annex XIV of REACH), and, thus, are generally banned. The Commission has recently called into question maintaining this part of REACH altogether (please see [frESH Law Horizons May 2021](#)).

EU court rejects actions regarding siloxanes. The European General Court dismissed, in its entirety, a legal action brought by the Global Silicones Council, supported by the American Chemistry Council (ACC) to annul the 2018 decision of ECHA to include octamethylcyclotetrasiloxane (D4), decamethylcyclopentasiloxane (D5) and dodecamethylcyclohexasiloxane (D6) in the REACH Candidate List ([Case T-519/18](#)). The court rejected the plea that ECHA had committed a manifest error of assessment. The court also rejected a second plea that ECHA had breached the principle of proportionality, and held that ECHA must be allowed a broad discretion in a sphere that entails political, economic and social choices, and in which it is called upon to undertake complex assessments. The three cyclosiloxanes are mainly used as raw materials in the production of silicone rubbers, gels and resins, which have a wide range of uses, including in cosmetics, cleaning products, polishes and waxes, pharmaceuticals and medical devices. They have been restricted in wash-off cosmetics since February 2020 and ECHA proposed a broader restriction in 2019, which would ban the use of D4, D5 and D6 in consumer and professional products and in dry cleaning solvents that contain them in concentrations of more than 0.1% weight-by-weight. The proposal received a positive opinion from RAC and SEAC in March 2020 and is pending with the Commission. ECHA has also [proposed](#) to include the siloxanes in the REACH Authorisation List, which would mean that they are generally banned (please see [frESH Law Horizons April 2021](#)). The court also dismissed an action against the existing restriction of D4 and D5 in wash-off cosmetics, brought by the same and other parties ([Case T-226/18](#)). The parties may appeal these judgments.



New waste gas BREF for the chemical sector. The Joint Research Centre of the Commission [announced](#) that stakeholders have agreed on a BAT reference document for Waste Gas Management and Treatment Systems in the Chemical Sector (WGC BREF – not yet publically available). The development of BREFs is a key component of the Industrial Emissions Directive 2010/75. The WGC BREF will provide new emission standards for 29 key air pollutants, mainly focusing on emissions to air of volatile organic compounds, dust and other pollutants, address diffuse emissions, and establish specific emission caps for the production of polymers, such as PVC or PE. The BREF reportedly establishes “mass flow thresholds”; [reportedly](#) welcomed by the European chemical sector body. However, NGO European Environmental Bureau (EEB) [fiercely criticised](#) the outcome. In the coming months, the Commission will draft BAT conclusions, as the legally binding part of the BREF, and adopt them after receiving an opinion from a committee composed of member state experts. National environmental competent authorities will then have four years to update the environmental permits of existing chemical installations.

EU co-legislators reach a provisional agreement on access to justice in environmental matters. The [Council](#) and the [European Parliament](#) concluded inter-institutional legislative negotiations with a provisional agreement (not yet publically available) on the revision of the Aarhus Regulation 1367/2006. The revision aims to broaden the scope of the regulation to ensure that the EU fully complies with the UN Aarhus Convention on the right of the public/civil society to review administrative acts adopted by an EU institution or body, which have external legal effect and contravene environmental law. This will include administrative acts that require implementing measures at the national level or at the EU level (contrary to what the Commission had proposed – please see [frESH Law Horizons October 2020](#)), but not state aid decisions. The right to request an internal review will be expanded to members of the public under certain conditions, including the demonstration of an impairment of their rights caused by the alleged contravention of environmental law and being directly affected by such impairment, or the demonstration of a sufficient public interest. Public interest will be demonstrated by having support of at least 4,000 members of the public residing or established in at least five member states, with at least 250 members in each of these member states. EU institutions and bodies will have to publish requests for internal review and decisions on them. The Commission [welcomed](#) the provisional agreement, which the Council and European Parliament are expected to formally adopt.

European Court of Auditors (ECA) publishes a report on the polluter pays principle (PPP). The PPP is one of the key principles underlying the EU environmental policy and law. In its [special report](#), the ECA examines whether the PPP has been implemented properly in EU policy on industrial pollution, waste, water and soil. It finds that the PPP is generally reflected on EU policies, but its coverage remains incomplete and it is applied unevenly across sectors and member states. Examples highlighted include that measures such as extended producer responsibility incorporate the PPP but do not ensure that polluters cover the full cost, and the difficulties to make polluters pay for contamination that happened long ago or the lack of sufficient financial security of some businesses, leading to environmental clean-up costs being borne by taxpayers. Among other things, ECA recommends reinforcing the Environmental Liability Directive 2004/35 or to make use of EU funds for cleaning pollution while taking other necessary steps to implement the PPP.



European Commission proposes a new General Product Safety Regulation. Implementing its New Consumer Agenda of 2020, the Commission [presented](#) a [legislative proposal](#) that would replace the General Product Safety Directive 2001/95 with a regulation. That regulation would address risks related to new technology products, such as cybersecurity risks, and to online shopping by introducing product safety rules for online marketplaces. It would ensure that all products reaching EU consumers are safe, whether coming from within the EU or from outside. National market surveillance authorities would have the power, for all covered products, to order an online marketplace to remove specific illegal content referring to a dangerous product, to disable access to it or to display an explicit warning to end users when they access it. At the same time, it would ensure greater consistency between harmonised and non-harmonised products, e.g. by providing a “safety net” for chemical risks in products not covered by specific legislation. That safety net function would also apply in case some safety aspects related to products in the circular economy are not specifically addressed by initiatives from the [Circular Economy Action Plan](#).

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