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# frESH Law Horizons

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## UK

**COVID-19: new controls and regulations.** Through the course of November, a number of changes have been announced and implemented in the UK response to COVID-19, which will affect businesses and could lead to enforcement action. The changes include new [regulations in Wales](#), to extend the requirement for proof of vaccination status, requiring persons responsible for cinemas, concert halls and theatres to take reasonable measures to ensure that attendees over 18 years old are either fully vaccinated or are exempt (this requirement already applied to late night venues and venues hosting large events). The Regulations came into force on 15 November 2021. In addition, the UK government confirmed vaccinations will be mandatory for frontline health and social care workers, in its [response](#) to a consultation on this. Providers of Care Quality Commission (CQC) regulated activities in the health and social care sector must only deploy individuals who have been fully vaccinated against COVID-19 to roles where they have direct, face-to-face contact with patients and service users. For health and care workers who are exempt, the CQC-registered person must have seen evidence of the exemption before the individual can deliver care. Finally, at the end of the month, the government re-introduced requirements for face masks or coverings in relevant places in England, including indoor shops and shopping centres, with [new regulations](#) setting out requirements for responsible persons to display notices and take other measures to ensure customers are informed of the requirement.

**Private member's corporate homicide bill introduced to Parliament.** [A Bill to amend the Corporate Manslaughter and Corporate Homicide Act 2007](#) has been introduced to Parliament and has gone through its first reading. The first draft contains provisions for a [new offence of Corporate Homicide](#) (under a new Section 1A) such that, "an organisation... is guilty of an offence if a responsible person acting within the scope of his or her employment by that organisation recklessly causes the death of a person." A "responsible person" is defined as, "a person who supervises, manages or organises any person or activities on behalf of an organisation, or any part of the organisation, as part of his or her actual, ostensible or implied duties for the organisation." This is in contrast to the existing offence under the legislation, whereby an organisation is guilty of an offence if the way in which its activities are managed or organised causes a person's death, and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased. Therefore, if passed, the amendment would significantly extend the scope of the regime to include "recklessness" and a greater focus on the actions of individual managers. It would be interesting to see how, if the Bill became law, it would interact with fire and building safety law. However, as it is a private member's bill, it may not receive support in Parliament. There are some examples of legislation which started as private members' bills ending up as law, such as the hunting ban, but more likely the Bill will be a means of raising awareness of perceived "inadequacies" of the current legislation. We will report further if the Bill proceeds.



**Director sentenced to 12 months' imprisonment for failing to comply with HSE enforcement notices.** [A director of a former car salvage company was jailed](#) for failing to comply with four HSE enforcement notices. The notices were served in relation to structural safety and the use of allegedly unsafe forklift truck vehicles. An investigation by the HSE found that the director had failed to comply with all of the notices served, was aware of the risks, and directed workers to act in a way that contravened the prohibitions and risked their own safety. The director pleaded guilty to four offences that contravened Section 33 of the Health and Safety at Work etc. Act 1974 and was sentenced to 12 months' imprisonment. This is an example of the Courts taking a dim view of an organisation's failure to comply with enforcement notices and that directors can be held personally liable for such failures.

**Court of Appeal rules that the rejection of witness' evidence always requires reasons.** In *R v Ruto* [2021] EWCA Crim 1669, the Court of Appeal quashed a judge's determination under section 10A of the Proceeds of Crime Act 2002 (POCA 2002) regarding an offender's beneficial interest in four properties, which was undermined by the judge's failure to address the evidence of the offender's wife (the applicant), who had claimed the whole beneficial interest in the properties. The Court explained that the obligation to articulate reasons why a witness' evidence was rejected had to be performed by the judge in every case. If no good reason for rejecting such evidence could be identified, that meant it was the wrong course to take.

**OPSS publishes its call for evidence response on reforming product safety law.** [The OPSS has published the analysis of the responses to its call for evidence on overhauling the UK product safety regime and set out the actions it intends to take as a result.](#) The questions asked in the Call for Evidence focused on five areas, and the response document sets out three "key themes" raised: (i) an outcomes-focused, risk-based approach is desirable; (ii) serious challenges to the current system and opportunities for the government to regulate in a forward-thinking, flexible way; and (iii) the need for greater simplicity, proportionality and consistency across legislation and powers. The response document acknowledges that technological innovation has created global challenges for regulators and notes that respondents drew particular attention to the accelerating growth of online markets and sales through third-party listings on online marketplaces and platforms, and consumers buying directly from abroad. The responses raise the likelihood of further, potentially rapid, supply chain and product innovation, building on the growth of eCommerce and encompassing new combinations of technology with both the physical and virtual world, and that supporting the transition to Net Zero will bring changes to products, relative risks and supply chain issues.

**Contractor and security company fined a total of £868,800 after security guard dies of hypothermia.** The contractor was [fined £768,000](#) and its security company £100,800, following the death of an elderly security guard after being "exposed to extreme weather conditions" for several hours at a wind farm construction site. Another security guard was also exposed to the heavy snow and cold. The Health and Safety Executive (HSE) investigation into the guard's death found that when preparing their emergency weather plan, the contractor had failed to include those times when nobody from the company would be present at the site. The company also failed to ensure there was a back-up generator at either of the guard's locations to ensure that their welfare area would have heating and lighting should the main generator fail (this had reportedly occurred on several occasions previously). The case serves as a reminder that companies and contractors must ensure that suitable arrangements are in place to protect the health and safety of lone workers and employees working in naturally exposed environments, whether directly employed or contracted staff.





**Government announces review into HGV driver training.** The UK government has [announced a review](#) that is intended to improve compulsory ongoing training for heavy goods vehicle (HGV) drivers. It has announced that it will look at current mandatory training requirements for Certificates of Professional Competence (CPC). The announcement does not include any detail of what might be proposed as an alternative, but does comment that they will look at the process with a view to reducing the burden on drivers, who they say are “put off” returning to driving, because they have to pay for training themselves and are not paid while they are undertaking the training. The government also says that it will identify sites for short-term improvements to lorry parking and invest to move freight to railways. The review came as the DVLA reportedly cleared over 40,000 HGV and vocational licence applications in four weeks to address the high demand for HGV drivers.

**Court of Appeal rules no evidence of real possibility of material irregularity from juror contacting victim’s partner after verdict.** In *R v Rose* [2021] EWCA Crim 1391, the Court of Appeal refused permission to appeal to the applicant, who had been convicted of murder. After the guilty verdict had been returned, the Witness Service informed the Crown Court that a juror had contacted the victim’s partner through Facebook, to express satisfaction at the outcome. The Court ruled that, on the facts, there was no basis for any further investigation or for considering the conviction unsafe – the evidence showed that the juror had expressed an opinion and the circumstances did not justify the inference that the juror must have conducted any prohibited research during the trial in breach of the Juries Act or that the juror was in any way biased. Although this case involved a murder charge, the principles are relevant to other Crown Court jury trials, including those for regulatory breaches, such as health and safety offences. The decision of the Court of Appeal shows that it is usually reluctant to go behind a juror’s verdict and investigate it, unless there is some demonstrable evidence of impropriety or clear demonstration of bias.

**Court of Appeal rules on the test for the safety of a conviction following receipt of fresh evidence.** In *R v Dunster* [2021] EWCA Crim 1555, the Court of Appeal has confirmed the test as regards the safety of a conviction following receipt of fresh evidence after the jury’s retirement. The test was clarified and restated as being whether there is evidence of prejudice to the defendant’s interests by the receipt of the new evidence. A key factor that the Court will consider in assessing this will be whether the new evidence was sought by the defence or was perceived to be of assistance to the defence. The defendant’s interests may be prejudiced where “further evidence or submissions are in fairness required”.

**Age Assurance (Minimum Standards) Bill receives second reading in House of Lords.** [The Private Member’s Bill](#) received its second reading on 19 November 2021 (the first in the House of Lords having taken place in May). If adopted, the Bill would require that any age assurance system operated in relation to online or digital services used by UK consumers, or operated in the UK, would have to comply with certain mandatory minimum standards, to be published by Ofcom. The Bill lists several factors that must be applied in the minimum standards. This is likely to be of interest to retailers of age restricted products, such as alcohol, who are developing online age verification, including those testing technology as part of the [Home Office’s “regulatory sandbox”](#).





**COP26 in Glasgow concluded on 13 November.** [Agreement was reached](#) on a number of important issues, including requesting that all parties revisit and strengthen the 2030 targets in their nationally determined contributions (NDCs) as necessary to align with the Paris Agreement temperature goal, by the end of 2022. There was also a commitment to rapidly scale up the deployment of clean power generation and energy efficiency measures, including accelerating efforts towards the phase-down of unabated coal power and inefficient fossil fuel subsidies, recognising the need for support towards a just transition (watered down from a phase out for coal as well). The “Paris rulebook” was finalised, which establishes a new framework for international carbon trading under the Paris Agreement. In particular, this includes “Article 6,” which allows countries to trade with one another, and to produce carbon credits through a new mechanism. It also addresses the thorny issue of using credits created through the predecessor system under the Kyoto protocol (yes you can, but they will be clearly distinguished and their use will be restricted) and how to avoid “double counting” where the same carbon saving is claimed or used more than once. To try and prevent double counting, countries trading credits between themselves to use against their NDCs will have to apply a carbon accounting framework known as “corresponding adjustments.” This new framework/system will also be important for voluntary carbon schemes and markets.

**Company fined for failures to protect staff working in the community.** Prosecutions in the UK for employers allegedly failing to protect staff working alone in the community are rare, but that was the basis of this [prosecution by the HSE](#). The defendant was a service provider for people with learning and other additional needs. An employee visiting the home of a service user was abducted, assaulted and raped. The HSE’s investigation found that the employer did not carry out a suitable and sufficient assessment of the risks to the safety of its female employees and so failed to identify and implement measures to mitigate those risks. Support staff had raised safety concerns with the employer about the service user previously, but the employer failed to record the reports or take action. It pleaded guilty in August to breaching Section 2(1) of the Health and Safety at Work etc. Act 1974, and Regulation 3(1)(a) of the Management of Health and Safety at Work Regulations 1999. The facts of this case should be of interest to other employers where staff visit customer’s (or service users) homes, or private properties.

**High Court rules that administrators can be personally prosecuted for failure to notify the Secretary of State of collective redundancies.** In deciding a claim for Judicial Review, the [High Court ruled](#) that an administrator could be prosecuted under the Trade Union and Labour Relations (Consolidation) Act 1992. The Court considered that Parliament must have intended that anyone with responsibility for the day-to-day control of a corporate employer should be capable of being fixed with personal liability for the employer’s failure to give the statutory notices that they had brought about. Administrators were officers of the company in this context: they managed the company by virtue of the office and had the specific power to dismiss its employees. It is possible that the principles of this case could be applied to other “corporate” offences where the relevant legislation provides for liability of officers and/or agents, in situations where administrators have been appointed.





**Business owner sentenced to suspended imprisonment and fined after a fatal accident.** The business owner received an eight-month suspended custodial sentence and his company was [fined £48,000 and ordered to pay costs of £110,000](#) after an employee fell from the flatbed of a HGV, which had not been risk-assessed. He died from his injuries 10 days later. Hart District Council Environmental Health Officers investigated the accident and advised the employer that systems were inadequate, and served Improvement Notices in July 2018. However, the company continued to operate an allegedly unsafe system of work and legal proceedings commenced in 2019. The company and its owner pleaded guilty to failing to ensure that employees were not exposed to risks to their health and safety while working from height on HGVs. This case is another reminder that health and safety failings can lead to individual liability and sentencing; and that costs awards can sometimes dwarf fines.

**HSE launches Working Minds campaign.** The HSE has warned that work-related stress and poor mental health risk is becoming a health and safety crisis for Great Britain's workplaces. The [HSE launched its new campaign, "Working Minds"](#), at its Health and Work Conference, which examines issues relating to health at work. The campaign aims to help businesses recognise the signs of work-related stress and make tackling issues routine. While "Working Minds" is specifically targeting workers in small businesses, HSE is calling for a culture change across Britain's workplaces, to ensure psychological risks are treated the same as physical ones in health and safety risk management.

**Building owner sentenced to suspended imprisonment and fine for fire safety offences.** [The building owner has received the suspended prison sentence of two months for serious fire safety failings](#) that inspectors stated could have had "potentially catastrophic results," following a fire in 2018 at a building with three self contained flats above a shop. When London Fire Brigade (LFB) inspectors investigated, they found that the person responsible for the building had failed to carry out a fire safety risk assessment and keep the assessment up to date; ensure the presence of an appropriate and functioning fire alarm and detection system; and make effective arrangements in relation to the protective and preventative measures required, including arrangements for safe evacuation. The defendant pleaded guilty to three breaches of the Regulatory Reform (Fire Safety) Order 2005. In addition to the suspended sentence, he was fined £20,000 and ordered to pay costs. The case is a reminder of duties on building owners under fire safety legislation, and that fire and rescue services may take enforcement action for alleged breaches.

**Security Industry Authority (SIA) and HMRC operation to check on illegal working practices in the security industry.** [The SIA and HMRC reportedly carried out joint operations](#) in London, Bradford and Glasgow in November, to ensure that security staff were employed legitimately and treated fairly. 29 venues were visited and 55 checks on operatives were carried out, showing that separate enforcement authorities can work together to carry out inspections in targeted campaigns.





**Director of waste company ordered to repay £800,000.** The managing director and sole shareholder of a waste company was successfully prosecuted by the Environment Agency (EA) for waste offences, and sentencing followed a Proceeds of Crime Act confiscation order [for £806,786.79](#). He was told to repay the total sum of his current assets, which amounted to £275,833.16 by 7 January 2022 or risk a default custodial sentence of two and a half years. The remainder of the confiscation order will remain as a debt until it is satisfied. In addition, for consenting to the unlawful deposits of waste by his company, he received a 15-month custodial sentence suspended for two years, and for consenting to the making of false or misleading information by his company, he received a 12-month custodial sentence suspended for two years. The two sentences will run concurrently. He must also undertake 200 hours of unpaid work and perform a rehabilitation activity and he was disqualified from acting as a company director for six years. Both the company and its owner had previous convictions for environmental offences (for operating without an environmental permit). Previous convictions can be taken into account on sentencing under the [Definitive Guidelines for sentencing environmental offences](#).

**Thames Water fined £4 million for sewage discharge.** [Thames Water Utilities Limited has been fined £4 million](#) for discharging an estimated half a million litres of raw sewage in July 2016. The water company has also been ordered to pay the prosecution costs in the sum of £90,713. The discharge lasted approximately 30 hours and flowed for at least 3.5 kilometres along the streams, through a pub garden and past community allotments. The Court heard how the company had failed to carry out essential maintenance to prevent blockages in a sewer that it knew was vulnerable; had no system in place to identify blockages or pollution occurring and instead relied on observations by members of the public; and that the incident was foreseeable and avoidable. This is another example of a large fine imposed on a water company for sewage discharges to surface waters that are prohibited or above permitted levels.

**Following COP26, the government has made a number of related announcements.** These include the Cabinet Office publishing the [Net Zero Estate Playbook](#), which sets out key policies and guidance for property teams to help in the transition of public buildings and estates to net zero. The Department for [Transport confirmed the pledge for zero-emission HGVs by 2040 and unveiled its new chargepoint design](#). The UK will become the first country in the world to commit to phasing out new, non-zero emission heavy goods vehicles weighing 26 tonnes and under by 2035, with all new HGVs sold in the UK to be zero emission by 2040. The new design for electric vehicle chargepoints was also announced, with the intention that these “could become as iconic as the Great British post box, London bus or black cab”.

**Science Based Targets Initiative (SBTi) launched the first net-zero corporate standard.** SBTi is a partnership between CDP (Carbon Disclosure Project), the UN Global Compact, World Resources Institute (WRI) and the World Wide Fund for Nature (WWF). The new standard seeks to give companies an independent and reliable method to assess greenhouse gas emissions target setting. One key feature of the standard is that it requires rapid action to halve emissions before 2030 and long-term deep emissions cuts of 90-95% before 2050, with remaining emissions that cannot be cut being offset through carbon removal.





**The Environment Bill receives Royal Assent.** It is now the [Environment Act 2021](#), the UK's new flagship law on environmental governance and regulation post-Brexit. The Act set out new statutory environmental principles and establishes a new governance structure with the **Office for Environmental Protection** (OEP) and has sections on waste, air quality, water, deforestation in supply chains and biodiversity. It has been a long road since the Bill was first introduced back in January 2020, and there have been many hotly debated issues along the way. The debate on a number of provisions between the House of Commons and the House of Lords continued right up until the end, although the government rejected the majority of the Lords' amendments. There were final wrangles regarding sewerage undertakers and storm overflows, with the government initially rejecting amendments to place more duties on undertakers, and then relenting after widespread criticism, to introduce a duty on the undertakers to secure a progressive reduction in the adverse impacts of discharges from storm overflows, and to publish annual reports of any storm overflows. The government must also publish a plan to reduce sewage discharges from storm overflows in England by 1 September 2022. The Act is very much a framework and relies on, and in some cases requires, the preparation of secondary legislation to implement many of the initiatives. For many of these, there is no fixed timetable. So far, only the provisions regarding the new Office for Environmental Protection have been brought into force, from 17 November 2021, by **The Environment Act 2021 (Commencement No. 1) Regulations 2021**. The Department for Environment, Food & Rural Affairs (DEFRA) also **published initial feedback on its earlier consultation on amendments to the Civil Procedure Rules**, which will be required to establish environmental review in the High Court (one of the new mechanisms introduced by the Act). DEFRA received nine responses, but is delaying publication of the summary responses and government response until early 2022.

**EA and OFWAT announce joint investigation into sewage treatment works.** This follows new checks by the EA that led to several water companies admitting that they could be releasing unpermitted sewage discharges into rivers and watercourses. The announcement confirmed that water companies could face legal action when the investigation concludes, if companies are found to be in breach of their environmental permit requirements. The EA's focus will be on potential breaches of environmental law and permits, and OFWAT will focus on companies' management of their wastewater treatment works, including any systemic management failure, or the misreporting of data. In a connected development, the OEP is dealing with a complaint from the Salmon and Trout Conservation, claiming that they had failed to enforce water companies' duty to "effectually deal with" sewage under the Water Industry Act 1991. OEP is [reported](#) to have written to DEFRA and OFWAT to "seek their views on whether they have applicable complaint procedures and, if so, whether they consider that your complaint has exhausted those procedures".

**DEFRA consults on single-use plastic bans for England.** The proposed new measures would ban plastic plates, plastic cutlery, plastic balloon sticks, and expanded and extruded polystyrene food and drink containers (including bio-based, biodegradable and compostable plastics). One particular issue being consulted is that DEFRA is considering whether to exclude plates, bowls and trays used as packaging, unless in "eat-in" settings, meaning that take-away food served onto a plate, bowl or tray at point of sale would not be covered by the ban. However, the exemption would not apply to expanded and extruded polystyrene food and drinks containers. It is proposed that the ban will be enforced principally through civil sanctions, with prosecutions only applying after a failure to comply with a civil sanction. The ban would apply from April 2023. DEFRA also issued a [call for evidence](#) regarding the approach to take on a number of other single use plastic items (mostly already covered by the EU single use plastic Directive), such as wet wipes, tobacco filters, sachets and single-use cups.



**HMRC publishes updated guidance and draft regulations for UK plastic packaging tax.** The consultation on draft regulations (The Plastic Packaging Tax (General) Regulations 2022) follows an earlier consultation in July 2021 on two sets of draft regulations and appears to consolidate those into a single Regulation, and to address additional technical aspects of the tax. The draft regulations address determining recycled content; provide for further regulations to be issued regarding evidence of recycled content; what is meant by “substantial modification” (which is important when determining the point at which the tax applies to a packaging component); export credits; registration; and measurement/weighing requirements. The consultation closes on 1 December 2021. HMRC also issued updated guidance on 4 November called “check if you need to register for plastic packaging tax,” which contains sections called [Work out which packaging is subject to Plastic Packaging Tax](#); [Decide if you need to register for the tax](#); [Check when you must register for the tax](#); [Find out how to register](#); [Read how to claim a credit or defer paying Plastic Packaging Tax](#); and [Find out how you will complete your return](#). The guidance is being frequently updated and supplemented, with additional text on more information about recycled plastic and invoicing added mid-month in November.

**The EA published a regulatory position statement (RPS 224) on collecting and storing waste.** RPS 224 replaces RPS 225, and it permits operators to collect and store non-hazardous waste produced at different sites within a single identifiable premises. The individual sites within the premises must be owned or operated by (or on behalf of) a single owner or occupier, such as retail units in a shopping mall, retail park, market, hospital or motorway service station, tenanted units within a multi-tenant office block or tenanted businesses within multiple educational campuses. An RPS means that the EA will not normally take enforcement action against you if your activity meets the description and conditions of the RPS and does not, and is not likely to, cause environmental pollution or harm human health. The RPS will be reviewed by October 2024.

**The Network for Greening the Financial System (NGFS) issued a technical document on climate-related litigation.** This aims to raise awareness about this growing area of risk, and provides information about trends on climate-related litigation, as well as ways to consider addressing the risk of such litigation. The report follows a survey by the NGFS legal task force earlier in 2021 sent to all NGFS plenary members and observers, which include central banks and supervisory authorities. The results of the survey are in Annex II, and Annex I contains a useful summary of a number of recent climate litigation cases, including what NGFS believes to be the first climate-related case lodged against a central bank (in Belgium).





## EU

**The European Commission adopted a [proposal](#) for a regulation on deforestation-free products.** The proposed regulation would establish mandatory due diligence requirements for companies placing specific commodities (soy, beef, palm oil, wood, cocoa and coffee) and some derived products (such as leather and chocolate) on the EU market. These commodities and products are associated with deforestation, forest degradation and illegal logging. Operators placing affected products on the EU market for the first time, whether as manufacturers or importers, will have to ensure that they have not been produced on land deforested or degraded after 31 December 2020; and that they have been produced in accordance with the laws of the country of production. Not meeting either of the two requirements will result in a prohibition to place those products on the EU market. Operators will need to have a due diligence system in place to assess and manage their risks. The Commission has also published a [Q&A document](#) and [factsheet](#).

**European Commission proposes new rules on waste shipments.** The Commission adopted a [proposal](#) for a new regulation replacing EU Waste Shipment Regulation 1013/2006 (WSR) and amending the regulation on electronic freight transport information. The Commission also published a [communication](#) on “waste shipments in a clean and more circular economy”. The three main goals of the new rules are to (1) ensure that the EU does not export its waste to third countries; (2) make the transport of waste for recycling and reuse within the EU easier; and (3) better tackle illegal waste shipments both within the EU and between third countries and the EU. The export of waste to non-OECD countries would not be authorised, except to those non-OECD countries that explicitly notify the EU of their willingness to receive EU waste exports of “green-listed” waste and can demonstrate their ability to treat this waste in an environmentally sustainable manner. Within the EU, waste shipments for incineration or landfilling would be subject to stricter conditions and only authorised in limited and well-justified cases. Additionally, implementing powers will be conferred to the Commission to adopt measures to harmonise the classification of waste at the EU level (including the establishment of contamination thresholds for certain waste). The Commission will be empowered to carry out investigative and coordinating actions in respect of illegal shipments and may entrust certain enforcement actions to the European Anti-Fraud Office (OLAF). The proposal includes non-exhaustive common criteria for determining the types and levels of penalties to be imposed for infringements. The proposal will follow the ordinary legislative procedure. The Commission opened the usual [feedback](#) period, which will run until 17 January 2022.



**European Commission publishes guidance on plastic waste shipments.** The Commission adopted the so-called [Correspondents' Guidelines No 12](#). It is not legally binding but provides guidance on the interpretation of certain terms in the entries on plastic waste in the recently WSR (updated with effect from January 2021). The WSR and new Guidelines aim at preventing plastic wastes of a low quality from being classified under the entries B3011 (certain plastic waste imported from/exported to outside the EU) or EU3011 (certain plastic waste shipped within the EU) that allow for "easier" shipments. In order to be classified as B3011, the content of contamination, other types of wastes or non-halogenated polymers, cured resins or condensation products, or fluorinated polymers other than the one that makes the bulk of the plastic waste should not exceed a total maximum of 2% of the weight of the consignment. Regarding intra-EU plastic waste shipments (EU3011), the content of contamination, other types of wastes or non-halogenated polymers, cured resins or condensation products, or fluorinated polymers other than the one that makes the bulk of the plastic waste is allowed up to a total maximum of 6% of the weight of the consignment. However, member states may decide to apply a maximum level of 2% after informing the Commission. Unlike B3011, EU3011 includes an indent on PVC shipments and the guidelines propose a maximum level of contamination or other types of waste of 6% of the weight of the consignment. The guidelines apply from 3 December 2021.

**EU Court clarifies rules on classification of waste for its transfrontier transport.** The European Court of Justice (ECJ) [decided](#) on a preliminary reference from Italy on the interpretation of certain rules regarding waste shipments and the classification of waste for that purpose (Case C-315/20; not yet available in English). The Italian court had asked the ECJ whether a competent authority may oppose the shipment of certain mixed municipal waste destined for recovery. The WSR allows competent authorities to oppose the shipment of mixed municipal waste collected from private households, for both disposal and recovery. The ECJ concluded that the rules must be interpreted as allowing competent authorities of dispatch to oppose a shipment of municipal mixed waste that, (even) after a mechanical treatment for energy recovery, have not altered substantially the original properties of that waste, irrespective of the classification of waste under the European list of wastes (EWC). The ECJ followed Advocate General Rantos' [opinion](#), which had recalled that the rules applicable to waste shipments depend on the substantial nature of the waste, and not on its formal classification in accordance with the EWC.

**Member states back new rules on industrial emissions from large combustion plants.** The European Commission submitted a [draft Implementing Decision](#) establishing the best available techniques (BAT) conclusions for large combustion plants (LCP) to a vote by its Committee on the Industrial Emissions Directive 2010/75 (IED), which gave a positive opinion. BAT conclusions are the reference for setting permit conditions for installations covered by Chapter II of the IED. National competent authorities must set emission limit values that ensure that emissions do not exceed the emission levels associated with the best available techniques as laid down in the BAT conclusions under normal operating conditions. Following the Committee's favourable opinion, the Commission is expected to adopt the Implementing Decision in the upcoming months. It will then replace Commission Implementing Decision 2017/1442, which the EU court annulled on application by Poland, whose energy system still relies on coal, supported by Bulgaria and Hungary (Case [T699/17](#); appeal pending, Case [C-207/21](#)). The court ruling required the Commission to adopt new LCP BAT conclusions before the end of January 2022. In the event that the Court of Justice reverses the judgment in Case T-699/17 so that Implementing Decision 2017/1442 remains valid, the decision to be adopted will cease to apply on 28 January 2022.





**European Commission proposes to set “new limits for some of the most harmful chemicals in waste”.** The Commission [presented](#) its [proposal](#) to amend Regulation 2019/1021 on persistent organic pollutants (POPs). In particular, the proposal would update the concentration limits in Annexes IV and V, which determine how waste that contains POPs must be treated, including whether it can be recycled or must be destroyed or irreversibly transformed. The Commission proposes to introduce stringent limits for three groups of substances, or groups of substances, in waste: perfluorooctanoic acid (PFOA), its salts and compounds; dicofol; and pentachlorophenol (PCP), its salts and esters. In addition, the Commission is proposing to tighten the maximum limits in waste for a number of other substances already regulated under the POPs regulation.

**European Commission publishes exemptions on phthalates in medical devices.** The Commission published in the Official Journal three delegated directives (Commission Delegated Directives [2021/1979](#), [2021/1980](#), [2021/1978](#)) exempting the use of phthalates in medical devices and spare parts under EU Directive 2017/2102 on the Restriction of Hazardous Substances in electrical and electronic equipment (RoHS). They add exemptions for the: use of bis(2-ethylhexyl) phthalate (DEHP) in plastic components in magnetic resonance imaging (MRI) detector coils; use of DEHP in ion-selective electrodes for analysing human body fluids and/or in dialysate fluids; and use of DEHP, butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP) in spare parts recovered from and used for the repair or refurbishment of medical devices. EU member states are required to transpose the directives by 30 April 2022.

**European Commission removes REACH authorisation exemptions for uses of DEHP in medicinal products and medical devices.** The European Commission adopted an [implementing regulation](#) amending Annex XIV of REACH (the Authorisation List regarding DEHP (benzyl butyl phthalate), BBP (Butyl benzyl phthalate), DBP (dibutyl phthalate), and DIBP (diisobutyl phthalate)). The European Commission previously exempted from the authorisation requirement the use of DEHP, BBP and DBP in the immediate packaging of medicinal products and in medical devices. The Commission reassessed the exemptions in light of the judgement of the Court of Justice in July 2017 in Case C-651/15 (VECCO), which provided clarifications on certain aspects of granting an exemption from the authorisation requirement.

**European Commission reports on progress with the Chemicals Strategy for Sustainability.** Ahead of the second meeting of its High Level Roundtable on the Chemicals Strategy for Sustainability in November, the Commission [reported](#) on the status of the implementation of that [Strategy](#). The adoption of the Sustainable Products Initiative is now planned for 2022. The Commission launched a study on criteria for essential uses, targeted consultations are ongoing, and the Commission plans an open consultation in spring 2022, before presenting horizontal criteria by the end of 2022 and introducing the concept in its proposal for the REACH revision. Based on the concept of essential uses, the most harmful chemicals will only be allowed if their use is necessary for health, safety or the functioning of society and if there are no acceptable alternatives. The Commission will also present three legal proposals: a horizontal proposal on the reattribution of tasks to EU agencies (2022), a proposal on transparency and reuse of data to allow EU and national authorities to commission testing (2023), and a proposal to improve the predictability and stability of European Chemicals Agency’s (ECHA) funding (2023). Furthermore, the “one substance, one assessment” approach also includes the development of a common open data portal on chemicals (2023) and of a repository of health-based limit values (2022).



### **European Commission expected to adopt restriction roadmap, considering measures on flame retardants.**

At the turn of the year, the Commission wants to adopt a roadmap to prioritise substances for REACH restrictions. It presented a [new draft](#) in November. The roadmap will likely use the following categories: substances already on the registry of intention (RoI) for restrictions; substances under consideration by ECHA, member states or the Commission for a restriction proposal; and potential restrictions where ECHA foresees a need for further regulatory action. According to the draft, and among many other things, ECHA, the member states, and the Commission are currently assessing the need for further regulatory measures regarding flame retardants in general. ECHA will prepare an overall strategy on flame retardants by 2022. This will support the Commission in deciding in 2023 to request that ECHA prepare a group restriction (or multiple restrictions) under REACH. Substances in scope are, in principle, all flame retardants, but there will be a particular focus on, and prioritisation of, brominated flame retardants.

**ECHA publishes report on chemical recycling.** ECHA [stated](#) that REACH requirements need to be considered in chemical recycling. The [report](#) analyses the current knowledge regarding chemical recycling of polymeric materials, such as plastics and rubber, and how different chemical recycling techniques can reduce the presence of substance of concern in recycled material. The report gives an overview of the different chemical recycling processes and the advantages and disadvantages of these techniques. Besides a literature review, the report includes the findings of a consultation, where stakeholders opined that chemical recycling could be treated as “supplementary” to mechanical recycling because it accepts waste that cannot be processed mechanically. The report concludes that there is not enough knowledge about the abilities of chemical recycling processes to eliminate substances of concern and further research is necessary, in particular regarding gasification and chemolysis. The report recommends harmonising the terminology regarding chemical recycling, as there is no clarity of the term or its role in the circular economy. The paper stresses that some regulatory issues are particular to chemical recycling technologies, since mechanical recycling does not cause chemical changes to the processed substances. Finally, it recommends the use of digital technologies to improve the traceability of substances of concern in recycling.

**EFSA consults on phthalates in food contact materials.** The European Food Safety Authority made available a [draft scientific opinion](#) on the identification and prioritisation for risk assessment of plasticisers used in food contact materials (FCMs) and a [draft protocol](#) for the exposure assessment of prioritised substances available for public consultation. In particular, the draft scientific opinion presents an overview of substances potentially used as plasticisers in FCMs and categorises them into groups of high, medium and low priority for further risk assessment. EFSA will collect data on the migration of the prioritised substances from, and their occurrence in, FCM via dedicated calls in 2022, separately from the public consultation. The consultation on the draft protocol addresses the exposure assessment as part of the safety assessment of phthalates, structurally similar substances and replacement substances that are potentially used as plasticisers in FCM, in particular dietary exposure, contribution of FCMs to dietary exposure, and contribution of FCMs to overall (dietary and non-dietary) exposure. Comments may be submitted until 16 December 2021.





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