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UK

Care home is fined a record amount for fire safety offences following the death of a resident in a fire. A private healthcare provider was ordered to pay £1.04 million by Southwark Crown Court, following the death of a resident who was smoking at one of its care homes. The London Fire Brigade reported that the fine (of £937,500) was the highest ever for fire safety breaches in the UK. The prosecution costs payable were also significant (£104,000). An investigation found that a smoking risk assessment had been carried out for the resident who died. However, it did not assess his use of emollient creams, which are flammable and can build up on skin and clothes. The company pleaded guilty to breaching Article 11(1) of the Regulatory Reform (Fire Safety) Order 2005. The case serves as a reminder that fire risk assessments must take account of individual-specific risks.

Update to the PPE at work regulations. The Personal Protective Equipment at Work (Amendment) Regulations 2022 will come into effect from 6 April 2022, amending The Personal Protective Equipment at Work Regulations 1992 (PPER 1992). As amended, PPER 1992 will require employers of "limb (b) workers" to provide them with the necessary personal protective equipment (PPE) to complete their tasks safely. According to the Health and Safety Executive's (HSE) guidance on types of workers, "a 'limb (b) worker' can be understood as a 'dependent contractor'. A 'worker' is registered as self-employed but provides a service as part of someone else's business. They generally must carry out the work personally, rather than being able to send someone in their place." Last month, we reported on the HSE's response to the consultation on this change and the industry sectors it identified as potentially affected.

Fire safety concerns raised over new high-rises in London. Fire safety in high-rise buildings is a major concern in the city of London and elsewhere following the Grenfell Fire disaster in 2017. The construction of the new Canary Wharf "Cuba Street" development was put on hold following concerns raised by the London Fire Brigade that the design of the building meant that there would not be any adequate means of escape for residents in the event of an emergency. The developer of a new high-rise that is being built close to Grenfell Tower, which would be twice its height, also received criticism for its fire safety plans and subsequently changed them. Developers, contractors and investors should be alive to the renewed focus on fire safety in newbuilds. These two cases demonstrate that there is major potential for criticism, bad publicity and disruption to development if there is a perception that a new building will have inadequate fire safety precautions, particularly in London.

The HSE publishes its headline document on the new building safety framework. The HSE is working to develop information that it hopes will form a "toolkit" for building owners and managers. It has now published the first part of this toolkit in the form of a short headline document summarising the key things that building owners and managers can do to prepare for the new building safety framework. These include finding out the profile of the building's residents; when the building was built; the building's height and number of storeys; and information about its structural condition. This document, and the wider toolkit that the HSE will publish, will likely be of particular interest to high-rise residential building owners and management, including "accountable persons" and "building safety managers" under the new regime.

HSE Inspection Campaign: 65% of businesses inspected in South Yorkshire are found to be in breach of health and safety laws. The HSE conducted an inspection campaign in South Yorkshire during which 22 HSE inspectors visited 71 businesses in Sheffield and Rotherham. Of those 71 businesses, the HSE considered that 46 needed to make improvements to better protect the health, safety and wellbeing of workers. Three Prohibition Notices and 31 Improvement Notices were served, and 23 letters were sent to businesses requiring them to improve various aspects of health and safety. The campaign was launched following a reported sharp increase in serious and fatal incidents in the region over recent years. There were 12 workplace fatalities and 594 serious injuries reported in Sheffield and Rotherham between 2014 and 2021. The campaign is a reminder that the HSE can conduct proactive targeted inspections, without any specific report of failings at a particular site. Being prepared for the possibility of such inspections can help to ensure they run smoothly.

Two Food Standards Agency (FSA) food law consultations opened – Novel Foods and Precautionary Allergen Labelling. The consultations seek views on regulated product applications for six novel foods that have been submitted for authorisation to the FSA and on precautionary allergen labelling and precautionary allergen information, such as "may contain", on many types of food. The six novel foods have already been evaluated by the European Food Safety Authority (EFSA), which now sits outside of the food safety regime in Great Britain. The allergen labelling consultation seeks views so the FSA can plan its approach to ensure that precautionary allergen labelling is communicated clearly and consistently, in an understandable and meaningful way to consumers, and based on a proportionate standardised process for assessing, managing and communicating the risk of allergen cross-contamination. The consultations close on 11 February and 14 March, respectively. We will report further when the FSA publishes its response.

The HSE publishes guidance on COVID-19 safety post-Plan B. The guidance provides the latest information on working safely during the pandemic, in the wake of the government's announcement that people are no longer asked to work from home and, from 27 January, face coverings and the NHS COVID Pass are not legally required in England. It includes advice on reducing the risk from COVID-19, including by ensuring adequate ventilation, sufficient cleaning and good hand hygiene. It also explains that facemasks are not classified as PPE and, therefore, are not covered by health and safety legislation. Employers should ensure they stay up to date with the latest guidance to understand their health and safety obligations and appropriate safeguards in relation to COVID-19.

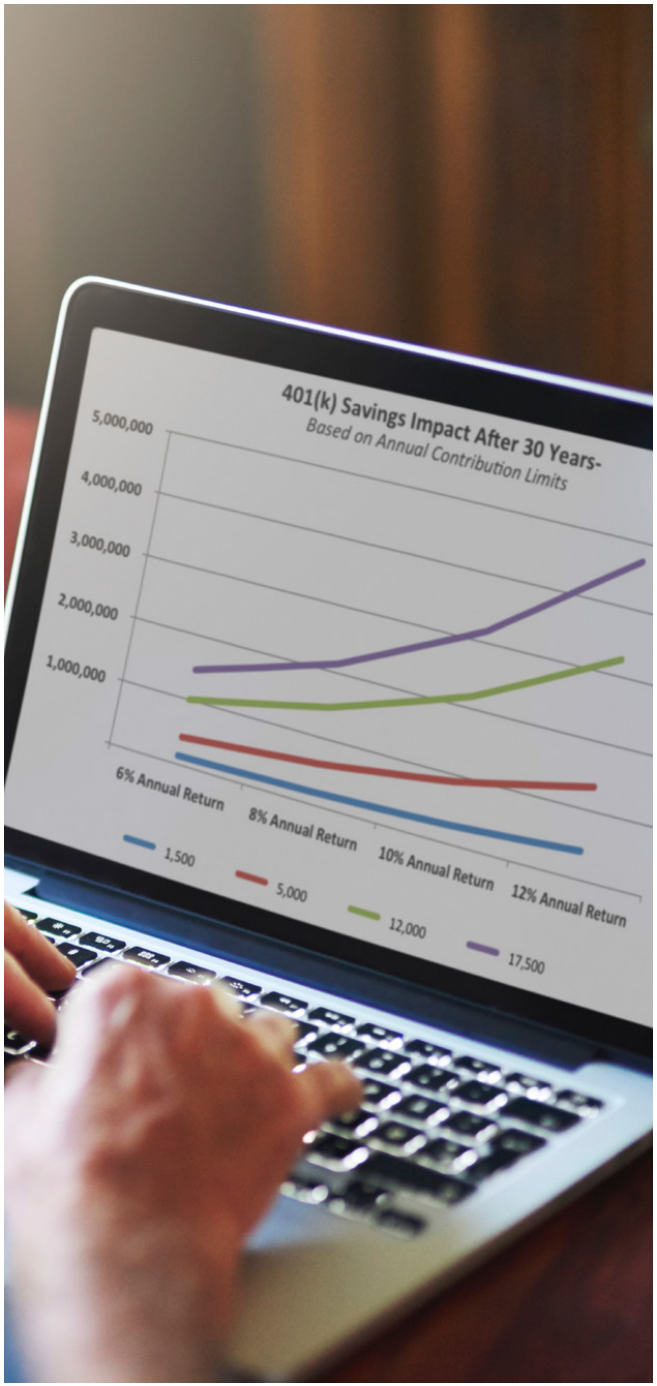
The HSE launches a consultation on proposals to amend the Gas Safety rules. The consultation proposes amendments to the Gas Safety (Management) Regulations 1996 (GSMR) to modernise the law to reflect changes to the industry since GSMR came into force. The changes would enable the use of sources of gas currently sitting outside of current specifications, which are currently restricted, to provide for greater diversity of gas resources to be accessed from biogas from the North Sea and to reduce gas processing. The consultation seeks views on gas quality, gas interchangeability, oxygen content in gas distribution networks, pipelines conveying biomethane and the gas network, and cooperation duties and the gas emergency telephone service. The consultation closes on 21 March 2022.

Construction company director is disqualified for two years following safety failings. Following an inspection, the company was found to be in breach of multiple health and safety laws in relation to unsafe scaffolding, electrics and traffic management, inadequate welfare, site tidiness and a lack of fire safety precautions. The company was the client and the principal contractor under The Construction (Design and Management) Regulations 2015 and, therefore, had responsibility for putting in place an adequate plan to manage and monitor health and safety during the construction phase. The company pleaded guilty to seven charges under health and safety regulations and was fined a total of £35,332, and its director pleaded guilty to six charges under Section 37(1) of the Health and Safety at Work etc. Act 1974 for the offences by the company being committed with his consent or attributable to his neglect. He was sentenced to a 166-hour community payback order (Scotland only) and was disqualified from holding a directorship for two years. The case highlights that inspections can happen unexpectedly, and that directors can be found personally liable for failures.

Final draft guidance on offensive weapons is published. The statutory guidance for the Offensive Weapons Act 2019 (OWA) provides details including the obligations imposed by OWA, on the sale and delivery of knives, corrosives and offensive weapons, and enforcement. We reported on the consultation on the draft statutory guidance in August 2019. OWA introduces a new criminal offence of selling a corrosive product to a person under the age of 18 years. It also provides for "all reasonable precautions" and "due diligence" defences that can apply to the offence of selling bladed articles to person(s) under the age of 18 years where that sale is done remotely, i.e. online, by phone or by mail order. There are also defences relating to the offences of delivering or arranging the delivery of a bladed product, including with a due diligence defence and procedures in place that were likely to ensure that any bladed product would be delivered into the hands of someone over 18 years of age.

Sentencing powers of the Magistrates' Court are to be increased to 12 months' imprisonment. The Magistrates' Courts sentencing powers will be increased to tackle backlog and reduce pressure on the Crown Courts in the wake of the COVID-19 pandemic and cuts to public funding. The government expects this to free up almost 2,000 extra days of Crown Court time per year. However, it is unclear how it has come to this figure. The changes will come into force at some point in the next few months by way of a commencement order and after magistrates are trained. The change was announced without any consultation or guidance from the Law Commission. It remains to be seen whether the change will lead to more defendants facing more serious charges choosing to be tried in the Crown Court in order to ensure the trial is overseen by a legally qualified judge.

New Criminal Procedure Rules will come into force from 4 April 2022. The Criminal Procedure (Amendment) Rules 2022 introduce a raft of changes to criminal procedure, including a requirement for the Magistrates' Court to officially record its opinion in proceeds of crime cases, that if it were not committing the defendant for consideration of a confiscation order, then it would have committed them to the Crown Court for sentencing of an offence under the Sentencing Act 2020. The new rules also encourage prompt written guilty pleas, where applicable, and require the Magistrates' Court to expressly state its opinion in relation to the exercise of some of its committal powers. A new time limit has also been added in relation to costs applications arising out of restraint or receivership applications, under which a costs application must be made within 28 days (inclusive) of the conclusion of the proceedings to which the costs application relates.



Occupational pensions are realisable assets in confiscation proceedings. The Court of Appeal has ruled that occupational pensions form part of an offender's realisable assets in calculations made in confiscation proceedings. Confiscation proceedings can be brought in relation to offences committed under the Proceeds of Crime Act 2002 and aim to deprive criminals of the proceeds of their crimes, thereby disrupting organised criminals and deterring offenders. As breaches of environmental and/or health and safety laws are mostly criminal offences, any proceeds made as a result of, or in connection with, the commission of any such offences may become the subject of confiscation proceedings.

Fine of £800,000 issued following a choking-related fatality. The HSE report on the case confirms that a member of nursery staff returned from using the bathroom and found a young boy, who had been eating a meal, unconscious and not breathing. Paramedics were called to the scene and performed CPR but could not remove the obstruction to his airway, which it was later found was blocked by a piece of mango. The boy died the following day in hospital. Following an investigation by the Crown Office and Procurator Fiscal Service (Health and Safety unit), the company pleaded guilty to failings under Health and Safety at Work legislation and was fined £800,000. The case reminds businesses in the care sector of their significant obligations towards their residents and/or clients, and specifically that children and/or vulnerable people who are at risk of choking should always be supervised while eating.

New "Brexit Freedoms Bill" is announced to govern future changes to EU law and retained EU law. In an announcement on the proposed bill, the government stated that the bill will "end the special status of EU law and ensure that it can be more easily amended or removed", and also published a policy paper on "the benefits of Brexit". The House of Commons European Scrutiny Committee has also launched an inquiry, "Retained EU law: Where next?", to examine the future of EU retained law within the context of the government's review. The amendment or repeal of provisions of the European Union (Withdrawal) Act 2018 would be necessary to achieve the changes proposed by the government. Currently, EU laws govern many aspects of environmental regulation in the UK, including laws around the protection of natural habitats, keeping air and water clean, ensuring proper waste disposal and climate change law. EU laws also govern composition, safety and labelling requirements for many categories of products and substances in the UK (including food and drink, chemicals, gas appliances, PPE and construction products), and set overarching objectives (under directives) for systems for general product safety and for other types of products (including machinery, electrical and electronic equipment, medical devices, lifts, pressure equipment, explosives and toys), although domestic laws govern enforcement and penalties in each case (and did so even before Brexit). Changes to EU laws could, therefore, lead to divergence of product standards and requirements between the EU and the UK, with potential complications for market access between jurisdictions. The deadline for submission of evidence to the inquiry on the future of retained law is 14 March 2022.

Guidance on the registration and regulation of medical devices within the UK is updated. The Medicines and Healthcare products Regulatory Agency (MHRA), which regulates the medical devices market in the UK, has published the updated guidance due to the expiry of post-Brexit deadlines, the requirements of the Northern Ireland Protocol, and the non-recognition of the UK medical device regulatory regime in the EU. In particular, it covers the requirement for medical devices in Great Britain (GB) to conform to the Medical Devices Regulations 2002, the EU Medical Devices Regulation 2017 (until 30 June 2023) or the EU in vitro Diagnostic Medical Devices Regulation 2017 (until 30 June 2023) in order to be registered with the MHRA. Manufacturers who place devices on the GB market must also register with the MHRA and those based outside of the UK must appoint a UK responsible person. In addition, it reminds manufacturers they may use either the UKCA marking or the CE marking on devices they place on the GB market until 30 June 2023, but from 1 July 2023, the UKCA marking will be required.

Consultation is opened on the Office for Environmental Protection's (OEP) draft strategy and enforcement policy. The consultation seeks views on the new regulator's plans, which set out how it will protect and improve the environment by holding public authorities to account. The draft strategy defines what the OEP considers to be a "public authority" and this includes the government, government agencies, local authorities and similar organisations, and private companies carrying out public functions (e.g. water companies). It also sets out four strategic objectives: sustained environmental improvement; better environmental law that is better implemented; improved compliance with environmental law; and organisational excellence and influence. The strategy states that the OEP will seek to achieve these objectives by scrutinising Environmental Improvement Plans and targets set by the government, scrutinising environmental law, advising the government on proposed changes to environmental law, and enforcement. The OEP will have a number of enforcement powers available, including powers to conduct investigations, to issue decision notices in respect of failures, and to launch proceedings in the High Court for serious failures. The draft enforcement policy sets out that the OEP will consider whether failures are "serious", by taking into account harm or potential harm to the natural environment or to human health associated with the failure and whether this amounts to serious damage. The consultation closes on 22 March 2022, and we will report further when the OEP publishes its response.

European Commission report on the consumer Internet of Things (IoT) sector inquiry finds complex standardisation landscapes may stifle growth. The report provides the Commission's findings on the consumer IoT, which relates to products and services that are connected to a network and can be controlled at a distance, such as smart home devices, smart lighting systems and smart white products. Standardisation in IoT is used to create universally accepted protocols and specifications, and adherence to these standards could be used by businesses to demonstrate compliance in a regulatory enforcement scenario, particularly in relation to sales to consumers. The report highlights concerns that a complex standardisation landscape coupled with complex proprietary technologies could lead to a stifling of consumer IoT growth. Increased barriers to inter-system communications were highlighted as creating potential for major operators to leverage their market power in downstream markets. Stakeholders' views differ on the future evolution of standards, with some calling for further standardisation, while others argue that standardisation is not necessarily the best solution for interoperability in this sector. The findings also state that "several submissions to the public consultation have emphasised the need for both competition law enforcement and regulation in relation to the identified concerns." However, no definitive action on this has been identified by the Commission at this stage, except that the report will inform its implementation of its digital strategy and standardisation strategy. It may be that calls for further standardisation will lead the Commission to create universal standards for IoT products.

Environment Agency (EA) published new guidance on resource frameworks. These frameworks will replace the waste quality protocols that provide a type of specification to determine when a certain material can be considered to have end-of-waste status. The existing protocols will either be republished as resource frameworks or withdrawn. Anyone can apply for a resource framework, with an initial fee of £900, and the EA will then consider if the request is suitable for the development of a resource framework. If accepted, the development of a framework is expected to cost at least £40,000 and take a minimum of 12 to 18 months to develop. The process will include working groups, detailed risk assessment and public consultation. These frameworks will exist alongside other end-of-waste assessment options, namely the EA's definition of waste service, and self-assessment.

Government unveils plans to crack down on waste. Two new consultations have been announced on measures intended to help tackle fly-tipping and illegal waste exports through stricter background checks and mandatory digital waste tracking. A consultation on implementation of mandatory digital waste tracking (using new powers in the Environment Act 2021) seeks views on proposals for the practical implementation of digital waste tracking, including what waste will be tracked, information recording, enforcement and charging. A consultation on waste carrier, broker and dealer system reform seeks views on moving from a registration to a permit-based system, with enhanced background checks to operate as a waste carrier, broker or dealer, as well as a technical competence requirement. The proposals also address enforcement, with the aim to make it easier for regulators to enforce against non-compliant operators and make it harder for unregistered operators to find work.

Judgment in two high-profile climate cases goes against the claimants. The High Court dismissed legal action in the "Paid to Pollute" case against the UK Oil and Gas Authority (OGA) and the Secretary of State for Business, Energy and Industrial Strategy (BEIS) challenging financial support for the oil and gas industry. Three climate activist claimants asserted that OGA's legal duty to "maximise economic recovery" does not benefit the UK as a whole because it ignores domestic tax relief for new oil and gas exploration and financial support provided for decommissioning costs, and amounts to a subsidy. The court did not accept the claimant's arguments and considered it to be "highly unlikely that parliament intended the court (rather than the expert regulator) to determine the best method of economic assessment, as is the claimant's claim." In another case before the High Court, campaigners Plan B and co-claimants sought (for the second time) to apply for judicial review of the UK government's climate policies on human rights grounds. The group claimed that the government was in breach of human rights, including a right to life and a right to a private and family life. The court considered that it was being asked to enforce the Paris Agreement, which it cannot do since these sort of international agreements "do not form part of domestic law, and domestic courts cannot determine whether the UK has violated its obligations under an international treaty". The court also held that it was "not arguable that a legal and administrative framework has not been put in place in response to the threats posed by climate change". The claimants intend to "appeal to the Court of Appeal and, from there, to the European Court of Human Rights".

ClientEarth and Friends of the Earth are challenging the government's net-zero strategy (NZS). In two separate but similar legal challenges, these groups are seeking judicial review of the government's NZS on the basis that it does not comply with the Climate Change Act 2008 (CCA). The CCA places a legal obligation on the secretary of state to set out how the UK will meet carbon reduction targets. The claimants allege that the NZS does not give effect to that duty. Friends of the Earth has an additional submission in relation to the Heat and Buildings Strategy, contending that it should have considered the impacts of its policies on protected groups, as part of ensuring a fair energy transition where climate action aligns with social responsibility. ClientEarth has an additional submission focusing on human rights claims against the NZS on the basis that it risks the UK having to introduce more drastic measures in future and pushes the burden onto future generations, impacting their rights to life and to family and private life. The initial applications are being considered by the government as defendants, and it is likely to be some time before any decisions by the court are made.

Government publishes the UK's Third Climate Change Risk Assessment. The report addresses the "unprecedented challenge of ensuring the UK is resilient to climate change" and explains work being done to meet it. This report is a legal requirement of the CCA. Headlines from the report include likely costs of more than £1 billion per year by 2050 if action is not taken to adapt for any of the eight "very high" risks identified. These very high-risk areas include infrastructure networks; flooding; financial markets; workplace overheating; and risks associated with climate change overseas. The report is intended to inform and lead to policy action, and will lead to a new version of the National Adaptation Programme (NAP) in 2023. In line with this report, and using further powers under the CCA, the government also asked a number of large organisations to produce reports on the current and future predicted effects of climate change on their organisation, and their proposals for adapting to climate change. The reports of more than 30 organisations have just been published – 13 water companies, eight energy companies, one strategic airport operator, two road and rail companies, three financial regulators, one harbour authority, two lighthouse authorities, three Department for Environment, Food and Rural Affairs (DEFRA) agencies and public bodies, and one other government organisation.

DEFRA published its consultation response regarding restricting phthalates in manufacturing medical devices and monitoring and control equipment. DEFRA consulted in September 2021 on amending the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (RoHS) in relation to Great Britain to bring in these additional restrictions, which already apply in the EU and Northern Ireland. The phthalates are bis(2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP). The response confirms that RoHS will be amended with effect from 1 July 2022 to mirror the EU restriction.

Consultation is published on biodiversity net gain (BNG) regulations and implementation. The consultation sets out government proposals, and seeks views, on how BNG will work in practice. The concept of BNG has been introduced by the Environment Act 2021 and requires developers to commit to and evidence a 10% BNG on new developments, over (currently) a 30-year period. On-site gains are preferred, but there will be scope for off-site gains, and for the trading of biodiversity credits. The consultation seeks views on the design of the regime and is open until 5 April 2022. BNG is due to become mandatory in November 2023 for "normal" planning applications, and two years later for nationally significant infrastructure projects. However, some authorities are already introducing BNG requirements into their planning conditions.

Further updates to HMRC's plastic packaging tax (PPT) guidance as the start date approaches. The existing pages were not particularly well linked to each other, so there is now a collection page that lists all the PPT guidance pages published on GOV.UK, together with links to HMRC webinars and past consultations. HMRC has also updated two decision tree documents on determining if plastic packaging is in scope and who is liable for the tax. Updates have also been made to the existing guidance in relation to examples of packaging in and out of scope; updates to one of the exemptions with specific reference to the change in status of silage wrap (as also reported in the press); and when you must register; registration of a group of companies; and completing your return.

UK emissions trading scheme (UKETS) rules updates are issued and proposed. The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 includes provisions on the rejection or administration of installations' monitoring plans, arrangements for ultra-small emitters, small emitters and hospitals and emissions reporting to the UKETS registry. The **Draft Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022** seeks to strengthen and clarify the UKETS requirements on penalties, enforcement and regulator powers of entry and inspection.

Environmental Audit Committee (EAC) report on water quality. The EAC recently issued its report following an inquiry into the state of rivers in England. Headlines include that "rivers in England are in a mess. A 'chemical cocktail' of sewage, agricultural waste, and plastic is polluting the waters of many of the country's rivers." Sewage from water companies, farm run-off and single-use sanitary items are identified as key contributors. EAC highlights the need to clean up our rivers for both public health and wildlife. It also describes a sewerage system that is "overloaded and unable to cope with the increasing pressures of housing development, the impact of heavier rainfall, and a profusion of plastic and other non-biodegradable waste clogging up the system", and which has suffered from underinvestment over successive governments. EAC calls for a "step change in regulatory action, water company investment, and cross-catchment collaboration with farmers and drainage authorities … to restore rivers to good ecological health, protect biodiversity and adapt to a changing climate." Defra has welcomed the report and says that it will be reviewing its recommendations carefully before responding later this year.

Environment Act 2021 commencement regulations are issued. The Environment Act 2021 (Commencement No 2 and Saving Provision) Regulations 2022 provides commencement dates for large parts of the act. This includes immediate (24 January 2022) commencement for provisions on environmental targets, environmental improvement plans and monitoring improvement, remaining powers of the OEP, producer responsibility and other waste-related provisions and local nature recovery strategies and protected site strategies. Later commencement dates are provided for reporting on significant international environmental protection legislation (April); local air quality aspects (May); and conservation covenants (September). There is also a saving provision for the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 – the original enabling legislation for the 2007 regulations (sections 93 to 95 of the Environment Act 1995) are repealed by the Environment Act 2021 provisions brought into effect by these new regulations, so they also "save" the 2007 regulations and they remain in force.

EA keynote speech – How to regulate better after Brexit: Think differently, speak softly and carry a bigger stick. EA Chief Executive Sir James Bevan spoke at a Westminster Energy, Environment & Transport Forum event. He highlighted that "now we have left the EU I think we could invent a new model which would simultaneously improve the environment, deliver better for business and cost the taxpayer less." The model would think differently, setting higher standards but with flexibility to make it climate-proof, with "fewer, simpler and better regulations". Regulation would be "proportionate, risk-based and outcome-focused" – with regulators who "speak softly, at least at first" and assume good intent until shown otherwise, but who, ultimately, have a "bigger stick" to make regulated industries pay the full cost of their regulation, and carry much tougher punishment for the biggest and worst polluters.

Government updates its guidance on waste import and export. Various changes have been made to the content and structure, with the intention of making the guidance clearer for importers and exporters. For example, the term "Article 18 controls" has been replaced with the more commonly used industry term "green list controls", and the conditions you need to meet to ship waste under green list controls have been clarified. Information has also been added in relation to exporting waste under notification controls; the steps to take if there are changes to the information; what exporters should do to find out if their notified waste passes through transit countries; the usual timescales for getting a notification assessed; and the sections on import of waste.

Advertising Standards Agency (ASA) ruling against Oatly in relation to environmental claims in its advertisements. The ruling related to two TV ads, a paid-for Facebook post, a paid-for Twitter post and two press ads. Five issues were investigated, of which four were upheld and one was not upheld. The upheld complaints related to four claims in the adverts relating to Oatly's environmental impact compared to the impact of dairy milk, and the wider environmental impact of meat and dairy. These included statements such as "Oatly generates 73% less CO2e vs. milk" and "The dairy and meat industries emit more CO2e than all the world's planes, trains, cars, boats etc., combined". ASA held these were misleading and breached the applicable advertising codes. The "not-upheld" complaint related to a claim that food's annual greenhouse emissions would be reduced by 49% if everyone in the world went vegan (on the basis that there was reasonable substantiation available for that claim). This ruling is another important reminder that brands making claims that plant-based products are better for consumers and the environment than dairy equivalents need to ensure they can provide substantiating evidence. It follows a similar ruling against Alpro last year.

Net Zero Tracker post-COP 26 snapshot report highlights an "integrity gap" in net-zero pledges. Net Zero Tracker is a global non-profit initiative to assess global net-zero targets to promote transparency and ambition. This snapshot taken on 25 November 2021 analysed the net-zero targets of 135 countries, 229 cities, 110 states and regions, and 632 of the world's largest companies by revenue that have set net-zero targets. It did identify that "major corporates have significantly strengthened net zero targets in the last year," but that there is still an urgent need to shift towards policies and laws rather than pledges. They also identified a propensity in both national governments and companies to use carbon offsets "improperly, instead of up-front action to cut near-term emissions". They identify an "integrity gap in net zero targets", because there is lack of clarity and specificity in how countries and companies will use offsets to meet their net-zero targets rather than cutting their own emissions. The analysis also highlighted that "most major companies have not yet faced up to the challenge of tackling" their scope 3 emissions (indirect emissions that occur in a company's value chain).

EA publishes its latest round of civil sanctions. The list of cases for which the EA accepted an enforcement undertaking or imposed a civil sanction for environmental offences between 10 September 2021 and 31 December 2021 has been published. These include the usual selection of environmental permitting and packaging waste enforcement undertakings.

EU

European Commission starts revision of waste rules. The European Commission published a call for evidence for an impact assessment of the revision of the Waste Framework Directive 2008/98 (WFD). The Commission aims at improving waste management by reducing waste generation and mixed waste, as well as improving separate waste collection, among other things. The policy options include expanding extended producer responsibility (EPR) schemes to additional products categories (e.g. textiles and oils) and improve enforcement of EPR requirements for products sold online. The WFD was most recently amended in 2018 as part of the EU Circular Economy Package (please see frESH June 2018). The call for evidence is open until 22 February. The Commission plans a public consultation for Q2 2022, and to adopt a legislative proposal in Q2 2023.

European Commission opens a public consultation on bioplastics. The Commission launched a public consultation on a policy framework for bio-based, biodegradable and compostable plastics (BBP and BDCP), following its roadmap from October 2021 (please see Sustainability Outlook October 2021). The consultation asks about certain policy measures regarding labelling, minimum EU sustainability requirements, limiting the use of biodegradable plastics in the open environment to products that are difficult to collect, and limiting the use of compostable plastics to products that are difficult to separate from food waste. The survey is open until 15 March 2022. The Commission currently plans to adopt this initiative by means of a (non-legislative) communication on 30 July as part of its second "Circular Economy package" in 2022.

Member states approve rules on reducing the consumption of single-use plastic products. These rules are in a draft implementing decision on the calculation, verification and reporting of the reduction in consumption of single-use plastic food containers and beverage cups. Pursuant to the Single-use Plastics Directive 2019/904 (SUPD), all member states must take such consumption reduction measures, following rules that the Commission will issue (it was supposed to adopt this implementing act by January 2021 and is expected to adopt the implementing decision in the coming weeks). The draft decision provides a wide margin of discretion to member states when calculating consumption reduction, based on (a) the number of single-use plastic items placed on the market, or (b) the total weight of plastic contained in those products. In the latter case, member states must also report the total weight of the products partly made of plastic. Member states must report specific measures to achieve the consumption reduction for each of the single-use plastic products: cups for beverages, including covers and lids, and food containers. The Commission provides an open list of possible measures, such as levies, EPR for producers of beverage cups, restrictions on placing them on the market, restrictions on making them available in certain locations and use restrictions when serving consumers. As criticised by some member states, the flexibility of these requirements could contribute to economic operators facing diverging conditions across the European market.

European Commission consults on the right to repair. The Commission launched a call for evidence and a public consultation on its "right to repair" initiative. The Commission had foreseen this initiative in its European Green Deal and Circular Economy Action Plan (CEAP 2.0). It aims to encourage consumers to make more sustainable choices by providing incentives and tools to use goods for longer, including repairing defective goods. It will also encourage producers to design goods that last longer and are easily reparable. The initiative intends to create synergies with the Sustainable Products Initiative (please see frESH Law Horizons March 2021) and the initiative on empowering consumers in the green transition. The Commission considers policy options with different degrees of intervention, such as amendment of the Sales of Goods Directive 2019/771 and a separate new legislative proposal. The amendment could include extending the legal guarantee periods for new goods that consumers choose to repair instead of replacing, for second-hand or refurbished goods or generally for all products beyond the current minimum period of two years (which became applicable as of January 2021). The amended directive may also make repair the preferred remedy. The new legislative instrument could oblige producers or sellers to repair products beyond the legal guarantee period for a reasonable price or, in some cases, for free. Both the feedback period of the call for evidence and the consultation period end on 5 April 2022. The Commission is expected to present a proposal for a directive in Q3 2022.

Council discusses a proposal for a Batteries Regulation. The European Commission has proposed a Batteries Regulation, which would repeal a current directive (please see frESH Law Horizons April 2018), following an Inception Impact Assessment presented in April 2020. The Commission's stated aim is to address the environmental and health risks due to use of hazardous substances in batteries, the GHG emissions associated with their manufacturing, the use of resources in their production and the responsible sourcing of materials. The proposal covers both industrial and rechargeable batteries, and imposes rules on their carbon footprint and recycled content. Electric vehicle batteries and rechargeable industrial batteries with internal storage and a capacity above 2kWh would have to be accompanied by technical documentation that includes a carbon footprint declaration.

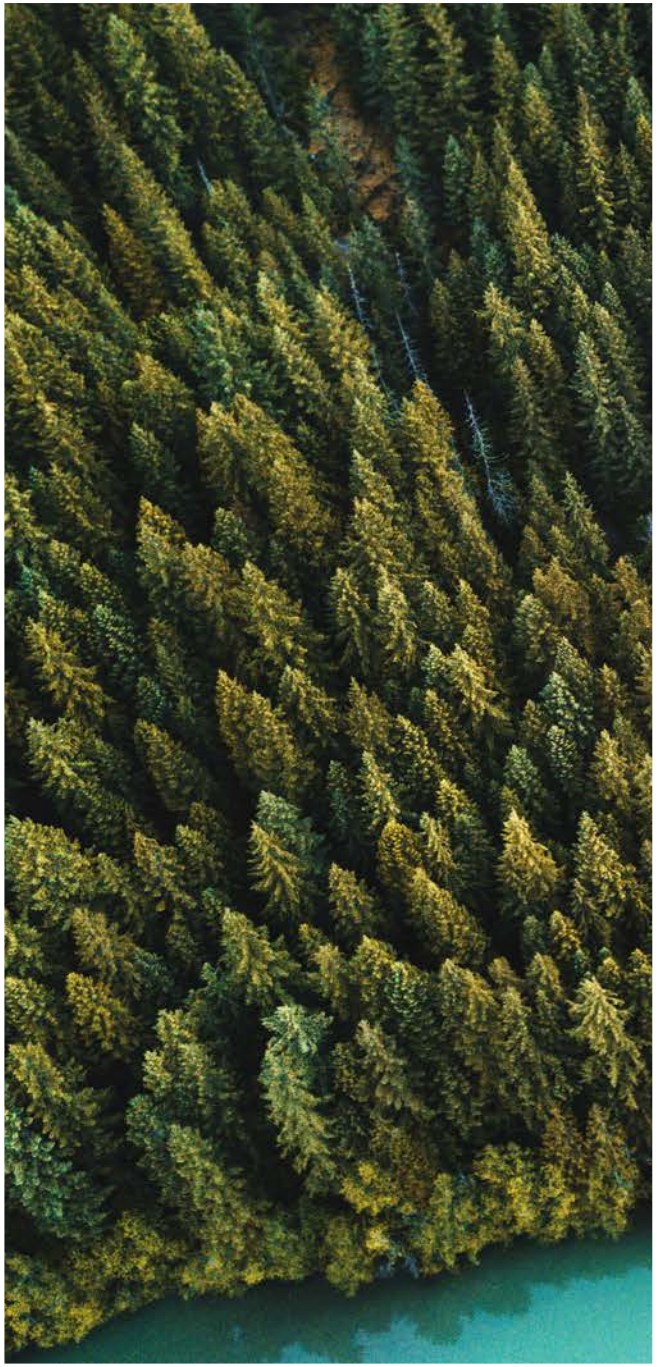
European Commission consults on REACH revision. The Commission launched an open consultation on the revision of REACH. The measures that the Commission consults upon are broadly in line with the Commission's Inception Impact Assessment (please see frESH Law Horizons May 2021). They include changes to registration requirements, the introduction of a mixture assessment factor (MAF) and simplification of communication throughout the supply chain, as well as changes to the authorisation and restriction processes. Questions on information requirements in the survey cover critical hazards, endocrine disruption, polymers and the environmental footprint, as well as use and exposure. Questions on the introduction of a MAF refer to studies showing that "unintentional" co-exposure to substances can lead to adverse effects on people and the environment. Exposures at concentrations that are regarded as safe for individual substances (i.e. where no effects are expected) can still result in adverse (eco)toxicological effects when humans or other organisms are exposed to an "unintentional" mixture. The 2020 Commission's progress report on Chemical Mixtures addresses these issues and provides real-world examples. On authorisation and restriction, the survey addresses the inclusion of the concept of essential use.

European Commission discusses details of its proposed right of initiative to classify chemicals. The European Commission laid out options regarding the introduction of a "right of initiative" to propose harmonised classification and labelling (CLH) under the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 in the context of the Chemicals Strategy for Sustainability. The Commission intends to address shortcomings identified in its 2019 fitness check of the most relevant chemicals legislation (excluding REACH): the slow pace of the CLH processes; member states' limited capacity to prepare CLH dossiers; and the uneven spread of workload between member states. It proposes that the European Chemicals Agency (ECHA) should regularly draw up and publish a list of substances (or groups of substances) that warrant CLH as part of a new prioritisation mechanism. The Commission would then discuss the list with member state competent authorities. The Commission should have the option to mandate ECHA to develop a CLH dossier only when no competent authority volunteers to do so. Upon such mandate, ECHA would then prepare the dossier and start the public consultation.

ECHA proposes restriction of PFAS in firefighting foams. ECHA submitted a proposal to restrict the use of per- and polyfluoroalkyl substances (PFAS) in firefighting foams. The Commission had requested that ECHA develop this dossier. They are of increasing concern for being persistent in the environment, and some are also known to be mobile, toxic and bioaccumulative. A recent study commissioned by the Commission and ECHA shows that fluorine-free firefighting foams are generally available and technically feasible and have been successfully used in most of the sectors identified. The inclusion of PFOA (part of the larger group of compounds under the PFAS heading) in Annex I of the POPs Regulation, following the listing under the Stockholm Convention, will lead, in the next five years, to the substitution of firefighting foams containing PFOA substances. ECHA is expected to "pre-publish" the restriction dossier on 23 February 2022. ECHA's scientific committees for risk (RAC) and socio-economic analysis (SEAC) will evaluate it, which includes a public consultation. Their opinion will then form the basis for the decision of the European Commission on the proposed restriction. In parallel, Germany, Denmark, the Netherlands, Norway and Sweden registered their intention to propose a broad restriction of the manufacture, placing on the market and use of PFAS (please see Sustainability Outlook July 2021).

European Commission announces new rules for large combustion plants. The Commission announced that it has published Implementing Decision 2021/2326 establishing best available techniques (BAT) conclusions for large combustion plants (LCP) in the Official Journal, following approval of the draft last year (please see Sustainability Outlook November 2020). This decision replaces Implementing Decision 2017/1442, which the EU court annulled on application by Poland (Case T-699/17; appeal pending, Case C-207/21). The BAT conclusions provided in the annex to the decision set the reference for permit conditions for LCP under the IED. The Commission stressed that they remain identical in content to the annulled decision and that it intends to ensure continuity in the implementation, as well as clarity and legal certainty for member states and operators.

European Court of Justice holds that the WEEE Directive is partially invalid. The European Court of Justice (ECJ) announced a preliminary ruling, i.e. a decision on reference from a national court, regarding "recast" Directive 2012/19 on waste electrical and electronic equipment (WEEE2 Directive) (Case C-181/20). It ruled that manufacturers of photovoltaic (PV) panels placed on the EU market before the entry into force of the WEEE2 Directive (August 2012) cannot be obliged to finance the waste management costs arising from those panels. The WEEE2 Directive makes producers responsible for the costs of the collection, treatment, recovery and environmentally sound disposal of WEEE resulting from products placed on the market before 13 August 2005 (the original implementation date of the earlier directive that the WEEE2 Directive replaced). However, PV panels were not within the scope of the earlier WEEE regime. The ECJ confirms that waste management costs regarding equipment placed on the market since the entry into force of the WEEE2 Directive must be borne by the producers, and not, as the Czech legislation that gave rise to the original case provides, their users. However, before the entry into force of the WEEE2 Directive, member states could place the obligations on users or manufacturers. For that reason, the ECJ declared Article 13(1) of the WEEE Directive invalid insofar as it imposes on producers the obligation to finance costs relating to the management of waste from PV panels placed on the market between 13 August 2005 and the entry into force of the WEEE2 Directive.



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