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# frESH Law Horizons

April 2022





## UK

**Sentencing Council publishes draft sentencing guidelines for perverting the course of justice and witness intimidation.** The [draft sentencing guidelines](#) have been published subject to [consultation](#), which closes on 22 June 2022. These are the first comprehensive guidelines on the two offences of [Perverting the course of justice](#) contrary to common law and [Witness intimidation](#) under the Criminal Justice and Public Order Act 1994, and will apply to adult offenders, judges and magistrates. Conduct that could amount to perverting the course of justice is wide ranging and includes giving false information to, or otherwise obstructing, the police. Witness intimidation relates to conduct that pressures a witness to withdraw allegations or statements, or not to attend court to give evidence. We [recently reported](#) on other changes to sentencing guidelines relating to confiscation and compensation. We will provide a further update on this consultation when the response is published.

**PPE at Work regulations are updated.** The [Personal Protective Equipment at Work \(Amendment\) Regulations 2022](#) came into effect from 6 April 2022, amending [The Personal Protective Equipment at Work Regulations 1992](#) (PPER 1992). We [previously reported](#) on the amendments, which will require employers of “limb (b) workers” to provide them with the necessary personal protective equipment (PPE) to complete their tasks safely. Businesses should note that, following a third round of revisions to [The Control of Noise at Work Regulations 2005](#) in 2021, the Health and Safety Executive (HSE) revised the layout to its [guidance document](#) such that it now places emphasis on prioritising the control of exposure to the risk of workplace noise and risk at the source. The PPER 1992 will place duties on employers to provide the same level of hearing protection to workers carrying out casual work as they do to employees who have a contract of employment, so the amended guidance should be considered when using “limb (b) workers” going forwards.

**First Implementation Report into the EU-UK Trade and Co-operation Agreement (TCA) is published.** The [report](#) is made by the European Commission to the European Parliament and the Council of the European Union. In its conclusion, the report states that “the TCA does not eliminate customs procedures and controls, rules of origin in order to benefit from the abolition of tariffs, or the non-tariff barriers resulting from regulatory divergence.” It continues that “The same holds true for all other EU policy areas which are addressed in the TCA, ranging from transport and energy to fisheries and judicial cooperation in criminal matters.” It also states that continued monitoring of the UK’s regulatory reform is of “vital importance to ensure that it does not conflict with the TCA provisions and that EU businesses are not put at a competitive disadvantage.” As we have [previously reported](#), the UK government has already announced a “Brexit Freedoms Bill”, which may lead to regulatory divergence. Such divergence could also put UK businesses at a competitive disadvantage in the EU.

**Conditional discharge is still compatible with director’s disqualification.** The Court of Appeal has decided in *R v Breslin* [2022] EWCA Crim 391 that an order disqualifying a director was not wrong in principle in cases where a conditional discharge was imposed. A conditional discharge is a potential sentence open to the courts on conviction of an offender, and operates such that the offender is released and the offence is registered on their criminal record but no further action is taken subject to them not committing a further offence within a time set by the court, which can be no more than three years. It is usually imposed where imposing a fine or other sentence would be pointless in effect, for example due to a lack of means of the offender. Businesses and their directors should be aware that, even where it would be inappropriate to impose a fine or other sentence on the business, directors may still face disqualification following convictions for regulatory breaches.



**HSE advises hospitality venues to check outdoor installations ready for spring and summer.** The HSE says it is working with the hospitality industry and local authorities to “increase awareness and to improve safety standards”; and is [urging venues](#) to ensure that electrical installations and equipment used outdoors are safe. Inspections, testing and maintenance of fixed installations and electrical appliances should be carried out in accordance with [The Electricity at Work Regulations 1989](#). Employers should make arrangements for a competent person to conduct electrical installation work, only use electrical equipment outdoors that is specifically designed for outdoor use, and conduct regular checks of equipment for damage.

**Calorie labelling law came into force on 6 April 2022.** [The Calorie Labelling \(Out of Home Sector\) \(England\) Regulations 2021](#) require calorie labelling for “non-prepacked foods” in England, which are sold in a form suitable for “immediate consumption”. With some limited exceptions, businesses with 250 or more employees are obliged to provide details of the energy value for meals and other foods served on-site to customers in restaurants, cafes, pubs, workplaces and canteens; for meals and other foods sold for consumption off-site, from shops, delicatessens, sandwich bars and takeaways; and for “distance sales” over the internet or the phone (the “out of home” sector). In its [press release](#), the government has stated that the aim of the change is to “improve the nation’s health” and has highlighted increases in hospital admissions related to obesity, and the link between obesity and diabetes. See our [blog article](#) for further information on the changes to the law, guidance documents and challenges for businesses.

**Government publishes guidance on the implementation of the Food (Promotion and Placement) (England) Regulations 2021.** [The Food \(Promotion and Placement\) \(England\) Regulations 2021](#) will come into force on 1 October 2022 and impact foods High in Fat, Salt and Sugar (HFSS) by introducing restrictions on volume offers and new rules on placement in retail stores and promotion. These include a 9 p.m. watershed on all advertising of HFSS foods and an outright ban on paid online advertising of HFSS foods, but additionally, the regulations prescribe the location where qualifying businesses must not place specified food inside a physical store. [The guidance](#) explains how the new rules will work, scope, liability and offers recommendations and examples of best practice. Failure to comply with the new regulations can be enforced by food authorities (essentially local authority Trading Standards or Environmental Health Officers) in a similar way as failures to comply with food information requirements, i.e. via improvement notice, with a failure to comply with an improvement notice being an offence (with a fixed penalty of £2,500 or prosecution with unlimited fine). Improvement notices can be appealed to the magistrates’ court. However, the guidance encourages enforcement authorities to take a “pragmatic” approach to enforcement and to focus on supporting compliance rather than penalising non-compliance, including conversations with businesses, as opposed to immediate service of formal notices. Nevertheless, businesses in the food and drink sector should familiarise themselves with the guidance ahead of the changes in October to prevent risks of enforcement action.



**Food Standards Agency (FSA) publishes a list of companies with credible novel food applications for products linked to Cannabidiol (CBD).**

On 31 March 2022, the FSA published a [list of CBD products linked to credible novel food applications](#), which contains CBD food products that meet the following criteria: (1) they were on the market on 13 February 2020; (2) the FSA received an authorisation application for the products before 31 March 2021; and (3) the FSA has validated the application or agreed that it is sufficiently progressing towards validation. CBD is treated as a novel food and novel foods are, of course, required to be authorised before they are put on the market. However, since CBD was identified as a novel food, CBD-containing products have remained on sale in the UK, pending a decision on their authorisation. Now, any products that do not appear on the newly published CBD product list or are marked “Removed” must be removed from the market, with local authorities responsible for taking appropriate action to remove the products from the market, with powers to take enforcement action where products are not voluntarily removed. The FSA has also advised local authorities that those products on the list marked as “Validated” or “Awaiting evidence” may stay on the market pending further consideration. For more information, see our [full article](#) on this topic.

**Ministry of Defence (MOD) is issued with Crown Censure after an employee was shot in a training exercise.**

The HSE has [issued the Crown Censure](#) after the MOD admitted breaching its duties under Section 2(1) and Section 3(1) of the Health and Safety at Work etc. Act 1974. The HSE stated that the employee suffered severe injuries when they were shot with live ammunition during a training exercise in January 2019. The exercise should have been carried out with blank rounds. While there is no Crown exemption from health and safety laws, the Crown cannot be prosecuted for breaches of the law. However, if the HSE is satisfied that, but for the Crown’s immunity, it would have sufficient evidence to provide a realistic prospect of conviction, then it can issue a Crown Censure to record that decision.

**Company is fined following the death of a worker who was crushed.** The HSE has stated that the company, which specialised in the manufacturing of containers and drums for the nuclear, aerospace and medical industries, failed to carry out a risk assessment and ensure a safe system of work for a 1,000-tonne capacity press. The employee was lying down beneath the raised middle section of the press using a handheld tool to remove a weld from a piston. The internal ram fell when the weld was removed and it crushed the employee, causing instant death. The company was found guilty of breaching Section 2(1) of the Health and Safety at Work etc. Act 1974 and was [fined £500,000](#) and ordered to pay costs of £145,487.

**Disclosure failings did not amount to abuse of process.** [The Court of Appeal decided](#) that deficiencies in disclosure, including incomplete and inaccurate entries in disclosure schedules, were insufficient to allow a stay of proceedings, and although the trial judge should also not have taken into account certain matters in determining an application for stay of proceedings, not every “error of law” will lead to a reversal of a ruling on appeal. Instead, the court would need to consider the judge’s decision on its merits. The case involved allegations of historical sexual abuse and it was noted in the case that the police had tried (but failed) to comply with disclosure obligations. The court noted that requests for disclosure should be focused, realistic and achievable to assist the prosecution, as requests that are too broad may be impossible for the prosecution to comply with. The decision makes clear that businesses prosecuted for regulatory offences, such as health and safety breaches, might not be successful in seeking to stay proceedings on the grounds only of poor disclosure by prosecuting authorities.



**Office for Product Safety and Standards (OPSS) launches new product safety alerts, reports and recalls site.**

[The new site](#) aims to help businesses and consumers to identify unsafe products and the OPSS says it is more user-friendly. The site contains a [list of alerts](#), of which there are three types: product recalls, product safety reports and product safety alerts. Aside from the obvious risks posed by a product recall or alert, businesses should be aware that information on recalls is publicly accessible, and can, therefore, impact upon brand reputation.

**Government responds to consultation on proposed consumer law reform.**

BEIS has published its [response to its consultation](#) on proposed reforms to the consumer law regime in the UK. The government proposes changes to the law to protect consumers from “subscription traps”; by creating a requirement to provide clearer information to consumers before they enter into a subscription contract; creating a specific requirement for businesses to send reminders to consumers before a contract auto-renews; and creating a new specific requirement that businesses ensure consumers have a straightforward, cost-effective and timely mechanism to end a subscription. The government is also seeking to protect consumers from fake reviews by introducing it into the list of practices that are always considered unfair in Schedule 1 of [the Consumer Protection from Unfair Trading Regulations 2008](#) (CPUT Regulations). The proposed changes will allow the Competition and Markets Authority (CMA) to enforce certain consumer protection legislation directly, enabling it to award compensation to consumers and impose financial penalties for breach of consumer protection laws. Civil financial penalties are also proposed. However, breaches of the CPUT Regulations do, of course, also create criminal offences for breach, which can be enforced and prosecuted by Trading Standards. Due diligence records to evidence compliance with any new requirements could, therefore, be important.

**Senior Traffic Commissioner’s Statutory documents are updated.**

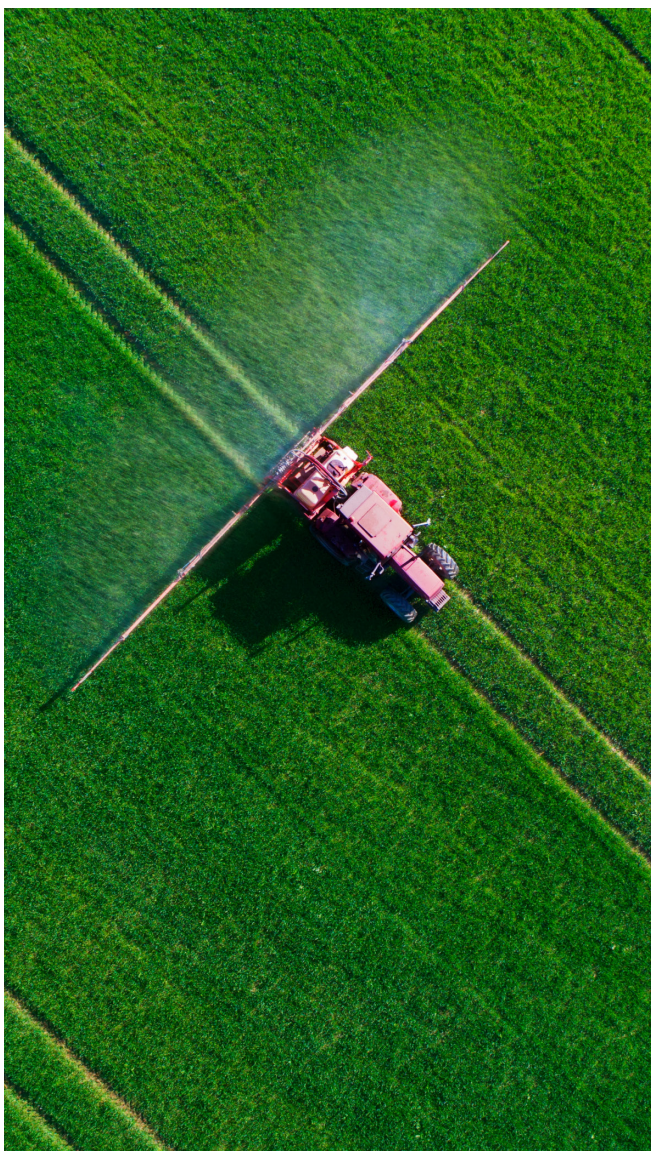
[The Senior Traffic Commissioner’s Statutory documents](#) have been updated to incorporate the new regulations on Large Goods Vehicles (LGVs) across the guidance. The amendments include how the Traffic Commissioner should approach LGV licensing and the differences between legislation on LGVs and Heavy Goods Vehicles; the Traffic Commissioner’s approach when considering appeals against the refusal of the Secretary of State to grant acquired rights for LGVs; financial standing rates for operators of LGVs; a general update to the requirements for all transport managers; and the increased scope of Statutory Document 0 (an introduction to operator licensing, the statutory guidance and statutory directions) to now include LGVs. Businesses that hold Operator’s Licences for LGVs should familiarise themselves with the Statutory documents, as they will assist compliance and set out how the Traffic Commissioner would consider any alleged breach of an Operator’s Licence.

**The United Nations’ Intergovernmental Panel on Climate Change (IPCC) published its latest report and accompanying press release.**

This report is the third part of the IPCC’s Sixth Assessment Report, due to be completed in the autumn. The report highlights that the next few years are critical because limiting warming to 1.5 degrees Celsius requires emissions to peak no later than 2025 and reduce by 43% by 2030. It also emphasises that major transitions in the energy sector are needed, such as a substantial reduction in fossil fuel use and the use of alternative fuels like hydrogen. The UK government’s [statement on the report](#) notes that the window for climate action is closing fast, and that while growth in global emissions has slowed over the past decade, much more needs to be done, including halving global emissions by 2030, to keep the goal of 1.5 degrees Celsius in reach and avoid the worst impacts of global warming.

**Environment Agency (EA) updates charges for water abstraction licences.**

It also published the [response to its earlier consultation](#) on proposed changes to water abstraction charging in England. The new scheme applies 1 April 2022, and charges for water abstraction licences had not changed for 10 years prior to this.



**HSE published its rolling action plan (RAP) of substances to be evaluated under UK REACH.** This is the UK version of the Community Rolling Action Plan (CoRAP) maintained by the European Chemicals Agency (ECHA) under EU REACH. Substance evaluation aims to clarify concerns that the manufacture and/or use of these substances could pose a risk to human health or the environment. HSE will have one year from the date of publication of the RAP to evaluate these substances and, where necessary, to prepare a draft decision requesting further information from the registrants to clarify the identified concern. In 2022 to 2023, HSE, working with the EA, will evaluate two substances: Paraffin waxes and hydrocarbon waxes, chloro (LCCPs) and 2,2'-Diallyl-4,4'-sulfonyldiphenol (TG-SA). LCCP's are similar to medium-chain chlorinated paraffins (MCCPs), in respect of which the UK has already conducted a substance evaluation under EU REACH, concluding it to be persistent, bioaccumulative and toxic (PBT) and/or very persistent and very bioaccumulative (vPvB). DEFRA has also already proposed (in 2021) that MCCPs be classified as a persistent organic pollutant under the Stockholm Convention. HSE has also published, last month, criteria for prioritising substances for substance evaluation, which will be used to prioritise substances for evaluation in subsequent years (the next ones are due to be announced by May 2023). It already seems clear that the UK does not have the resources to be able to “keep up” with the EU in terms of its substance evaluation programme, since the EU programme plans to evaluate four substances in 2022, 14 in 2023 and nine in 2024.

**The Department for Environment, Food and Rural Affairs (DEFRA) is consulting on measures to prevent householders being charged to dispose of DIY waste.** The proposals would remove the right for waste authorities to charge householders to dispose of DIY waste at household waste centres. The proposals would cover wastes like plasterboards, bricks and bath units. This is part of the government's renewed efforts to crack down on fly-tipping, which has increased since the beginning of the pandemic. The government has sought to remove such charges more subtly since 2015 (mainly through guidance), but around a third of local authorities still charge for certain types of DIY waste, using rules designed for construction waste. The proposals would clearly classify DIY waste as household waste (which cannot be charged-for) provided the quantity was no greater than 300 litres and not disposed of more than once a week. The consultation also includes a call for evidence on the impacts of booking systems at household waste centres, which were brought in during the pandemic. The consultation is open until 4 July 2022.

**DEFRA has also published a policy paper on mandatory digital waste tracking.** This is another part of the efforts to improve waste tracking and address fly-tipping, and follows on from new powers created in the Environment Act 2021. Digital waste tracking is intended to provide real-time information from a single source on where and how waste is created, who is handling and moving it, what treatments or processes are applied to it, and where it ultimately goes. The paper says that the government intends to launch this scheme in 2023/2024, depending on progress with the IT development and the transition needs for affected businesses. The introduction of this system will require amendments to waste legislation, such as the waste duty of care, hazardous waste and transfrontier shipment of waste. The waste duty of care codes of practice will also need to be updated.



**EA Chief Executive gives a keynote speech on waste crime – Crackdown on waste crime: Time to stop trashing our future.** Sir James Bevan gave a speech on waste crime at a Let's Recycle and Environmental Services Association event on Tuesday 12 April. He explained the progress that had been made in recent years to crack down on waste crime and how the EA intends to "win this fight." He highlighted that "to tip the scales against the criminals, we need to be tough on waste crime, with better knowledge, more resources, tougher deterrents; and tough on the causes of waste crime, with smarter policies that keep one step ahead of criminals, shut them out of the system and move us towards an economy in which there is no space for waste crime."

**The Department for Business, Energy and Industrial Strategy (BEIS) publishes the British Energy Security Strategy.** This follows on from, and develops, the [ten point plan for a green industrial revolution](#) from 2020 and the [Net Zero Strategy: Build Back Greener](#) from 2021. The strategy sets out steps to accelerate the progress towards net-zero, which is fundamental to energy security. It states that by 2030, 95% of British electricity could be low-carbon, and by 2035, we will have decarbonised our electricity system, subject to security of supply. This would reduce the dependence on imported oil and gas and deliver a radical long-term shift in energy sources. The strategy advocates significantly increasing nuclear power generation (up to 24 gigawatts by 2050, which is three times what we have currently). Other major announcements include doubling the low-carbon hydrogen production capacity by 2030 (10GW rather than the 5GW set out in the net-zero strategy)

**Consumer Goods Forum Plastic Waste Coalition publishes Chemical Recycling in a Circular Economy for Plastics – A Vision and Principles Paper.** This consortium consists of 16 major consumer goods companies, and the purpose of the paper is to set out their "shared view of the role of pyrolysis based Chemical Recycling (Py-CR) in a circular economy for plastics, and to outline a shared vision and principles for their potential development and deployment for plastic-to-plastic recycling." It focuses on Py-CR, which breaks down plastics into simpler building blocks for plastics manufacturing as opposed to mechanical recycling. The paper advocates chemical recycling as the only way to recycle large volumes of flexible plastics packaging and other mixed polyethylene/polypropylene (PE/PP) into food grade PE/PP recycled content under current European regulations. It says that operating such processes at scale could increase packaging recycling rates, which could enable recyclability targets to be met, and allow the reprocessing of flexible plastics into pure PP or PE suitable for use in new food-grade plastic applications.

**Norfolk landowner is imprisoned for eight months for storing and burning waste illegally.** Despite repeated warnings from the EA, including seven site visits and a notice ordering him to clear the site, the man continued to store and burn mixed wastes on the site, including hazardous wastes. He evaded repeated attempts by EA officers to discuss the matter with him, and a warrant for EA officers to enter the site was issued in December 2019. He pleaded guilty to storing and disposing of waste without an environmental permit.

The judge also observed that the COVID-19 lockdown had given him ample opportunity to clear the site, yet he continued to accept more waste, and to frustrate the EA's efforts to discuss the matter with him. Storing and burning waste in this way saved the cost of legal disposal and put the environment at real risk and the man was able to operate at a commercial advantage and undermine his lawful competitors. He was sentenced to eight months' imprisonment, and ordered to pay a £140 victim surcharge and to pay £10 for breaching a suspended sentence order. In addition, he was served with a court order requiring him to remove all waste from the site by 30 June 2023, and to provide the EA with all paperwork by 7 July 2023.



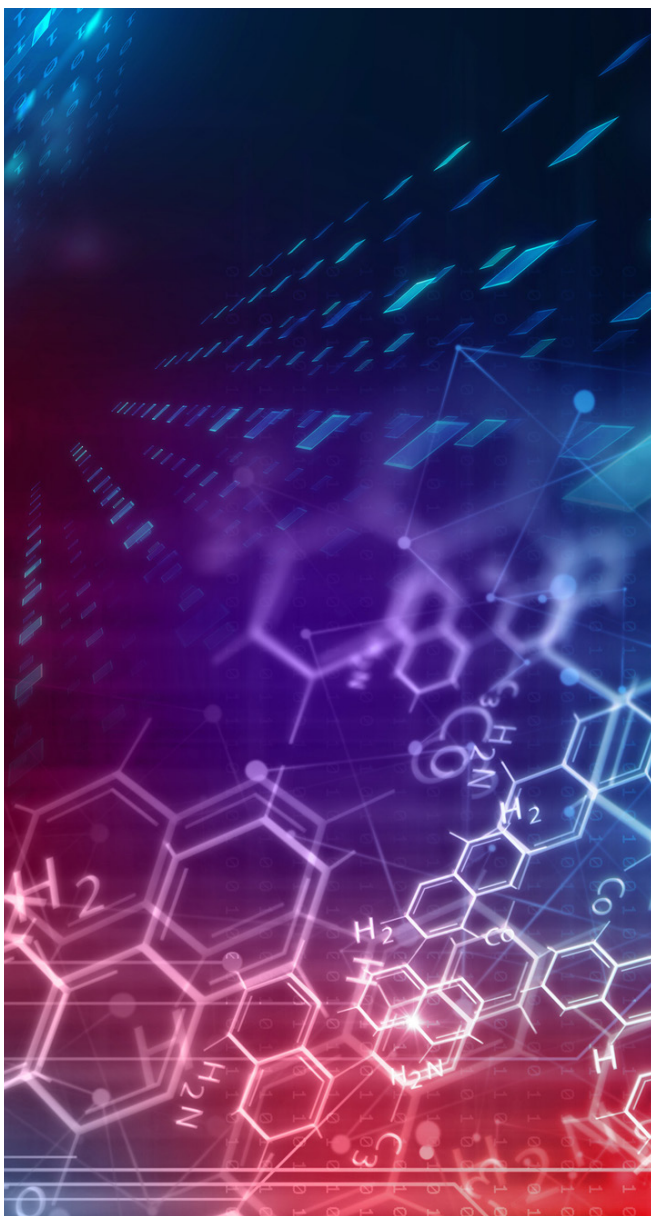
**Two men were convicted and fined over an illegal waste injection scheme.** Company director Neal Tremayne used his firm, Carnon Valley Transport, to collect raw sewage, septic tank contents and other controlled wastes from holiday and caravan parks, hotels, a farm, an abattoir and a car dealership. He then put that liquid waste into giant storage tankers belonging to Brian Matthews. Matthews was paid a quarter of the going rate for legitimate waste disposal and he disposed of it by injecting the mixture into the ground at agricultural locations he rented. Both men pleaded guilty to various environmental offences under environmental permitting regulations, the Environmental Protection Act 1990, and the Fraud Act 2006. For negligent culpability and environmental harm, Matthews was ordered to pay £136,674.50 under the Proceeds of Crime Act within three months or face imprisonment, and fined £8,000 plus £10,000 in costs. For reckless offending, Tremayne was ordered to pay £80,000 under the Proceeds of Crime Act within three months or face imprisonment, and given a four-month prison sentence suspended for 12 months, plus fines for him and his company totalling £3,000, plus £3,450 in costs.

**DEFRA confirms the extension of consultation on environmental targets.** During a [webinar hosted by the Environment APPG](#), called “Driving forward nature’s recovery”; DEFRA’s Rebecca Pow said that they have “agreed to extend the time of the consultation to give people full time to look at on what evidence we based our targets, and what the thinking was behind them, because there was a great deal of scientific evidence and data used to set these targets. They weren’t just randomly set.” This reflects a delay in publishing further evidence reports and impact assessments. DEFRA has not confirmed the date of the extension, but it is understood that this will be announced once the awaited reports and assessments have been published.

## EU

**ECHA finds no need to restrict 10 phthalates “at present”.** In a [report](#), ECHA considered 10 phthalates: Diisopentylphthalate; 1,2-Benzenedicarboxylic acid di-C6-8- branched alkyl esters, C7-rich; 1,2-Benzenedicarboxylic acid, di-C7- 11-branched and linear alkyl esters; 1,2-Benzenedicarboxylic acid, dipentyl ester, branched and linear; Bis(2-methoxyethyl) phthalate; Dipentyl phthalate; n-pentyl-isopentylphthalate; 1,2-Benzenedicarboxylic acid, dihexyl ester, branched and linear; Dihexyl phthalate; and 1,2-benzenedicarboxylic acid and di-C6- 10-alkyl esters or mixed decyl and hexyl and octyl diesters with  $\geq 0.3\%$  of dihexyl phthalate. These are mostly used as plasticisers in PVC articles and other polymeric materials, and were added to the REACH Authorisation List between 2011 and 2015. For seven of them, the sunset date has passed; for the remaining three, it will pass in February 2023. The sunset date is the date from which the placing on the market and the use of the substance is prohibited unless an authorisation is granted. ECHA has not received any applications for authorisation for their use. According to ECHA, this indicates that the use of these substances in articles has been largely phased-out in the EU. Even though ECHA found no need to restrict the 10 phthalates “at present”, it deemed further examination of the risks from their use in articles is necessary.





**ECHA recommends the restriction of 34 bisphenols.** ECHA [assessed the regulatory needs for](#) 148 substances, including 17 bisphenols. The main potential hazard categories for this group are endocrine disruptors (ED) for human health and the environment, reproductive toxicity and skin sensitisation, as well as, for some, PBT and vPvB. Depending on the scope of the eventual restriction(s), authorisation could be further considered as a complimentary measure (e.g. to avoid regrettable substitution and possibly regulate uses for which restriction was not considered the appropriate tool). ECHA referred to the [proposal](#) to restrict Bisphenol A (BPA) based on its ED properties in the environment. Furthermore, Bisphenol AF (BPAF) and its eight salts meet the OECD definition of being Per-and PolyFluoroAlkyl Substances (PFAS) and might, therefore, be in scope of the universal PFAS restriction that is also currently under development (please see [Sustainability Outlook July 2021](#)).

**ECHA points out new information requirements under REACH.** ECHA [summarised the revised rules on information requirements under REACH](#), which companies must apply as of October 2022. The new requirements cover studies of mutagenicity *in vitro* and *in vivo*, reproductive toxicity, aquatic toxicity, and toxicity on terrestrial and sediment organisms, as well as of degradation and bioaccumulation. Specific requirements on substance identification include describing the compositions, nanoform or set of similar nanoforms, reporting a crystal structure and reporting the composition of substances with unknown or variable composition (UVCBs), as well as reporting constituents, impurities and additives. ECHA said that it will provide further guidance on these new requirements later this year.

**Member states are set to evaluate 27 substances from 2022 to 2024.** In late March, ECHA adopted and published the [Community Rolling Action Plan \(CoRAP\) for 2022-2024](#), based on the opinion of its Member State Committee (MSC). The CoRAP lists 27 substances for evaluation by EU member states (as well as by competent authorities of other European countries that apply REACH, in particular Norway). Four of the substances are planned to be evaluated in 2022, while 23 substances are listed for evaluation in 2023 and 2024. CoRAP prioritises substances for evaluation over a period of three years. The evaluation aims to clarify concerns that the manufacture and/or use of these substances could pose a risk to human health or the environment (please see [frESH Law Horizons March 2021](#)).

**European Commission proposes the “phase-down” of F-gas emissions.** The Commission [proposed](#) a regulation to revise the F-gas Directive 2019/1937. It [noted](#) that fluorinated gases (F-gases) are very strong greenhouse gases (GHG), often several thousand times stronger than carbon dioxide (CO<sub>2</sub>). Besides ensuring alignment with the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, one of the objectives of the proposed regulation is to achieve additional F-gas emission reductions to contribute to reaching the 55% reduction in GHG emissions by 2030 and net carbon neutrality by 2050. The Commission estimates that the proposed regulation will result in additional savings of cumulatively 40 Mt CO<sub>2</sub>e. An important aspect of the proposed F-gas Regulation is an EU HFC phase-down, namely a quota system to gradually reduce the amount of HFCs that importers and producers place on the market every year. It would also introduce new restrictions to ensure that F-gases would only be used in new equipment where no suitable alternatives are available. The EU co-legislators, Council and European Parliament are expected to discuss, amend and adopt the proposal, following the ordinary legislative procedure.



**European Commission proposes new bans on ozone depleting potential substances.** The Commission [proposed](#) a new regulation replacing Regulation 1005/2009 on ozone depleting substances (ODS). The aim of the new rules would be to prevent 180 Mt CO<sub>2</sub>e and 32,000 tonnes of ozone depleting potential (ODP) emissions by 2050, in particular from formerly legal applications in products and equipment. For instance, it would become mandatory to recover or destroy ODS from some insulation foams during the renovation and demolition of buildings. The Commission noted that, given the relevance of end-of-life emissions from insulation foams containing ODS, there are strong synergies with objectives of the circular economy and waste policies. The targeted revision of the Waste Framework Directive in 2023, which it recently initiated (please see [Sustainability Outlook January 2022](#)), was a good opportunity to reinforce these links to the ODS Regulation.

**European Commission's roadmap foresees group restrictions "for the most harmful substances".** The Commission issued a [Restriction Roadmap](#) as one deliverable under the [Chemicals Strategy for Sustainability](#) (CSS). It [said](#) that the roadmap prioritises group restrictions for the most harmful substances to human health and the environment for the period between 2025 and 2027, before a new REACH Regulation, implementing a generic approach to risk management, enters into force. Further, the roadmap was an important step towards providing detailed information on all ongoing work on future restrictions under the EU chemical legislation, allowing companies to anticipate (potential) upcoming restrictions (e.g. by already preparing substitutions). It includes a rolling list of substances, which will become the basis for the multiannual planning under REACH "in full respect of the prerogatives of Member States". Among many others and besides bisphenols and PFAS, it includes "PVC and its additives" (please see [frESH Law Horizons February 2021](#)) and flame retardants.

**European Commission warns about hazardous substances in toys, online sales and other products.** The Commission published its [annual report](#) on the [Safety Gate](#), the EU rapid alert system for dangerous non-food products (RAPEX). In 2021, authorities of the countries participating in the Safety Gate exchanged 2,142 alerts through the system. For the first time, the highest number of alerts was notified in the motor vehicles category, followed by toys and electrical appliances and equipment. As regards motor vehicles, actions taken mainly concerned recalls following the detection of technical problems, while those for toys focused on the presence of dangerous chemicals, as well as button batteries. The most common problems reported for electrical appliances and equipment related to the exposure of live parts and overheating. Hazardous substances in consumer goods accounted for a quarter of all product risks notified through the system. Following the publication of the annual report, the Commission is launching a new e-surveillance tool called web crawler. The tool will support national authorities in the detection of online offers of dangerous products signalled in Safety Gate.

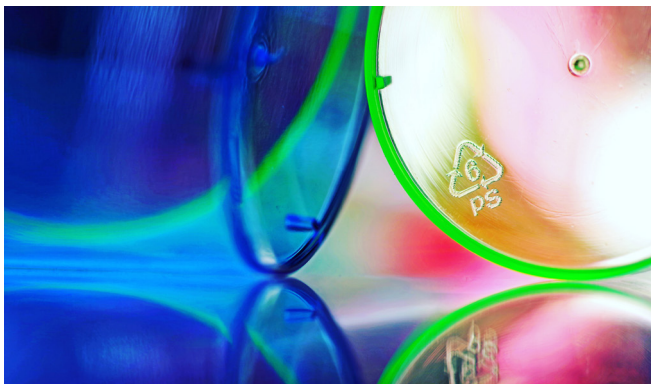


**European Parliament Rapporteur proposes changes to waste shipment rules.** The [draft report](#) of the Rapporteur of the Committee on the Environment, Public Health and Food Safety (ENVI) of the European Parliament suggests amendments to the proposal for a new Waste Shipment Regulation (WSR) that the European Commission presented last year (please see [Sustainability Outlook November 2021](#)). Regarding intra-EU shipments, the draft report takes a more flexible approach on certain deadlines, thresholds and procedural steps. Changes include that the prohibition of mixing wastes would not apply in cases of non-hazardous waste shipped to facilities that have demonstrated an ability to treat waste of the corresponding contamination level. The draft report narrows the conditions under which a shipment destined for disposal is prohibited, and competent authorities may object to shipments destined for recovery due to a conviction of the notifier or the consignee to convictions of significant illegal acts in relation to environmental protection (i.e. those that cause serious harm to the environment or human health). The draft report does not provide a general ban for waste exports to third countries, but proposes to update the list of non-OECD countries to which exports of non-hazardous waste for recovery are authorised every year (instead of every two years, as proposed by the Commission). The plenary of the Parliament has scheduled to adopt the final ENVI report as its position in November 2022, to enter into negotiations with the Council to adopt the proposal.

**European Commission proposes new industrial emissions rules.** The Commission [presented](#) its [proposal](#) to amend the Industrial Emissions Directive 2010/75 (IED), together with an [impact assessment](#). The Commission proposal retains the so-called Sevilla process to develop permitting conditions based on Best Available Techniques (BAT), but proposes various changes, including:

- Wider scope to cover more installations, such as the extraction of industrial minerals and metals (exclusion of energy minerals such as coal) and large-scale production of batteries
- Tighter pollutant emission limit values for revising permits or setting new permit conditions
- Minimum energy efficiency levels or the use of a binding ceiling on energy intensity will become mandatory, where these are included in the sector-specific, legally binding BAT conclusions
- By 2030, large installations must develop “Transformation Plans;” showing how they propose to adopt techniques as a contribution to EU objectives regarding a clean, circular and climate neutral economy

Chemical industry association Cefic [expressed concerns](#) that the proposal would not increase the competitiveness of the European industry and called for greater clarity on the practical aspects of the new IED. The proposal is open for [feedback](#) until 21 June 2022. It follows the ordinary legislative procedure.



**European Commission prioritises waste streams for EU end-of-waste criteria.** The Commission [announced](#) priority waste streams for the development of further EU-wide end-of-waste (EoW) criteria, based on a [scoping report](#) by its Joint Research Centre (JRC). The Commission identified plastic waste, namely polyethylene terephthalate (PET), low- and high-density polyethylene recovered/recycled (LDPE/HDPE), polystyrene and expanded polystyrene (PS and EPS), polypropylene (PP) and mixed plastics, as having the highest overall potential. Other priority streams are textiles, rubber, mineral fractions of construction and demolition waste, and paper and cardboard. The JRC used several criteria, such as the level of support from stakeholders, current collection, re-use and recycling rates, uses, demand and current national or regional EoW criteria. EoW is the line between waste and chemicals/product regulation. The Waste Framework Directive tasks the Commission with harmonising the EoW criteria for certain types of waste if necessary. In the absence of EU EoW criteria, member states may establish national ones, and failing that a case-by-case analysis is required. The Commission intends to finalise the technical assessment by Q1 2024.



## Contacts



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