

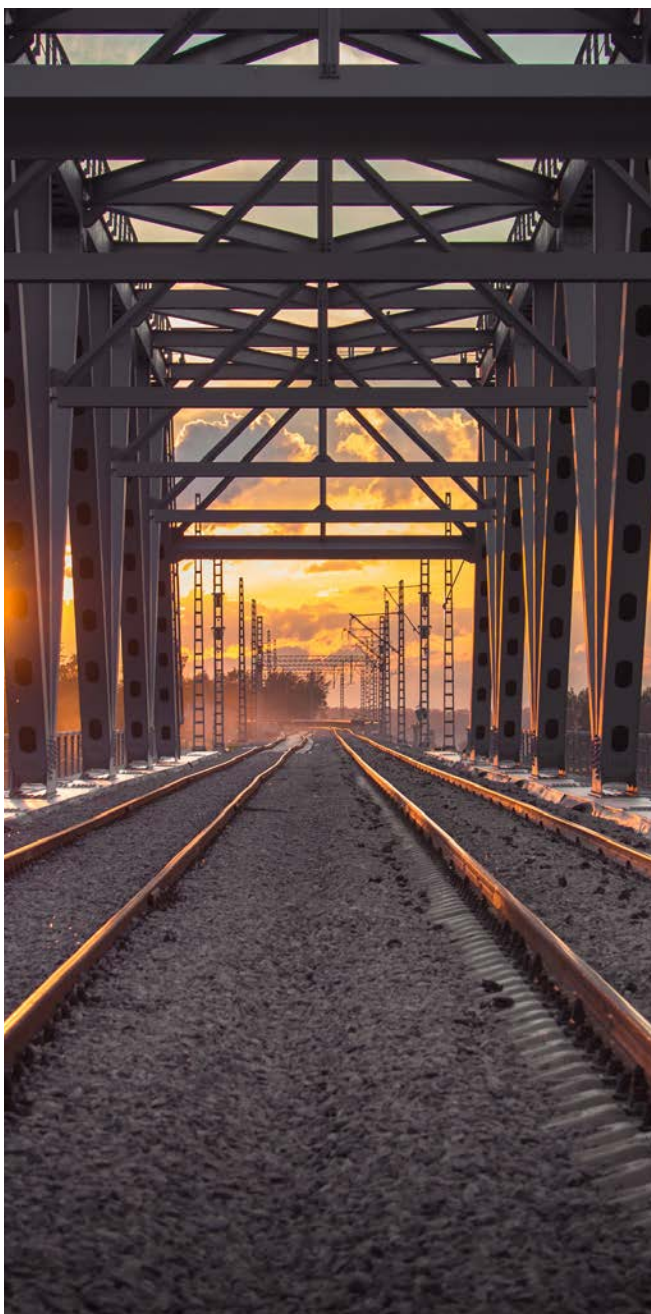


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May 2022





UK

Queen's Speech 2022 – new Bills announced. On 10 May, the [Queen's Speech](#) and the government's [briefing notes](#) on it set out a number of new Bills that will be introduced in the next Parliamentary session. These included:

- The Brexit Freedoms Bill, also known as the Retained EU Law Bill, that will repeal and reform existing regulations and “enable law inherited from the European Union to be more easily amended”. The Bill is expected to create new powers to strengthen the ability to amend, repeal or replace retained EU law by reducing the need to always use primary legislation to do so (therefore requiring less parliamentary scrutiny) and removing the supremacy of, and clarifying the status of, retained EU law in the UK. The Chair of the House of Commons European Scrutiny Committee had [written](#) to the Prime Minister in January enquiring about the government's reviews into the status of retained EU law, and the Minister for Brexit Opportunities and Government Efficiency's [response](#) was published in April. We have previously [reported](#) on this Bill.
- The Digital Markets Competition and Consumer Bill to “promote competition, strengthen consumer rights and protect households and businesses”. New competition rules for digital markets and the largest digital firms will be created, including rules requiring businesses to provide clearer information to consumers and remind them of auto-renewals, prohibit commissioning fake reviews, and giving the Competition and Markets Authority to power to decide when consumer law has been broken and issue penalties.
- The Modern Slavery Bill to increase accountability of companies and organisations to seek to drive out modern slavery from their supply chains. This will include strengthening requirements on businesses (with turnover of £36m or more) to publish an annual modern slavery statement setting out steps taken to counter the issue by mandating reporting areas for the statements and issuing penalties to organisations that do not comply.

Health and Safety Executive (HSE) Investigation into Covid-19 Death. There have been press reports this month into an investigation by the HSE into a Covid-19 death of a staff member at Burnley College. The University and College Union have released a [letter](#) from the HSE, which sets out their conclusion that, overall, the death did not meet the criteria of RIDDOR reportability, largely because the evidence presented as to whether the staff member contracted the virus at work, or as a result of work activity, was inconclusive. However, the letter does also indicate that the HSE has issued a notification of contravention letter in relation to material breaches of health and safety law, around the college not taking all reasonably practicable measures to control COVID-19 within the workplace at the relevant time, including failures in relation to social distancing, contact tracing and monitoring and enforcing mask wearing.

Major rail company fined after employee suffers life-changing injuries. The Office of Rail and Road (ORR) stated that the employee suffered injuries to their legs and spine, causing permanent disability. The employee was crushed between a 25 tonne ballast distributor's conveyor and a people carrier. Another worker also suffered minor injuries. The Company pleaded guilty to breaches of the Health and Safety at Work etc. Act 1974 and was [fined £1.4 million](#). The judge commented during sentencing that there had been many layers of failure within the company including lack of clarity in planning and as to what was happening, insufficient supervision, and other operating failures. The case highlights the importance of planning activities and adequate supervision in relation to high risk works and serves as a reminder that fines for failures by large and very large organisations can result in correspondingly high fines.



Building Safety Act 2022 and ancillary regulations enacted. [The Building Safety Act 2022](#) received Royal Assent in late April and some of its provisions have come into force, with the remaining provisions and ancillary regulations coming into force [within the next 18 months](#). From a regulatory perspective, key enacted regulations include the [Fire Safety \(England\) Regulations 2022](#) (which come into force in January 2023) and key draft regulations include The Building (Appointment of Persons, Industry Competence and Dutyholders) (England) Regulations and The Building (Higher-Risk Buildings) (England) Regulations. The Act and regulations will create a new regime of building and fire safety, including the creation of a new category of ‘higher risk buildings’ to which duties apply to ‘dutyholders’ during the construction phase and ‘Accountable Persons’ during the occupation phase. Notably, the concept of a ‘Building Safety Manager’ was removed from the Bill before its enactment, which the government says is to allow for more flexibility in how the Accountable Person discharges their duties.

Delay to new rules restricting promotion of high fat, salt and sugar (HFSS) products (but no delay in relation to placement provisions). Certain restrictions on HFSS products, due to come into effect on 1 October 2022 as part of the Food (Promotion and Placement) (England) Regulations 2021 (SI 2021/1368), are being [delayed by one year](#). The government has stated that the delay is to allow time to review and monitor their impact on the rising costs of living. Once in effect, the measures will restrict multibuy deals of HFSS products (for example, by limits on volume price promotions such as ‘buy one get one free’, and on free in-store refills of non-pre-packaged sugar-sweetened drinks). In parallel, government has also delayed new rules banning adverts for HFSS products on television before 9pm, and an outright ban on paid-for online adverts of HFSS products, until January 2024. The government states that this will allow industry to adapt and to account for delays to the Health and Care Bill receiving Royal Assent. The restrictions on where HFSS products may be placed within relevant premises are not, however, being delayed and are still due to come into force on 1 October 2022. See our recent [blog post](#) on HFSS products for more details. We will report further on the delayed restrictions as updates become available.

Food Standards Agency (FSA) makes final call to businesses to submit evidence for the cannabidiol (CBD) list. In March, the FSA published a [list](#) of CBD products linked to novel food applications, which may stay on the market in England and Wales (subject to further consideration). Products omitted from the list must be removed from the market. The FSA says that it plans to “lock down the CBD list by the end of June,” and made a [final call](#) to businesses to provide evidence by 26 May that their products were linked to a credible application and were on the market before February 2020. Any products not on the list by the end of June will be prohibited from being sold in England and Wales and local authorities will be responsible for pursuing companies to remove them from the market voluntarily or face enforcement action. See our [blog post](#) about the CBD product list for more details.



Magistrates' Court sentencing powers increased to 12 months for a single offence. [The Criminal Justice Act 2003 \(Commencement No 33\) and Sentencing Act 2020 \(Commencement No 2\) Regulations 2022](#) were made on 28 April 2022, bringing into force [section 282 of the Criminal Justice Act 2003](#) that increases the maximum term available for summary conviction of an either way offence in the Magistrates' Court to 12 months imprisonment. This represents a doubling of their sentencing powers, as previously magistrates were restricted to a maximum sentence of 6 months imprisonment. The government has stated that the change has been made to help [tackle the backlog created by the COVID-19 pandemic](#). Breaches of environmental and health and safety laws are generally criminal offences (often with a maximum penalty of two years' imprisonment) therefore these changes will be of particular note to business operating in high risk sectors as regards the environment and health and safety, where there may be liability for directors and officers of corporate organisations. We have [previously reported](#) on this change.

OPSS publishes study on impact of artificial intelligence (AI) and a case study on historic product recall. The [study on the impact of artificial intelligence](#) was intended to examine the current and forecasted future impacts of AI in consumer products, and what this means for product safety. The report found that the incorporation of AI systems into manufactured consumer products brings opportunities, as well as challenges and risks. Material harms, which are more likely to occur because of challenges around robustness and predictability, transparency and explainability, security and resilience, could include examples such as: an AI-driven robot malfunctioning because of automated decisions causing physical injury; or cyber security vulnerabilities in a product leading to threats to physical safety. The study also highlights the lack of legal certainty for economic operators involved in the manufacture of AI driven consumer products, as well as a need to improve the skills and knowledge of regulatory bodies, such as market surveillance authorities and conformity assessment bodies, on AI systems. The [case study on historic product recall](#) was commissioned to provide evidence of the factors that support and hinder product recall processes, to inform policy interventions that will improve the effectiveness of recalls in the future. Suggestions to improve the recall system included greater enforcement of the PAS 7100 guidelines, greater responsibility placed on other actors (beyond manufacturers) involved in recalls and introducing broad parameters to measure recall success.

Office for Product Safety and Standards (OPSS) updates guidance notes on non-compliance. The updates are intended to clarify what actions businesses must take if non-compliance with the regulations is found. These updates concern guidance for a number of regulations, see here for a [full list](#). By way of example, under the updated [guidance for the General Product Safety Regulations 2005](#), it is specified that where a producer knows that a product they have placed on the market or supplied poses risks to the consumer that are incompatible with the general safety requirement, they must notify an enforcement authority in writing about the risks and the action taken to prevent risk to the consumer; and where a distributor knows that a product they have placed on the market or supplied poses risks to the consumer that are incompatible with the general safety requirement, they must notify an enforcement authority in writing about the risks and the action taken to prevent risk to the consumer. Another example is the updated [guidance for the Personal Protective Equipment \(Enforcement\) Regulations 2018](#), which specifies that importers and distributors must, further to a reasoned request from the enforcement authority in the UK, provide it with all the information and documentation, in paper or electronic form, necessary to demonstrate the conformity of PPE in a language which can be easily understood by that authority; and they shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by PPE that they have placed on the GB market. Businesses should ensure they are familiar with the guidance notes that apply to them and are ready to take the recommended actions where needed, in order to mitigate the severity of any regulatory response to non-compliance.



Shortcomings identified in modern slavery statements. Modern slavery is moving up the political agenda in the UK and, notably, the Queen’s Speech outlined plans for a Modern Slavery Bill in the UK (discussed further above). Businesses with a turnover of £36m per year or more are required to prepare an annual statement detailing the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in its own business or in its supply chain. However, many companies still do not comply with their requirements and notable shortcomings have been identified in the modern slavery statements of over 100 major companies according to [research](#) by the Financial Reporting Council (FRC). 12% of companies considered did not provide a slavery and human trafficking statement, and only one third of statements were considered easy to read. Others were described as “fragmented, disjointed, lacking clear focus or narrative”. The research warns that companies may be opting for a “compliance approach” rather than thoroughly addressing the issue of modern slavery in their supply chains. To ensure compliance, businesses should review their modern slavery obligations and ensure that, where required, statements are clear and easy to read.

Railway infrastructure company fined following health and safety failings. The ORR stated that the company failed to prevent danger to workers whilst they undertook excavation works by a railway, in that they failed to use temporary works such as trench supports, that briefings were inadequate, and that poor management meant that failings were not corrected. This led to a worker being buried in a trench after it collapsed. The worker suffered serious injuries including a broken pelvis and is no longer able to work full time. The company was successfully prosecuted by the ORR and was [fined £550,000](#). The case serves as a reminder that temporary works should be constructed to ensure the safety of workers carrying out even seemingly uncomplicated tasks such as digging a trench.

Test for continuing offence reaffirmed. The Court of Appeal has [decided](#), reaffirming the current legal position, that the test for determining whether an offence is continuing should be based on a proper construction of the legal provision giving rise to the relevant offence. In this case, the offence of dishonest representations for obtaining a benefit under section 111A of the Social Security Administration Act 1992 included “making a false statement or representation” or “producing or furnishing false information”. The appellant (offender) conceded that “making a false statement” was capable of being committed over an extended period because the false statement was relied on over a period of time. The Court decided that there was no reason, looking at the words of the provision, to interpret “producing or furnishing false information” any differently to this.

FRC publishes new guidance on supply chain disclosure. The new [guidance](#) seeks to provide information and resources for organisations to utilise when preparing reports on supply chains. The guidance highlights growing demand for, and regulation of, sustainability reporting and states that understanding the impact of supply chains is more important than ever. Investors increasingly wish to understand what factors might affect their investments, including companies’ supply chains. The guidance suggests that companies include information on a number of issues including: access to raw materials and goods; digital security, outsourcing and weakness in infrastructure; and legal, ethical and reputational considerations. The latter focuses on how a company assesses its suppliers and owners, manages ongoing relationships, uses external parties for verification, how it takes legal and reputational risks into account and puts in place mitigations, and how any changes in the supply chain reflect the company’s business values and Environmental, Social, and Governance commitments. Businesses should consider putting in place and regularly reviewing due diligence measures to ensure compliance with legal requirements in relation to health and safety, product safety, and labelling in respect of their supply chains.



Consultation responses on the safe use of driverless automated vehicles published. We have [previously reported](#) on the [Report on the safe use of driverless automated vehicles published](#) by the Law Commission and laid before Parliament. The government has now published [the response to its consultation on the safe use of automated vehicles](#). In its summary, the government stated that responses were broadly supportive of the “proposal to add a new section to The Highway Code on automated vehicles to provide greater clarity” but that the majority of respondents wanted “more detail on driver responsibilities, behaviours and the type of activities that are and are not permitted when an automated vehicle is driving itself.” As a result, the government proposes improvements be made to the language of The Highway Code including the adoption of the term ‘self-driving’ to describe ‘automated vehicles’ under the Automated and Electric Vehicles Act 2018, clarifications as to the differences between self-driving and assistance technologies, and more details on rules applying to drivers even when a vehicle is set to self-driving mode. We will provide further updates as they become available.

OEP publishes first annual monitoring report on the environmental improvement plan (EIP) and accompanying [press release](#). It calls for government to act now to ensure its ambitious 25 Year Environment Plan (the current EIP) is achieved. The report warns against slow progress and the risk of missed targets eroding public confidence. It sets out a framework for government to follow and makes 16 recommendations on long-term statutory targets (currently the subject of consultation). The OEP has a duty to monitor and report on government progress on improving the environment in line with the EIP, and the report has generally been praised by environmental groups and welcomed by ministers.

Government has extended the closing date of its consultation on long and short-term environmental targets for England to 27 June 2022. The consultation seeks views on proposed legally-binding environmental long-term targets under the Environment Act 2021, covering water, air quality, biodiversity and waste, and shorter term targets to reduce PM2.5 particulate matter in the air and on species abundance. The EA has responded to the DEFRA consultation on initial policy proposals on protected sites and species protections. It welcomes government’s ambition to restore nature and halt the decline in species abundance by 2030, particularly the water targets that will “complement existing targets by driving action to address some of the main pressures preventing the achievement of good ecological status”. The EA did not take the opportunity to suggest strengthening any proposed measures. Meanwhile, pressure groups remain sceptical of the government’s biodiversity goals, and the government has also published the [Outcome Indicator Framework for the 25 Year Environment Plan: 2022 Update](#), which includes five new indicators to this framework, including one relating to the UK’s global environmental footprint.

Further provisions of the Environment Act 2021 came into effect from 10 May 2022 by virtue of the Environment Act 2021 (Commencement No 3) Regulations 2022 (SI 2022/518) (Regulations). These provisions are: the Secretary of State must prepare a policy statement on how environmental principles should be proportionately applied by ministers when making policy (sections 17, 18 and 19(5)-(6)); ministers in charge of a Bill with environmental law provisions must make a statement on the potential effect on the existing level of environmental protection (section 20); and Ofwat can require information from water companies when reviewing their activities and use electronic service of documents (sections 85 and 87). The Regulations will also give effect to certain provisions on species conservation strategies and amendments to the wildlife licensing regime from 30 September 2022.



The Department for Food and Rural Affairs (DEFRA) publishes draft environmental principles policy statement (and [response](#) to the consultation) following a 12-week consultation that closed on 2 June 2021. DEFRA is required to publish a statement under the Environment Act 2021, which sets out how five environmental principles should be interpreted and proportionately applied by ministers. Prior to Brexit, these principles had direct effect in the UK by virtue of the Treaty on the Functioning of the European Union. Many groups are fearful of a watering down of the precautionary principle. The draft environmental principles policy statement is now in Parliament for scrutiny and comment until 28 June 2022. Once approved (and following a likely implementation period – unspecified timeframe), most ministers should have “due regard” to the policy statement when making new policy or revisions to existing policy. However, commentators have noted that the section of the Environment Act 2021 requiring compliance with the policy statement has yet to come into force.

The Law Society has published its [response](#) to the government’s January 2022 consultation on how the new biodiversity net gain (BNG) requirement on developments should work in practice. The BNG requirement should be applied “as broadly as possible” with exceptions “kept to a minimum in order to ensure they support the overall delivery of the UK government’s strategy and are consistent with the legal requirements under the Environment Act 2021”. The BNG requirement, which will require developers to show their projects bring at least 10% increase in biodiversity in order to get planning permission, is set to become compulsory in November 2023. The scope of the BNG requirement is debated – the Law Society supports the government’s proposal to exempt small-scale householder developments from BNG requirements, but supports them applying to brownfield sites. Other bodies have published their responses to the consultation and views on scope of BNG requirements vary.

[Butler Sloss v Charity Commissioners & AG for Pension Schemes – High Court decides charity trustees can adopt climate change focused investment policy.](#) Two trusts have been allowed to adopt a policy to prioritise climate change outcomes even if it results in diminishing financial returns by excluding part of the market. It is expected that the decision will be welcomed by the charities sector, and that the Charity Commission will publish some revised guidance on investments to reflect the decision. For more analysis of this case by our Pensions team, please see this [blog article](#).

HM Treasury has launched the UK Transition Plan Taskforce (TPT) to help firms transitioning to net zero and tackle greenwashing. TPT has a two-year mandate in which it will, according to its [site](#), “drive decarbonisation by ensuring that financial institutions and companies prepare rigorous plans to achieve net zero and support efforts to tackle greenwashing.” This follows the Treasury’s [roadmap](#) for its new Sustainability Disclosure Requirements regime in October last year. The TPT will work with international organisations to develop gold standards for climate transition plans. It is due to report to government by the end of 2022. TPT has already published a [call for evidence](#) seeking views on how companies should meet government’s reporting requirements on adapting to low carbon economy (closing on 13 July 2022). Its next actions will include publishing guidance on targets, with the aim of providing sector-specific recommendations.



Government publishes [Response and accompanying press release to the Environment Audit Committee's January 2022 Report](#) which found that only 14% of rivers in England have good ecological status, and that current

means of monitoring water quality are outdated. The government refers to its proposed strict limits on when water companies can use storm overflows and requirements to completely eliminate the harm any sewage discharge causes to the environment under the plans. The government says this builds on existing measures in the Environment Act. However, industry will not be required to install volume monitors to gauge the amount of untreated/partially treated discharge. Separately, the government is consulting on targets to improve water quality, reduce both nutrient pollution and pollution by metals from abandoned mines. On other sources of water pollution, government has called for evidence on wet wipes, which account for over 90% of the material blocking sewers, causing pollution, flooding, and costly damage to pipes. Various regulatory options are considered – including a ban on wet wipes containing plastic, a mandatory ‘flushability’ standard, mandatory labelling on packaging, and an extended producer responsibility scheme for wipes containing plastic. However, the following EAC recommendations will not be implemented: a presumption against planning permission for new intensive livestock units in areas suffering from excessive nutrient pollution was rejected; and voluntary targets to reduce microplastic pollution.

The Environment Agency (EA) publishes [update on Flow to Full Treatment \(FFT\) Investigation](#). Major

investigations into potential widespread non-compliance by water and sewerage companies at wastewater treatment works were first announced in November 2021. The EA is leading a programme requiring water and sewerage companies to improve how they monitor and manage flows at wastewater treatment works – this will also introduce tighter permit conditions that will help better regulate flow-to-full treatment processes. This FFT investigation is likely to be the largest of its kind, and will be conducted in accordance with criminal rules and procedures. Investigating all ten water companies is expected to take at least two years, with over 2,200 sewage treatment works under scrutiny. The EA will investigate whether breaches of permit have occurred, the level of culpability, the reason for breaches and what the impact of the breaches might be on the environment. Enforcement action will be taken in line with the EA's Enforcement and Sanctions Policy and the EA is considering all available enforcement options. The above announcement by the EA follows the **publication of the new Water Industry National Environment Programme (WINEP)** roadmap, updated to reflect responses to a consultation that was held in July last year. The roadmap now counts actions for the next price review in 2024, and factors to be considered by the WINEP taskforce and water companies in future price reviews (from 2029 onwards).

The plastic packaging tax (PPT) came into force on 1 April 2022, with UK businesses that produce or import plastic packaging components that do not contain at least 30% recycled plastic in quantities of 10 or more tonnes per year affected. To manage increased costs and to ensure compliance with the law, businesses should pay close attention to the detailed rules of the PPT. See our [Frequently Asked Questions](#) document for key details about the tax and what you need to know.



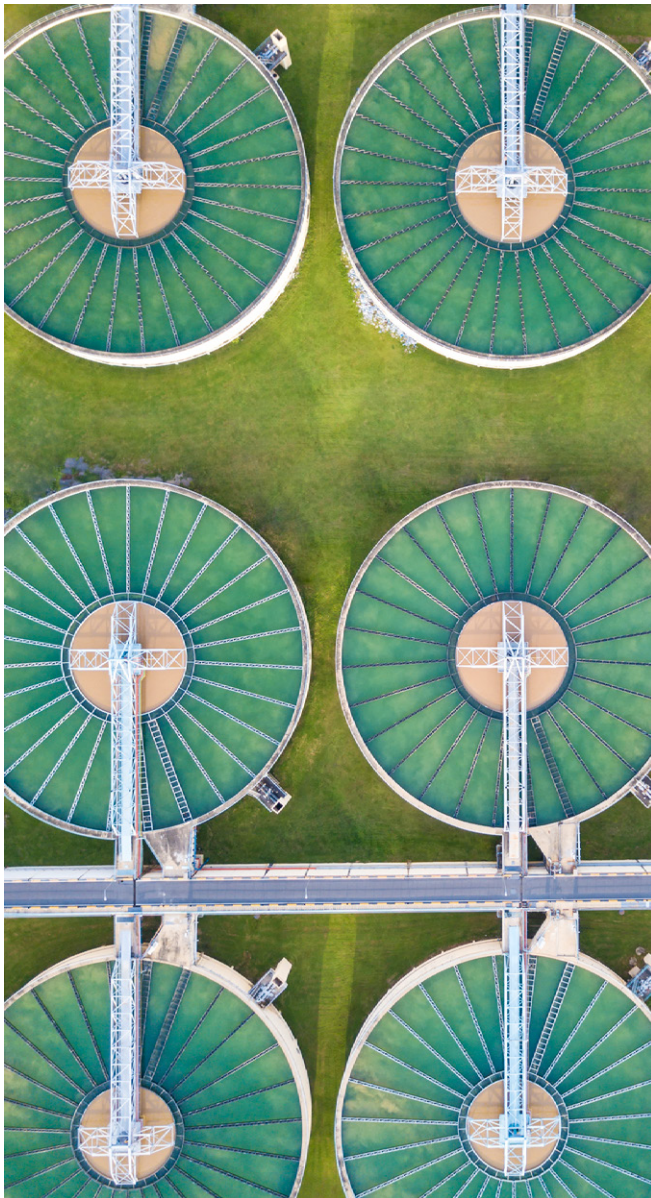
HMRC publishes PPT report. The report by Ipsos MORI aimed to understand how different types of businesses and local authorities handle plastic packaging as well as the potential impact of a new tax. The research was carried out in 2019 by phone survey of 1,589 businesses and in-depth interviews of 40 organisations. The research ‘reflects the policy context of that time’ and concerned actors across the supply chain. It found that organisations were “broadly positive” about the tax encouraging greater use of recycled materials, but some were sceptical of how compliance could be monitored.

Complying with the UK Emissions Trading Scheme: On 18 May 2022, an EA [guidance paper](#) was published to help operators of installations with greenhouse gas emissions permits comply with their obligations under the UK Emissions Trading Scheme (UK ETS). It applies to installations in the UK ETS with greenhouse gas emissions permits.

Defra publishes statutory guidance [Smoke control area enforcement by local authorities in England](#). The Clean Air Act 1993 is partially amended by Part 4 of the Environment Act 2021, which gives additional enforcement powers to local authorities (LAs) in smoke control areas (SCAs) in England. Notably, the guidance clarifies that smoke emissions, whether in or out of an SCA, can amount to a statutory nuisance under the Environmental Protection Act 1990. Under the guidance, LAs’ enforcement action includes (for the smoke emitter) improvement notices and the civil sanction of a financial penalty notice ranging from £175 to £300 for each notice; and (for an unauthorised fuel retailer), criminal prosecution with a potentially unlimited fine.

National Audit Office (NAO) report has now found that HSE will need another four years before it reaches full capacity to regulate chemicals post-Brexit. Last month, we reported that the HSE would only be evaluating two substances under UK REACH in 2022-2023. This is despite a huge increase (1) in number of staff (for UK REACH and regimes governing pesticides and biocides) and (2) in budget (from both fee income and government funding). The HSE is struggling to find the required specialists and continues to advertise a high number of vacancies. Timescales are becoming a concern, with staff taking up to five years to become fully competent given the proportion of time spent training. The NAO report warns that “capacity constraints could delay regulatory decisions. For example, HSE has extended approvals for biocidal active substances due to expire in 2021-22 to at least 2023 while it develops its biocide active substance assessment programme.” Even with delays to data submission deadlines under UK REACH, the HSE may struggle with its chemicals regulation workload. Minimising waste of public money and ensuring the highest standard of health and environmental protection remain a priority.

The Health and Safety Executive (HSE) is [consulting for six months on two UK REACH restriction proposals: \(1\) on lead in ammunition and \(2\) substances in tattoo ink and permanent makeup \(PMU\)](#). The rationale for restricting lead in ammunition is identified risks to human health (poisoning from ingestion of lead by animals can lead them to suffer, and adversely affect human health where meat from such animals is eaten). The proposed restrictions on substances in tattoo inks and PMU is a precautionary measure in response to risks to human health and /or the environment. At present, there is no legislation in Great Britain to address the risk of inserting these substances into the skin. Since not all pigments are necessarily produced for this specific use, they may be hazardous (either intentionally or as an impurity). The HSE would like the tattoo industry to comply with world-leading safety standards.



A company director who piled up more than 2,000 tonnes of illegal rubbish has pleaded guilty to operating a waste site illegally. Past inspections, following complaints, uncovered high volumes of plastic waste being blown around with no fencing and plastics not being separated properly. In February 2019, the company exited the site leaving huge amounts of waste and pools of contaminated water. There was evidence on-site of attempts to burn some left over waste. The company director was sentenced to 26 weeks in custody (suspended for 2 years), was disqualified from being a director for 5 years, and ordered to pay £2,000 in costs and a victim surcharge of £100. The company was fined £1,000.

Individuals sentenced after major diesel fire leads to evacuation of homes. A father and daughter have received a suspended custodial sentence after a fire at their removals business led to serious property damage and the evacuation of several neighbouring homes. The pair were using shipping containers to illegally store approx. 50,000 litres of diesel. They were criticised for the risk of storing such large volumes near residential homes, and each fined £500 and ordered to pay £128 victim surcharge.

A water company was fined £18,000 for failures at a pumping station. Raw sewage flooding a river for hours was blamed on the company's slow response to the incident. At least 60 fish died in the incident in Cambridgeshire in 2019. The company pleaded guilty to breaching regulations 12 (1) (b) and 38 (1) (a) of the Environmental Permitting (England and Wales) Regulations 2016. The sentencing judge said the company should have given "a higher category of response" to a second sewage pump failing, because the site at Yaxley was operating at a lower capacity with another pump already out of order.

A company that accidentally polluted a lake with cyanide secures out-of-court settlement of £20,000 with a Derbyshire angling club. In February 2018, a tank ruptured at an industrial estate and over 400 litres of the chemical solution flowed down a road and into a drain feeding a country park leased to an angling club. The company was quick to contact the club in order to settle the damage before the EA finalised its enforcement action, and no prosecution followed. A fisheries expert assessed the pollution's impact on the fish (including roach, bream and carp) that formerly swam in the lake and the parties negotiated for the loss of stock and amenity, settling on a payment of £20,000. Fish Legal said the case showed that anglers can conclude a civil claim even before the EA has finalised enforcement action and released its evidence.

The Department for Transport (DfT) has published its response to the consultation on ending the sale of new non-zero emission heavy goods vehicles (HGVs). The consultation was proposing to end sales of new non-zero emission vehicles weighing 3.5 tonnes to 26 tonnes by 2035, and vehicles over 26 tonnes by 2040. The response confirms that the proposal will go ahead, and this also covers HGVs using low carbon fuels, except renewable hydrogen. At the same time, DfT issued a [call for evidence](#) on exemptions to the 2035 phase-out date, which is open until 22 July 2022.



Fines have been issued for breaches of climate change emissions regulation. 33 companies have been issued with civil penalty fines totalling more than £27 million for breaches of the European Union Emissions Trading System, CRC Energy Efficiency Scheme, Energy Savings Opportunity Scheme (ESOS) and Fluorinated Greenhouse Gas regime. The EA said that the “fines published today should serve as an important reminder for all organisations to ensure that they are compliant with these schemes and are playing their part in tackling climate change.”

Clean Air (Human Rights) Bill (Ella’s Law) reintroduced to parliament. The Bill has received its first reading (a formality), and the second reading (with more formal debate) is scheduled for 24 June 2022. The bill has been tabled twice before without it reaching this stage, having first been introduced in 2018. This Bill is named ‘Ella’s Law’ after Ella Kissi-Debrah, the first person in the UK to have air pollution listed as a cause of death by a coroner, and it aims to protect the public against air pollution, which is responsible for thousands of premature deaths in the UK.

Court dismisses climate grounds for runway challenge. In *Goesa Ltd, R (On the Application Of) v Eastleigh Borough Council*, the High Court has rejected a legal challenge to Eastleigh Borough Council’s decision to approve a runway extension at Southampton Airport. The claimants argued that the grant of planning permission was unlawful on five grounds, which included that the council had breached environmental impact assessment requirements in not assessing the cumulative effects of greenhouse gas emissions of this project together with other projects at Bristol, Stansted and Leeds Bradford airports. The judge held that the council had made an allowance for cumulative effects and dismissed this argument (as well as the remaining grounds of claim).

EU

EU Advocate General opines that Member States may be liable for damages resulting from air pollution. The European Court of Justice (ECJ) [announced](#) the [opinion](#) of its Advocate General (AG) Kokott regarding the question of whether individuals may claim compensation from a Member State for damage to their health caused by infringements of EU air quality limit values (Case [C-61/21](#)). A French administrative court referred the question to the ECJ to decide the case of a resident of the Paris agglomeration. The AG analyses the three conditions established for a right to compensation under the rules of EU State non-contractual liability: (1) the rule of EU law infringed is intended to confer rights on them; (2) the infringement of the rules is sufficiently serious; and (3) there is a direct causal link between that infringement and the damage suffered by those individuals. According to the AG, the first condition is satisfied, since the limit values for pollutants in ambient air and the obligations to improve air quality were intended to confer rights to individuals. With regard to the second condition, AG considers exceeding the limit value of ambient air quality rules a serious infringement for all periods during which there was no corresponding plan without manifest defects in place to remedy it. It is for the national court to establish whether this was the case. As regards the third condition, the AG states that it is for the national court to determine the exact standard of proof needed to win compensation. Individuals must first prove that they stayed, for a sufficiently long period of time, in an environment in which limit values have been seriously infringed. It does not suffice to refer to the air quality breach in an agglomeration or zone – to prove the link between the health problem and the exceedance of the limit values generally requires expert medical assessment. In addition, even if the direct link is proven, the Member State may exonerate itself if it shows that the air quality breaches would still have occurred if it had adopted an air quality improvement plan that met the EU requirements. The opinion of the AG is not binding upon the Court. However, the Court often follows it. The ECJ’s decision is expected later this year.



European Commission consults on the revision of waste rules. The Commission [launched](#) an [online public consultation](#) on the revision of Waste Framework Directive 2008/98 (WFD). The survey consists of four sets of questions that address policy areas already provided in the call for evidence published earlier this year (see [Sustainability Outlook January 2022](#)): waste reduction and prevention, food waste reduction, separate collection systems, and regulatory and economic incentives. The public consultation is open until 16 August 2022. The Commission plans to adopt the proposal of a Directive in second quarter 2023. Then, it will follow the ordinary legislative procedure.

European Commission consults on the evaluation of the Environmental Liability Directive 2004/35 (ELD). The European Commission [launched](#) an open public consultation of the ELD (a framework to better prevent and remedy environmental damage to land, water, and biodiversity), based on the “polluter pays” principle. Under the ELD, operators have a legal responsibility to prevent and restore environmental damage caused by their activities. The survey includes general questions such as the need for dedicated legislation to implement the polluter pays principle and technical questions. It also asks about the effectiveness of the new guidelines on the definition of “environmental damage” (please see [frESH Law Horizons March 2021](#)). It seeks views on revising annex III of the ELD, which sets out activities for which companies are subject to “strict liability” if they cause damage to land, water, or biodiversity. Other activities are currently only subject to “fault-based liability” for damaging biodiversity. The consultation suggests the possibility of making non-annex III operators also liable for damage to land and water. It also suggests a stricter approach to the state-of-the-art defence. The current ELD allows the operator to demonstrate that it was not at fault or negligent and that the environmental damage was caused by an emission or activity, which was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time. The evaluation (which is the second one, after the Commission concluded the first in 2016) will last for a year. In addition to the consultation, the evaluation will also take into account, among others: (1) the European Parliament resolution on the liability of companies for environmental damage (please see [frESH Law Horizons May 2021](#) and [frESH Law Horizons March 2021](#)); and (2) the European Court of Auditors Special Report on the polluter pays principle (see [Sustainability Outlook July 2021](#)). The public consultation is [open](#) until 4 August.

European Commission plans to reduce presence of persistent organic pollutants (POPs). The Commission made available a [draft regulation](#) amending the POPs Regulation 2019/1021 as regards perfluorooctanoic acid (PFOA), its salts, and PFOA-related compounds. Annex I to the POPs Regulation provides unintentional trace contaminant (UTC) levels, above which a substance may not be used or placed on the market on its own, in mixtures, or in articles. The current UTC limit for PFOA and its salts in PTFE micropowders is 1 mg/kg, to be reviewed by 5 July 2022. According to the Commission’s draft, the Committees of the European Chemicals Agency (ECHA) concluded that processes have been developed to reduce the concentration of PFOA to below the generic UTC level of 0.025 mg/kg (25 ppb). However, the Commission proposes keeping the UTC limit of 1 mg/kg to cover manufacture, placing on the market and use only for the purpose of transport and treatment of PTFE micropowders. However, the 0.025 mg/kg limit would then apply also to PFOA and its salts present in PTFE micropowders placed on the market for final use. The Commission also considers that the current exemption for the use of PFOA to produce polytetrafluoroethylene (PTFE) and polyvinylidene fluoride (PVDF) is no longer needed and proposes deleting it. The draft delegated regulation is open for [feedback](#) until 14 June 2022. Once the Commission adopts the delegated act, it will communicate it to the European Parliament and the Council. Both will have two months to raise objections to the regulation. If they do not, the measure will enter into force after being published in the Official Journal of the EU.



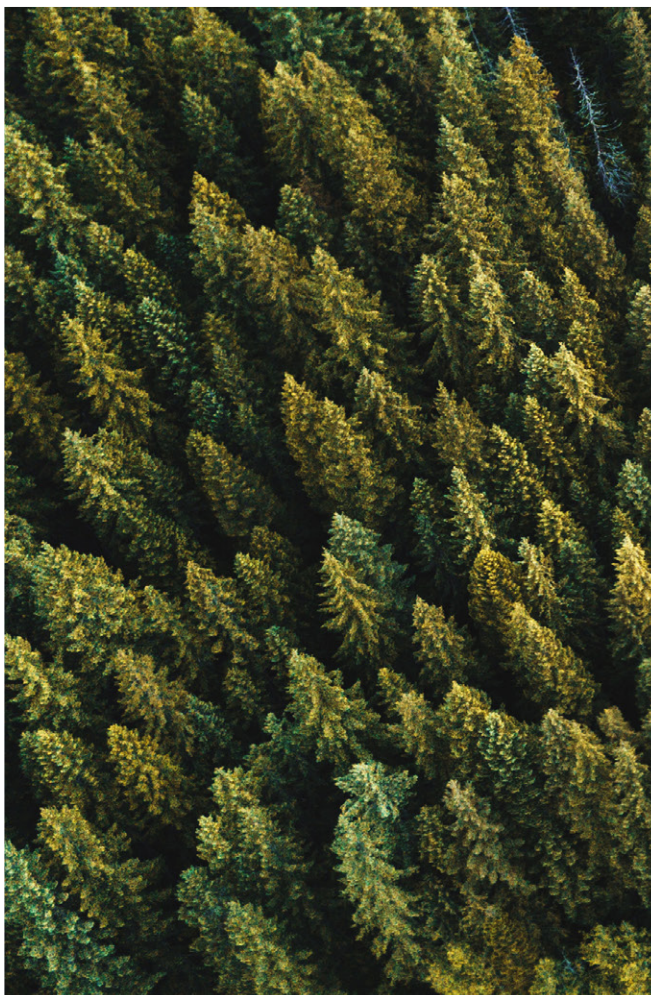
European Parliament wants to clarify the scope of the Machinery Regulation. The European Parliament Committee on the Internal Market (**IMCO**) adopted its [report](#) on the proposed Machinery Regulation. The European Commission [adopted that proposal](#) in April 2021. The launch of the inter-institutional negotiations (trilogues) is pending the adoption by the Council of its position. The amendments proposed by the Committee include clarifications regarding definitions of machinery products, such as “safety component”, “substantial modification” and “manufacturer”, and an extension of the transitional period in order to allow industry to adapt to the new regulation and provisions allowing for more digital solutions. The purpose of the Machinery Regulation is to address the risks stemming from machinery function and not the transport of goods, persons or animals, however, the Parliament’s amendments state that non-type-approved, off-road vehicles, as well as e-bikes, cargo e-bikes, e-scooters and similar means of transport should be covered by the new regulation as regards their machinery function, with the exception of “road circulation risks”, until they become the subject of specific EU legislation. As no objections were raised following its announcement during the plenary session held on 18 May 2022, the Committee Report will constitute the negotiating mandate of the European Parliament. Meanwhile, Council experts continue preparations on the position of that co-legislator. Both will then enter into negotiations with each other (trilogues) to amend and adopt the proposal.

European Parliament Committee wants to expand Carbon Border Adjustment Mechanism (CBAM) to aluminium, hydrogen, plastic and chemicals, as well as indirect emissions. ENVI [adopted](#) its [report](#) on the proposal of the European Commission for a regulation establishing a CBAM (please see [Sustainability Outlook February 2022](#) and [Sustainability Outlook March 2022](#)). The amended report indicates significant controversies among the parliamentarians. With the [compromise amendments](#) to the draft report, the MEPs want CBAM to cover aluminium, hydrogen, polymers and organic chemicals in addition to the products proposed by the Commission (iron and steel, refineries, cement, organic basic chemicals and fertilisers). To better reflect CO2 costs for European industry, MEPs also want to extend CBAM to include indirect emissions, i.e. emissions deriving from the electricity used by manufacturers. The CBAM should be phased-in five years earlier than proposed by the Commission, ending free allowances in EU ETS by 2030. The ENVI report is scheduled for a vote during the plenary session on 6-9 June. If the plenary adopts it, the Parliament will be ready to start legislative negotiations with the Council.

European Parliament Committee wants to include waste incineration in more ambitious EU Emissions Trading System (ETS). The Committee on the Environment, Public Health and Food Safety (**ENVI**) [adopted](#) the [draft report](#) of Rapporteur *Peter Liese* on the proposal for a revised EU Emissions Trading System (ETS) Directive 2003/87 with [compromise amendments](#) (please see [Sustainability Outlook February 2022](#), [Sustainability Outlook January 2022](#) and [Sustainability Outlook July 2021](#)). Generally, ENVI aims to significantly increase the ambition level compared to the Commission proposal, with a steeper reduction pathway. To incentivise best-performers and innovation, ENVI wants to introduce a bonus-malus system from 2025 so that the most efficient installations in a sector will get additional free allowances. Free allowances in the ETS would be incrementally phased out from 2026 and disappear by 2030, when ENVI wants CBAM to be fully operational (please see above). Besides shipping, ENVI’s amendments would include municipal waste incinerators from January 2026. By the end of 2024, the Commission would have to present a report in which it examines the possible impacts on landfilling and waste exports to third countries, as well as the possibility to include other waste management activities in this system, in particular landfills that create methane and nitrous oxide emissions. According to ENVI’s report, a separate new ETS II for fuel distribution for commercial road transport and buildings would also be established at the start 2025. ENVI’s report is provisionally scheduled to be debated and approved as the negotiation position of the European Parliament during its plenary session of 6-9 June. The Parliament would then be ready to enter into trilogue negotiation with the Council with a view to adopting the final law.



European Food Safety Authority (EFSA) seeks comments on phthalates in food contact materials. EFSA received a mandate to conduct preparatory work for the re-evaluation of phthalates, structurally similar substances and replacement substances that are potentially used as plasticisers in food contact materials (FCMs) from the European Commission (please also see [Sustainability Outlook April 2022](#)). To this end, EFSA [invited](#) national food authorities, research institutions, academia, food business operators and other stakeholders to submit data on migration or occurrence of plasticisers in FCMs. The mandate includes a request to consider migration data in the context of the dietary exposure assessment. EFSA aims to collect results generated in experimental studies on FCMs before their actual use, e.g. tests on migration of plasticisers from FCMs using food/food simulants, or tests on the concentration of plasticisers in FCMs.



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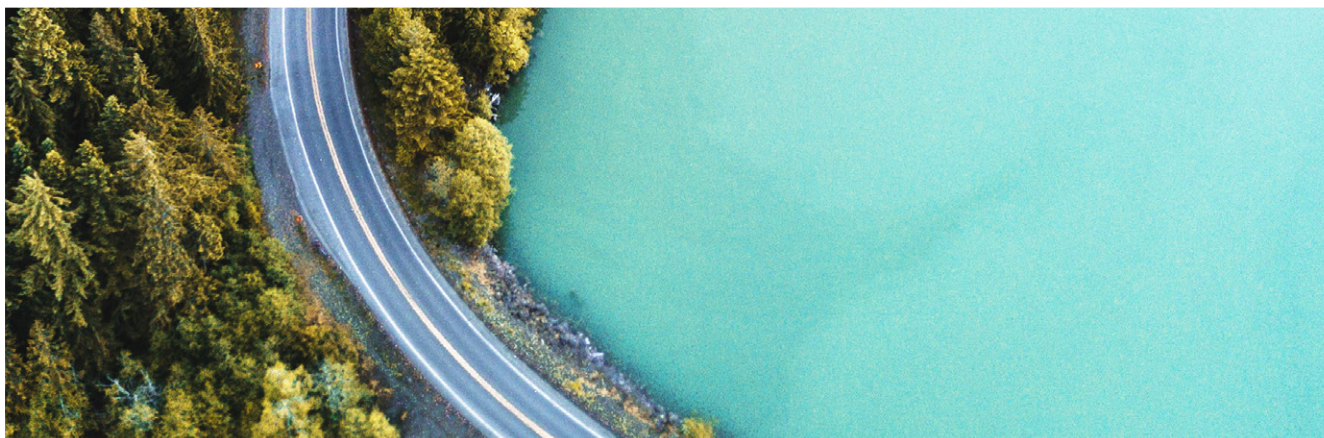
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