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UK

Safe standing at Premier League and Championship football stadiums starting this season. The government announced this month that Premier League and Championship football clubs that wish to introduce licensed "safe standing" areas at stadiums can do so, starting in the 2022/23 season. Many clubs have confirmed that they will adopt safe standing, including those with some of the largest stadiums in England and Wales, such as Tottenham, Manchester United, Manchester City and Chelsea. Standing areas were banned by legislation passed in the wake of the 1989 Hillsborough disaster, which resulted in the deaths of 97 Liverpool fans. Under the new laws, fans will be allowed to stand in allocated spaces behind a barrier/rail in an area of persistent standing. A report created for the Sports Ground Safety Authority in June 2021 concluded that the installation of such barriers/rails in areas of persistent standing delivered a positive impact on spectator safety.

Members of Parliament (MPs) and Unions call for maximum workplace temperature limits. MPs and Unions have called on government to set a maximum workplace temperature to protect workers, with both suggesting a limit of 30 degrees Celsius, or 27 degrees Celsius for workers performing strenuous work. This came shortly before the Met Office issued the first ever Red warning for exceptional heat. Currently, the Workplace (Health, Safety and Welfare) Regulations 1992 require employers to provide a "reasonable" temperature in the workplace, and the corresponding Approved Code of Practice provides a minimum temperature. However, there is no maximum temperature set by law. Businesses should refer to HSE guidance on workplace temperatures during the hotter and colder months, or during significant spikes in hot or cold weather, to ensure that workplace temperatures are reasonable.

Workplace fatality figures for April 2021 to March 2022 published. The Health and Safety Executive (HSE) has published the workplace fatality figures, which show that 123 workers died in work-related accidents in Great Britain between April 2021 and March 2022. According to the HSE, the industries with the most deaths were construction (30), agriculture, forestry, and fishing (22), and manufacturing (22) and the most common causes were falling from height and being struck by either a moving vehicle or a moving object. For business operators, therefore, this is perhaps a reminder of the importance of safe systems of work to address these specific risks, particularly in the industries where work-related deaths are relatively common. The HSE says that there has been a long-term downward trend in fatal accidents and that Great Britain is one of the safest places in the world to work.

Health Board fined for death of an elderly patient and failing to comply with an Improvement Notice. The HSE stated that on 13 November 2019, a patient, who was known to wander, left the hospital they were being treated in, without being noticed by staff, after which they fell in icy conditions and suffered a fatal head injury. According to the HSE, no reasonably practicable steps were taken at the hospital to protect vulnerable patients from wandering and coming to serious harm. The Health Board pleaded guilty to breaching Section 3(1) and Section 33(1)(a) of the Health and Safety at Work etc. Act 1974 and was fined £850,000. The case highlights that vulnerable persons who are affected by an organisation's undertaking may require an individual risk assessment, particularly where the risks specific to an individual are well known to staff.

Consultation on edible insects and Novel Food authorisations published. The Food Standards Agency (FSA) has published the consultation, which it says seeks to bring clarity to the British edible insect industry. The FSA has set out plans that will allow edible insects to remain on the market while they go through the process of a Novel Foods authorisation. The edible insects can only remain on sale if they were marketed in the EU or the UK before 1 January 2018 and were the subject of an application for EU authorisation as a novel food on or before 1 January 2019. Applications must now be made to the FSA (or FSS in Scotland) by 31 December 2023, in order for the edible insects to remain on the market while the application is assessed. This is a similar approach to that which was adopted for cannabidiol (CBD), where there were already numerous products on the market before Novel Foods authorisations were submitted.

Food waste recycling company fined for double corporate manslaughter. Leicestershire Police stated that the company was convicted of two counts of corporate manslaughter and fined £2 million following the deaths of two employees, who drowned after falling into a tanker containing semi-liquid pig feed. They also reported that the forensic pathologist found that the incidents were likely caused by the first employee being overcome by toxic product from the feed and/or oxygen deprivation, and the second employee succumbing in the same way when attempting to rescue the first employee. Three senior employees were also convicted. Two directors were found guilty of gross negligence manslaughter and imprisoned; one for 13 years and another for 20 months. They were also disqualified from being company directors for 15 years and 10 years, respectively. The company's transport manager was also convicted for breaching Section 7(a) of the Health and Safety at Work etc. Act 1974 and was sentenced to one year's imprisonment (suspended). The critical failings in this case were having no proper risk assessment, method statement or proper equipment for the cleaning method the first employee was using. The case is a reminder that health and safety failings can result in penalties for both organisations and individuals, and penalties can include imprisonment in serious cases.

Goods Vehicle Operator Licensing Guide updated. The Goods Vehicle Operator Licensing Guide has been updated to reflect changes in legislation and accessibility criteria. The guide provides details of what is necessary in order to hold, apply for and/or manage an operator's licence, and details on the role and responsibilities of transport managers, among other things. The updates also include guidance on the operation of light goods vehicles (LGVs) internationally (including in Ireland) after they were included under operator licensing rules for the first time from 21 May. Licensed goods vehicle operators should ensure they familiarise themselves with the guidance to ensure continued compliance.

Revised guidance on the use of live links in criminal courts published. The revised guidance was published by the Lord Chief Justice under Section 51 of the Criminal Justice Act 2003 (as substituted by the Police, Crime, Sentencing and Courts Act 2022 with effect from 28 June 2022). Section 51 also enables courts to require or permit a person to take part in criminal proceedings (i.e. hearings) via live link. The court can only make such a direction if the parties have been given the chance to make representations in relation to it, and the court is satisfied that it is in the interest of justice to do so. The revised guidance permits a jury to attend by live link, but only where all members of the jury do so and they are all together in the same place, and the guidance states that this is likely to be "very rare".

Contempt of court to be reviewed by the Law Commission. The Law Commission of England and Wales will review the law on criminal and civil contempt of court after being asked to do so by the Ministry of Justice and the Attorney General's Office. The review will cover issues such as codifying and simplifying the law, the appropriateness of penalties, and whether there is scope for improving procedural rules. Contempt of court is a criminal offence punishable by a maximum penalty of an unlimited fine and/or two years' imprisonment. There are many kinds of contempt but the most common example that can be relevant in proceedings against corporate defendants (for example for breaches of health and safety or product safety laws) is disobeying or breaching a court order or judgment. We will report further once further updates become available.

Council of European Union (CEU) adopts position on proposed regulation on machinery products. The CEU announcement stated that member states have agreed on a mandate for negotiations surrounding a new regulation on machinery products with the European Parliament. The proposed regulation would transform the Machinery Directive (2006/42/EC (as amended)) into a regulation, meaning that it would apply automatically in member states rather than needing to be transposed into national law by each member state. The regulation would apply to machinery products and would clarify the scope of the directive, for example by expressly including small personal transport vehicles and light electric vehicles (such as electric scooters/bikes). The draft regulation also proposes that the European Commission may, as a last resort, develop technical specification where standards are not available or are unsatisfactory. Of course, the new regulation would not apply automatically in Great Britain post-Brexit, but would certainly be relevant for companies exporting machinery to the EU (and likely also to Northern Ireland). We will provide an update when further details become available.

"Own-brander" company liable as a producer under the EU Product Liability Directive. The Court of Justice of the European Union confirmed that that an "own-brander" placing their logo or trademark onto a product is a producer under the EU Product Liability Directive, and is therefore liable for damage caused by such a defective product. Article 3(1) of the directive defines a producer as "the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer." As this is a decision of a European court, it is not strictly binding in the UK. However, UK courts would likely find it persuasive.

Ministry of Defence (MOD) issued with Crown Censure after a Marine recruit drowned during training. The HSE has issued a Crown Censure and the MOD admitted breaching its duty under Section 2(1) of the Health and Safety at Work etc. Act 1974. The HSE stated that the MOD failed to undertake a suitable and sufficient risk assessment, and failed to properly supervise and plan the training exercise. This led to the Marine recruit drowning when disembarking from a landing craft into deeper than expected offshore waters. 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.

Maximum sentencing powers for Magistrates increased in respect of either way offences. The Criminal Justice Act 2003 (Commencement No 34) and Judicial Review and Courts Act 2022 (Commencement No 1) Regulations 2022 came into force on 14 July and extended the Magistrates' Courts' power to impose periods of imprisonment of up to 12 months for offences which are triable "either way" (i.e. in the Magistrates' Court or the Crown Court). Most health and safety offences are triable either way, with the decision as to which court the defendant will be tried in being determined at the first hearing. The intention behind this change is to allow more cases to be tried in the Magistrates' Court, to assist with the backlog in Crown Court cases. We have previously reported on the increase to Magistrates' powers to impose periods of imprisonment of up to 12 months for a single offence.

High Court deems UK government's climate strategy "unlawful". We previously reported that three environmental and legal organisations challenged the UK government's Net Zero Strategy (NZS) in the High Court. The claimants argued in June 2022 that the NZS breaches the government's obligation under the Climate Change Act 2008 to produce detailed climate policies showing how carbon budgets would be met. A High Court ruling published on 18 July 2022 found that the NZS lacked explanation or quantification of how government's plans would achieve emissions targets, and that the minister for Business, Energy and Industrial Strategy (BEIS) approved the NZS without the required information on how carbon budgets would be met. It became clear during proceedings that calculations by civil servants to quantify emissions cuts from government policies in the NZS did not actually meet the necessary reductions in order to comply with the sixth carbon budget (the volume of greenhouse gases the country can emit in 2033-37). The High Court has now ordered government to outline how the net zero policies will achieve emissions targets. Government will prepare and present an updated strategy to MPs in Parliament, including the Climate Change Committee. Friends of the Earth, among the group of claimants, issued a press release on the day of the ruling setting out the findings.

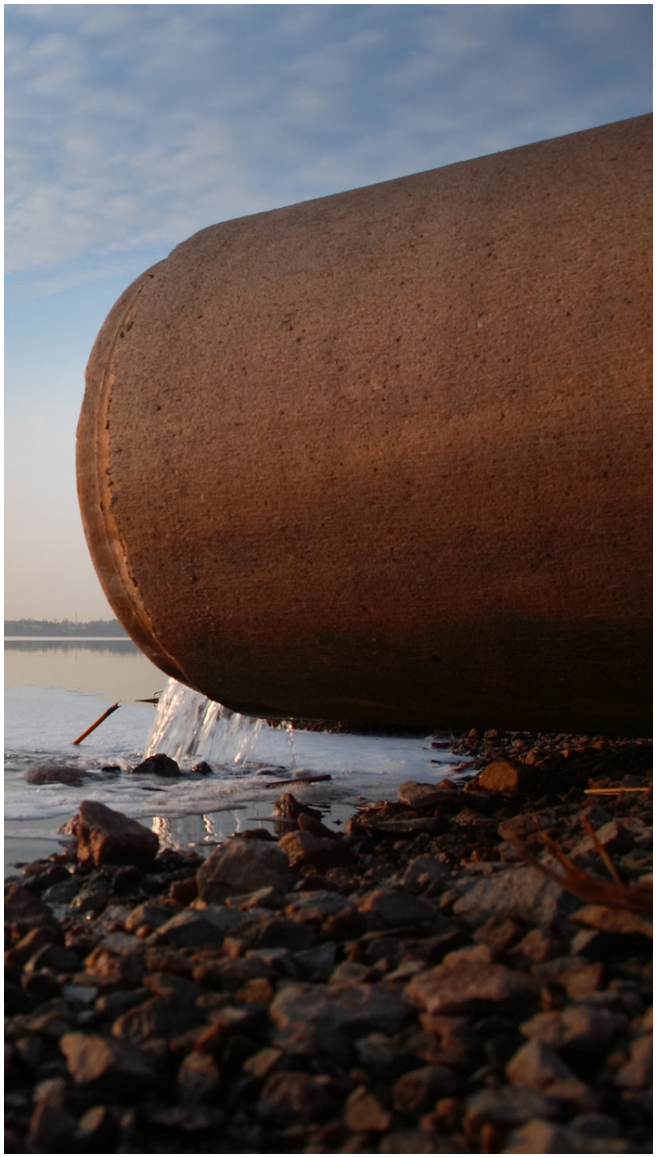
Environment Agency (EA) publishes speech on "Finance, resilience, net zero and nature". Emma Howard Boyd, chair of the EA and interim chair of the Green Finance Institute delivered the speech on how finance can help address the climate crisis. Ms. Howard warned that UK banks and insurers alone "will end up taking on nearly £340 billion worth of climate-related losses by 2050 unless action is taken to curb rising temperatures and sea level." The speech touches on the importance of environmental regulation working alongside financial and economic regulation to ensure incentives and penalties on businesses "have enough clout to drive change", and growing evidence that nature-based solutions alongside or instead of traditional infrastructure are cost-effective.

UK government consults on ending sales of new non-zero-emission powered lightweight vehicles by 2035. Following publication of the July 2021 Decarbonising Transport plan, the Department for Transport is proposing to end the sale of new, non-zero-emission L-category vehicles (powered lightweight vehicles with two, three or four wheels, classed into seven groups based on weight, power output, number of wheels, and seating) by 2035. Specific proposals would end the sale of L1 (light two-wheel powered vehicles, including mopeds), L2 (three-wheel mopeds), some L3 (two-wheel motorcycles), L6 (light quadricycles) and L7 (heavy quadricycles) sub-category vehicles by 2030, with the ban applying to the remaining categories L3, L4 and L5 by 2035. The consultation will close on 21 September 2022.

London School of Economics publishes report on 2022 global trends in climate change litigation. The report's goal is to help readers understand the ways in which the law is being used as a tool to advance a variety of often inconsistent climate-related agendas. It sets out some main messages – first, on a global scale, the cumulative number of climate change-related cases has more than doubled since 2015, bringing the total number of cases to over 2,000. Around one quarter of these were filed between 2020 and 2022. Second, climate litigation has become an instrument used to enforce or enhance climate commitments made by governments, with 73 "framework" cases challenging governments' overall responses to climate change. Third, in the last 12 months, further legal cases have been brought against fossil fuel companies, especially outside the US. Cases against corporate actors are also increasingly targeting the food and agriculture, transport, plastics and finance sectors. Fourth, the number of climate litigation cases with strategic ambition (i.e. to bring about a broader societal shift) continues to rise. The report also sets out five areas to watch in the next year – cases involving personal responsibility, cases challenging commitments that over-rely on greenhouse gas removals or "negative emissions" technologies, cases focused on short-lived climate pollutants, cases explicitly concerned with the climate and biodiversity nexus, and strategies exploring legal recourse for the "loss and damage" resulting from climate change.

Task Force on Nature-related Financial Disclosures (TNFD) consults on second draft of disclosure framework and shares separate Executive Summary. This framework is intended to give organisations guidance on reporting and acting on nature-related risks and includes the TNFD's approach on metrics and targets, practical guidance for organisations to start pilot testing the framework between July 2022 and July 2023, and information on how TNFD will develop guidance in future, including alignment with the International Sustainability Standards Board (ISSB), the Sustainability Accounting Standards Board (SASB) and the Task Force on Climate-related Financial Disclosures (TCFD). The three core components of the framework from the first beta have not changed, but the TNFD has made enhancements based on feedback from a range of market participants and stakeholders. Three "significant additions" are a first draft architecture for metrics and targets (and draft guidance on and illustrative set of dependency and impact metrics), a proposed approach to specific guidance, and an update to LEAP-FI. TNFD intends to release updated beta versions later this year and in February 2023, with publication of the final framework expected in September 2023.

OEP responds to consultation on environmental targets. Writing to the Department for Environment, Food and Rural Affairs (DEFRA) and to the Minister for Nature Recovery and the Domestic Environment, the OEP has set out its advice on the government's specific proposals for various targets under the Environment Act 2021. It stressed that targets must be coherent, comprehensive and cover the full range of priorities. In addition, government should set out the relationships between targets to prevent pre-existing targets and commitments being overlooked. The OEP also warned against inconsistent levels of ambition across proposed targets and that some lack urgency to reflect the scale of change needed. Specific examples are the post 2030 species recovery target, wildlife-rich habitats target and PM2.5 air quality target. Finally, government must meet the October 2022 deadline to set targets and move quickly to assemble resources and coordinate delivery activity. While congratulating government on progress made to date, Dame Glenys Stacey, Chair of the OEP, said there was an "urgent need to make significant progress over the next few years, in protecting, restoring and improving the environment".



High Court publishes judgment on measured duty of care in nuisance. In *House Maker (Padgate) Ltd v Network Rail Infrastructure*, the court found in favour of the claimant that Network Rail owed a "measured" duty of care for the collapse of an artificial culvert or drain. The extent of a landowner's liability for natural nuisances has evolved. Historically, landowners were not liable for non-feasance (failure to act required by law) for a natural nuisance, but a "measured duty" is increasingly being imposed by the courts. The claimant purchased land for development next to a railway station operated and owned by the defendant, Network Rail Infrastructure (NRI). In early 2017, the claimant notified NRI of flooding on the site caused by a collapsed drain on the defendant's adjoining land. House Maker (Padgate) Ltd. claimed damages for nuisance and/or negligence relating to a drain under NRI's land, which caused damage to the claimant's land. On the scope of measured duty of care for natural nuisances, the High Court found that there was a measured duty of care owed to the claimant and that this was breached. In considering breach of duty, the court conducted a balancing act. The factors considered, and which may form useful guidance in future case law, were considerations of fairness, justice and reasonableness between neighbouring landowners, all the circumstances of the case including parties' knowledge of the extent of the risk, preventive measures, and the resources of both parties.

Office for Environmental Protection (OEP) announces investigation into regulation of combined sewer overflows (CSOs). Part of the OEP's role is to hold public authorities to account on environmental law after Brexit (in England and Northern Ireland). At the end of June 2022, the OEP announced an investigation under section 33 of the Environment Act 2021 into Ofwat, the EA and the Secretary of State for Environment, Food and Rural Affairs' roles in regulating CSOs in England (including monitoring and enforcement). The OEP will seek to determine whether these authorities have complied with their respective duties in respect of regulation of water companies' duties to manage sewage. The OEP must prepare a report following all investigation, save those taken to court. If failures are identified, the OEP's objective will be to improve regulation and improve water quality in the long term.

Court of Appeal (CA) rules that discharges of foul water into canal are not nuisance or trespass. In *Manchester Ship Canal Company Limited v United Utilities Water Limited*, the CA gave judgment on a case on potential avenues for redress for discharges of sewage. When the owner of the canal threatened to bring a claim in private nuisance and/or trespass against United Utilities (UU), UU sought a declaration that this cause of action was not open to the canal owner because the Water Industry Act 1991 provided a statutory enforcement mechanism for breaches of duty by sewage undertakers. The decision was the culmination of a long-running dispute about discharges into Manchester Ship Canal by UU. Of particular interest was an appeal from a 2018 private action in trespass or nuisance in relation to discharges into a canal. The CA held that UU breached a statutory duty under the Water Industry Act 1991, and that the powers of the Secretary of State and Ofwat to issue an enforcement order excluded additional private actions in tort. The CA decided that holding UU liable for trespass or nuisance for unauthorised discharges into the canal would be inconsistent with the statutory scheme covering sewerage undertakers. This decision may limit individuals from bringing private claims against water companies that dump sewage into rivers and seas.

Yorkshire Water fined £1.6 million for sewage pollution. In the latest large prosecution by the EA of a water company, Yorkshire Water has been fined £1,600,750 and ordered to pay a victim surcharge of £170 and £22,112.79 in costs. The company pleaded guilty to unauthorised sewer discharges into Bradford Beck and breaches of its environmental permit. A detention tank operated by the company, which collected and stored a mix of rainfall and sewage, was designed to overflow into the watercourse during times of heavy rain but when operated correctly should have been empty during dry weather. The detention tank was full for up to eight months in 2018, which lead to 25 unauthorised sewage spills. The judge found that Yorkshire Water was aware the storm pumps were out of action and that the tank was full. It failed to fix the pumps as soon as practical, to provide a standby pump, to maintain its pumps and to maintain the overflow. The judge concluded that the company was reckless and would have known that a discharge into the tank would cause an unlawful discharge into Bradford Beck. In mitigation, the company reiterated that it took its environmental responsibilities seriously, that remedial steps were taken to address the issue and that it had cooperated with the investigation. This follows the company submitting two Enforcement Undertakings to the EA – £150,000 for an incident at Holgate Beck and £250,000 for Hoyle Mill Stream. These are voluntary offerings from companies or individuals to make amends for an offence.

The EA issues wider call for higher sanctions for serious and deliberate pollution incidents. Since 2015, the EA's prosecutions against water companies have secured over £138 million in fines (£90 million in 2021 alone). The EA's annual report "Water and sewerage companies in England: environmental performance report 2021" shows a decline to the lowest level in the performance of water companies ever seen under the Environmental Performance Assessment. This is in spite of continuing enforcement action from the EA. One key finding of the report is that there has been "no overall improvement for several years in total incident numbers or compliance with conditions for discharging treated wastewater". In particular, the EA has called for courts to "impose much higher fines for serious and deliberate pollution incidents", and "prison sentences for Chief Executives and Board members whose companies are responsible for the most serious incidents and company directors struck off so they cannot move on in their careers after illegal environmental damage". Other action being taken by the EA and DEFRA to hold water companies to account includes increasing inspections of sewage treatment works, new requirements in the Environment Act 2021 to put monitors on storm overflows, publicising more data, investigations into environmental crime and toughening regulation.

UK REACH: DEFRA consults on extending submission deadline for transitional registrations. UK REACH will require substances that are manufactured in, or imported into, Great Britain to be registered with the Agency for UK REACH (the HSE). UK REACH contains transitional provisions to minimise disruptions to industry moving from EU REACH, which applied in the UK before Brexit. The current deadlines for completing the transitional registration process are either October 2023, 2025 or 2027 depending on tonnage and hazard profile of the substance. The government is consulting on extending the first data submission deadline by three years to 2026, with two options for the spacing of the two subsequent submission deadlines, which would continue to be based on production tonnage and hazard profile. In response to concerns from stakeholders on the feasibility and costs of completing registrations in time, DEFRA is also considering alternative transitional arrangements as well as extending the deadlines. The public consultation invites views on options to extend those current deadlines for registration and on extending the dates for the HSE to carry out compliance checks on 20% of registration dossiers. The consultation will close on 1 September 2022. For more information, please see the UK REACH Article 1 consistency statement also published on 5 July 2022.

DEFRA and Scottish and Welsh governments publish policy paper on substance prioritisation in UK REACH work programme. The two types of activities under UK REACH to be prioritised are restriction and Regulatory Management Options Analysis (RMOA). The five retained priorities for the 2022 to 2023 UK REACH work programme (of 17 proposals) are per- and polyfluoroalkyl (PFAS) substances, intentionally added microplastics, formaldehyde and formaldehyde releasers in articles, bisphenols in thermal paper, and hazardous flame retardants. The policy paper explains the rationale used to identify these priorities.

Government consults on publication of UK emissions trading scheme (ETS) data in registry. The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (Order) currently prohibits the disclosure of information on the UK ETS (with certain exemptions). This consultation sets out a number of proposals to increase transparency and bring the rules closer to the EU ETS. The first proposal is that that all information already published via the UK ETS Registry (Registry) be published under the Order rather than relying on the Environmental Information Regulations (EIR) 2004. This would mean that the obligation to publish the information rests with the UK ETS Authority. The second proposal is to use legislation to enable the UK ETS Authority to publish a new report to detail the number of allowances on the Registry in all user accounts on the previous day. Next, to enact legislation to introduce new exemptions to data and information disclosure under the Order. The final proposal is to introduce new obligations on the UK ETS Authority to publish data on the reportable emissions of hospital and small emitters. The consultation opened on 8 July and closed on 24 July 2022. We will look to report on the UK ETS Authority's response in due course.

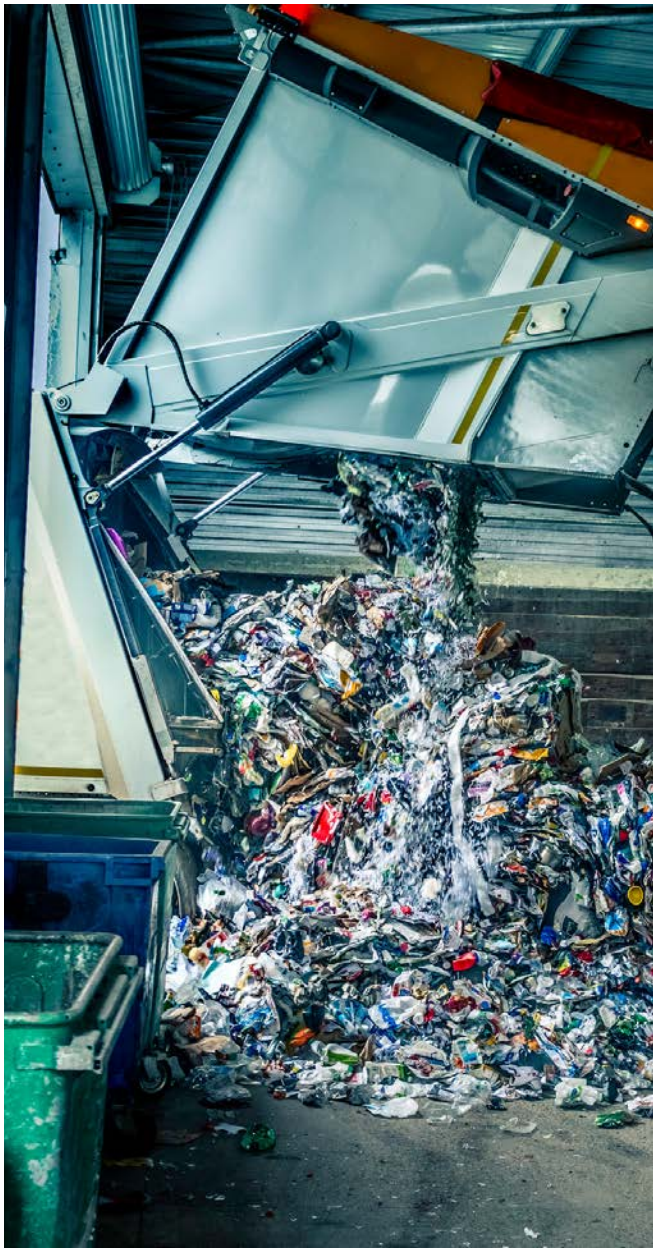
Government updates guidance on clean air zones. To improve air quality in urban areas, some local authorities have introduced charges for drivers of certain vehicles if they enter a certain zone. Existing clean air zones have been brought in, in Bath, Birmingham and Portsmouth, with more planned in the near future. The government website has recently been updated to indicate that Bristol's clean air zone will begin on 28 November 2022 and Sheffield's is set to begin in early 2023. Some additional information on exemptions for driving in Tyneside were also made available earlier this month.

Group litigation claims and parent company liability: English CA has jurisdiction over Fundao dam disaster claim. In *Municipio De Mariana and others v BHP Group (UK) Ltd. and another*, the CA allowed the claimants' appeal against a decision to strike out claims brought by over 200,000 people in Brazil. The claims were brought in the English High Court against the English and Australian parent companies of the BHP Group following the collapse of the dam in 2015. The High Court judge had struck out the claims for being unmanageable. The CA disagreed with defendants' submission that the proceedings were pointless and wasteful, and also with the High Court's strikeout. The CA found that the judge's error on manageability of the litigation had infected his conclusion on whether the claims were clearly and obviously pointless. The decision will be of interest to those who risk facing collective actions in England and Wales, particularly for group litigation claims against large companies originating in environmental disasters abroad.

Precautionary principle: CA dismisses appeal that criticised Natural England's nutrient neutrality guidance. The main issue in *R (on application of Wyatt) v Fareham Borough Council* was whether the council failed to make a lawful "appropriate assessment" of a proposed development because it relied on a technical guidance note published by Natural England titled "Advice on Achieving Nutrient Neutrality for New Development in the Solent Region (Version 5, June 2020)", which the claimant contended was legally flawed. Natural England's advice was that, where protected sites are in poor condition on account of excess nutrients, projects should only go ahead if they will not cause additional pollution to sites. New advice issued in March 2022 has doubled the number of authorities affected. The *Waytt* case concerned campaigners attempting to overturn a council's approval of a scheme to build eight detached houses near the Solent and Southampton Water Special Protection Area. The claimant appealed against a decision by the High Court to dismiss his claim for judicial review of the respondent, Fareham Borough Council to grant outline planning permission for the development. It argued that Natural England's advice on nutrient neutrality was insufficiently rigorous to prevent harm to protected sites. The appeal was dismissed.

DEFRA consults on landfill tax grant scheme and calls for evidence. The government is proposing a scheme that would refund landfill tax to encourage the redevelopment of brownfield sites and land affected by contamination. The consultation overview highlighted that although the landfill tax has been highly effective in diverting waste from landfills and encouraging better waste management, its cost has at times prevented the redevelopment, remediation and/or protection of land affected by contamination. The document sets out a proposed definition for when a site should fall within the so called "landfill tax trap", criteria to help target a grant scheme while avoiding environmental harms, and financial and socioeconomic criteria. The call for evidence invites information on times when the landfill tax has been an "insurmountable barrier" for businesses redeveloping land affected by contamination. Government will use responses to this open consultation to help shape future policy and guidance. The consultation will close on 18 August 2022.

DEFRA commits to OEP's recommendations on a comprehensive and systematic approach to the environment agenda. In its response to the OEP's report on "Taking Stock: protecting, restoring and improving the environment in England", DEFRA reiterated its long-term commitment to improving the environment. It references its fourth progress report on the 25 Year Environment Plan, also published in July 2022. The report recaps the last year, citing in particular the Environment Act 2021 coming into force, establishing a statutory framework for government to deliver its environmental ambitions, publication of the Nature Recovery Green Paper and the Net Zero Strategy, and £5.2 billion of investment to protect homes from flooding. It also sets out key progress on particular goals including clean air, clean and plentiful water, reduced risks of environmental hazards, mitigating and adapting to climate change, more sustainable and efficient use of resources, minimising waste, and managing exposure to chemicals and pesticides. The report uses outcome indicators and data to indicate whether there has been an improvement in a particular area, though these indicators do not consider "whether any improvements seen are on a sufficient scale for meeting targets". In its response to the OEP report, DEFRA indicates it will publish a revised version of the 25 Year Environment Plan by 31 January 2023.



Norfolk man jailed for six months for illegal waste operation. The owner of a garage ignored repeated warnings from the EA about storing end of life vehicles and parts. In July 2022, he was handed a six-month jail sentence, ordered to pay £5,000 in costs, and given a Criminal Behaviour Order (CBO) setting out legally binding conditions he must adhere to. The man pleaded guilty in November 2021 to storing the items without a permit at his site and was given a 16-week suspended sentence, on the condition of remaining offence-free. However, on second inspection in January 2022, EA officers found that it had not been cleared. The court heard that officers had visited the site 18 times between November 2019 and July 2022 and had made every effort to work with the defendant. The CBO will remain in effect for five years.

Company pays enforcement undertaking to environmental charity for illegal waste export. P&D Material Recovery Ltd. (P&D) was found to have breached the Transfrontier Shipment of Waste Regulations 2007 after an attempted export of illegal waste was discovered at a routine inspection in March 2019. The company filled 11 containers at Chatham Dockyard, Gillingham (in two shipments totalling 200 tonnes) with plastic contaminated with banned waste to be shipped to a facility in Turkey. Among the banned cargo were sanitary towels, cotton buds, glass, textiles, soiled nappies, condoms, old underwear and tin cans. P&D paid the EA's costs of roughly £11,000 following the investigation and made an enforcement undertaking payment as a civil sanction totalling £13,000 to Sandwich Bay Observatory Trust, a charity committed to the conservation and recording of the natural environment.

EA successful in High Court following a hazardous waste export dispute. In a rejected claim for judicial review, the High Court found that the EA had been entitled to withdraw permission for an export of hazardous Air Pollution Control Residue (APCr) to Langøya, an island in Norway. The claimant, New Earth Solutions, held an environmental permit from the EA for the repackaging and temporary storage of hazardous waste and which allowed New Earth Solutions to accept up to 100,000 tonnes of fly ash per year. It notified the EA of a proposal to export 100,000 tonnes of APCr to Norway under the Transfrontier Shipment of Waste regime in December 2020. It classed the end-use of the waste as recovery rather than disposal (the shipment would not have been allowed for disposal). After initially consenting to the export as an R5 recovery option in February 2021, the EA later reversed its decision on the basis that the shipment was waste disposal. New Earth Solutions had "not supplied sufficient evidence to show that the deposit of the treated APCr in the quarry would meet the definition of a recovery operation and [that] there were facilities for the material in the UK". The judge found that the EA was entitled to look at the full waste operation (in particular the physico-chemical treatment and final disposal) to conclude that the relevant operation was a D9 disposal operation as opposed to R5. The case, *R (on application of New Earth Solutions (West) Ltd) v Environment Agency*, is available in full here.

Impact Assessment: DEFRA sets out review of statutory exemptions for permitted uses of persistent organic pollutants (POPs). On 18 July 2022, DEFRA announced that it was undertaking a review of statutory exemptions for permitted uses of certain POPs: decabromodiphenyl ether (decaBDE), perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds, perfluorooctane sulfonic acid (PFOS), its salts and its derivatives, and short chain chlorinated paraffins (SCCPs). As part of the review, industry actors are invited to provide information on their use of POPs in order to help government understand the need for exemptions. To comment, email POPS@defra.gov.uk with the information listed on the government site by 12 August 2022.

Global Feedback (Feedback) legal action over failings of England's food strategy. A campaign group for regenerative food production has issued a letter before action for judicial review to government. Feedback contends that government has failed to support the transition to a low-carbon diet with a reduced meat and dairy consumption. The group claims that the government's Food Strategy (FS), published in June 2022, does not take into account advice on the role of cutting consumption of meat and dairy in achieving net zero. The group's letter before claim states that the FS "made no mention of, and showed no consideration of, the clear advice on meat and dairy reduction…" Feedback have requested that the FS be rescinded, asked for details of the documents considered by the Secretary of State in order to adopt the FS, and contend that the Secretary of State is required to explain any decision not to follow the advice given. News of the legal challenge was reported in the national press.

EU

European Commission (Commission) discusses concept of essential use with competent authorities for chemicals legislation. The Commission recently discussed the concept of essential use in a paper presented to the Competent Authorities for REACH and CLP (CARACAL). The aim of the document is to provide a description of how generic risk management and the essential use concept fit into the three options identified for reforming the authorisation and restriction provisions under Regulation 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH, please see frESH Law Horizons May 2021), i.e.:

- Option 1 – Streamline the authorisation and restriction provisions
- Option 2 – Merge authorisation and restriction provisions into one system
- Option 3 – Abandon the authorisation provisions (but keep the candidate list)

The document clarifies that the aim of applying essential use is to replace the large number of applications with a handful of derogations, and that a simpler and less granular approach could free resources for other tasks, and the system might become more manageable. Under the first scenario considered by the Commission, the European Chemicals Agency (ECHA) would assess alternatives to a substance on the market based on easily available information and information from notifications on uses and alternatives at the candidate listing. A second scenario would be to involve the Commission and the REACH Committee in a flexible manner before the scientific/technical assessment takes place, in order to allow fast-track decisions where uses are either clearly essential or clearly non-essential. Should there be no fast-track decision possible, and where no prior discussion at the REACH Committee has been requested, the scientific assessment by ECHA bodies would take place as under the first scenario, if appropriate taking into account any guidance by the REACH Committee. The concept of essential use is foreseen in the Chemicals Strategy for Sustainability (CSS). The Strategy states that the Commission would define criteria for essential uses to ensure that the most harmful chemicals are only allowed if their use is necessary for health, safety or is critical for the functioning of society and if there are no alternatives that are acceptable from the standpoint of environment and health.

European Commission outlines future procedural steps to revise chemical regulation on Classification, Labelling and Packaging. The Commission, in a paper recently submitted to the Competent Authorities for REACH and CLP (CARACAL), shed some light on upcoming revision of Regulation 1272/2008 on Classification, Labelling and Packaging of substances and mixtures (CLP, please see frESH Law Horizons May 2021). In particular, the Commission is planning to adopt the upcoming revision of CLP under the ordinary legislative procedure, except for those amendments to Annexes that would add new hazard classes in CLP (which would be adopted via delegated acts). In the legal analysis included in the document, the Commission states that the most important question is whether adding new hazard classes (such as endocrine disruptors and Persistent Bioavailable and Toxic (PBTs)) can be considered a non-essential element of CLP, that could be amended in this way by the Commission. The reasoning behind the conclusion is that the draft amendments that will include new hazard classes and criteria are the result of a scientific assessment not involving a political choice. Therefore, they should be considered as modifying "non-essential" elements and hence can be adopted via delegated act.

Industry groups raise concerns over a possible new classification of lithium under CLP. In 2019, the French Agency for Food, Environmental and Occupational Health & Safety (ANSES) submitted a proposal to ECHA for harmonised classification and labelling (CLH) of lithium carbonate, lithium chloride and lithium hydroxide under CLP. For hazards of highest concern (carcinogenicity, mutagenicity, reproductive toxicity and respiratory sensitisers) and for other substances on a case-by-case basis, classification and labelling should be harmonised throughout the EU to ensure an adequate risk management. According to ANSES, these three salts are hazardous to fertility and foetal development. After a public consultation, ECHA's Risk Assessment Committee (RAC) submitted its opinion in September 2021. The RAC concluded that lithium carbonate, lithium hydroxide and lithium chloride should be classified under CLP as substances that may damage fertility and the unborn child, and held that the substances may harm breast-fed children. The final opinion by RAC was sent to the European Commission, which will decide on the relevance of adding the lithium salts to CLP. Seven industry groups (including European Battery Recycling Association, the metals trade association Eurometaux and the European industry association for advanced rechargeable and lithium batteries RECHARGE) wrote to the Commission to express concern over the potential impact of classifying three lithium compounds as category 1A reprotoxic, which they say is based on weak scientific evidence. The groups call for a new scientific evaluation on lithium carbonate, lithium hydroxide and lithium chloride and for the upcoming REACH and CLP review to better align with the EU's raw materials and chemicals goals.

Public consultation on CPR proposal closes: stakeholders discuss on use of delegated acts. The public consultation on the European Commission's proposal for a revision of the Construction Products Regulation (CPR) closed on 12 July 2022: stakeholders submitted a total of 272 contributions. Business associations and companies submitted the majority of feedback. Representatives from civil society organisations, including NGOs, trade unions and environmental organisations also submitted comments, together with representatives from academia, public authorities and citizens. Overall, the majority of stakeholders supported the Commission's proposal. They noted that it would contribute to the creation of a well-functioning single market for construction products, as well as supporting the green and digital transitions. Some criticisms highlighted in the comments submitted are about the European Commission's powers to adopt delegated acts, obligations foreseen under the proposal, and legal uncertainty as far as harmonised standards are concerned. CEN (European Committee for Standardization) and CENELEC (European Electrotechnical Committee for Standardization) also submitted their comments. The two committees requested harmonised standards to be considered the primary route for the development of harmonised technical specifications within the framework of the CPR, whereas the development of delegated acts should be exceptional and used in limited cases as a fall-back solution instead of an alternative/equal solution to harmonised standards.

European Commission consults on current waste management practices to adopt early warning report. The Commission launched a call for evidence on the early warning report (EWR) initiative. With this early warning report, the Commission will:

- Assess member states' waste management performance and their prospects of achieving the 2025 recycling targets and the 2035 landfill target
- Identify those member states at risk of not meeting the 2025 recycling targets and give them recommendations on how to improve their performance

The latest review of the Waste Framework Directive, Packaging and Packaging Waste Directive and the Landfill Directive carried out in 2018 first introduced the concept of the "early warning report" (EWR) to be performed by the Commission at the latest three years before the deadline of each target. The EWR shall include a list of member states at risk of not attaining the targets within the respective deadlines, accompanied by appropriate recommendations for the member states concerned to help put the member states back on track. This EWR is specific to municipal waste and packaging waste. It will identify member states at risk of not meeting the 2025 recycling targets set for municipal waste and packaging waste and provide them with recommendations on how to improve their performance, including by sharing best practices. An impact assessment will not be carried out as this initiative is not a legislative proposal and there are no new objectives nor policy choices to be proposed. The call for evidence will run until 1 August 2022 and the adoption of the report from the Commission is planned for the fourth quarter of 2022.

European Parliament does not object to inclusion of nuclear and gas activities under taxonomy. The European Parliament did not object to the Commission's Taxonomy Delegated Act to include specific nuclear and gas energy activities, under certain conditions, in the list of environmentally sustainable economic activities covered by the so-called EU Taxonomy. The taxonomy regulation is part of the Commission's action plan on financing sustainable growth and aims to boost green investments and prevent "greenwashing". The delegated act was adopted in February 2022 and sets out clear and strict conditions, subject to which certain nuclear and gas activities can be added as transitional activities to those already covered by the first delegated act on climate mitigation and adaptation, applicable since 1 January 2022. These stringent conditions are:

- For both gas and nuclear, that they contribute to the transition to climate neutrality
- For nuclear, that it fulfils nuclear and environmental safety requirements
- For gas, that it contributes to the transition from coal to renewables

The delegated act also introduces specific disclosure requirements for businesses related to their activities in the gas and nuclear energy sectors. The absolute majority of MEPs needed to reject the Commission's proposal was not reached, since 278 MEPs voted in favour of the resolution, 328 against and 33 abstained. If the Council does not object either, the Taxonomy Delegated Act comes into force on 1 January 2023.

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