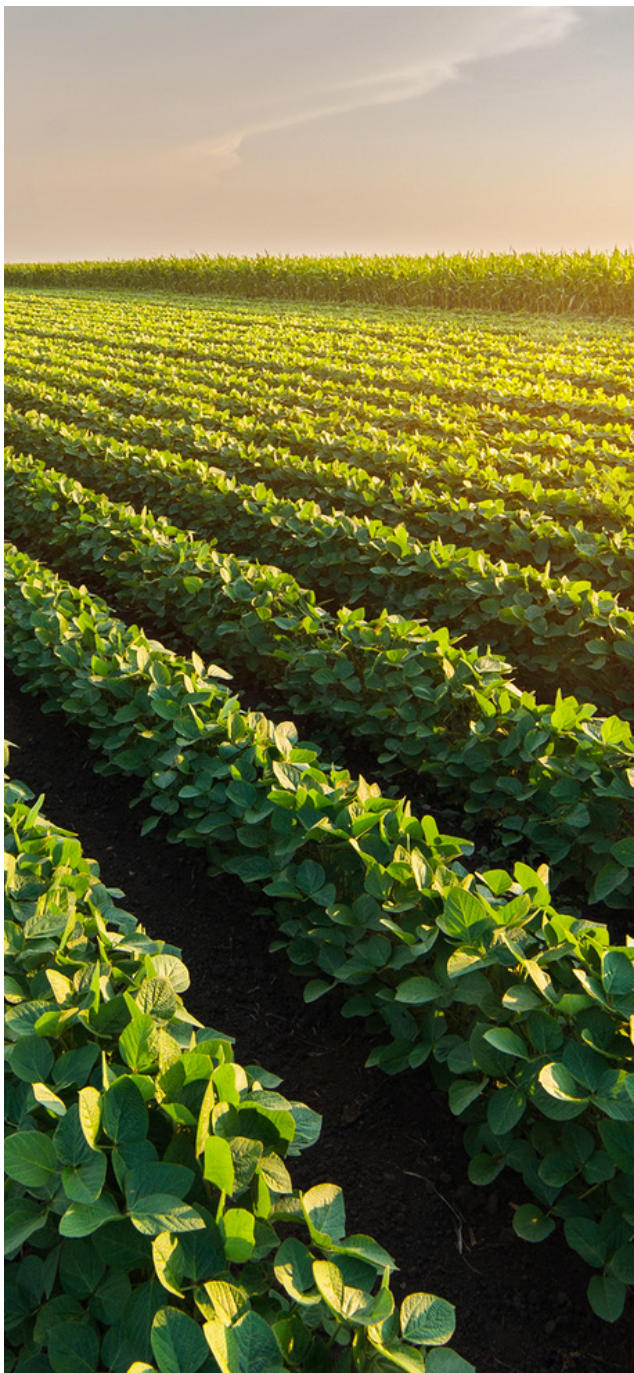


frESH Law Horizons

July to October 2024



Government publishes response on UK Carbon Border Adjustment Mechanism (CBAM) consultation – On 30 October, the UK government published its anticipated [response](#) to its consultation on a CBAM scheme for the UK. The document confirms that UK CBAM will apply from 1 January 2027. The scheme is intended to ensure “highly traded, carbon intensive goods imported from overseas face a carbon price that is comparable to what would have been payable had they been produced in the UK.” The scheme will apply to specific product codes, but at high level will be relevant to the aluminium, cement, fertiliser, hydrogen and iron and steel sectors. UK CBAM will be applied to “direct”, “indirect” and select “precursor” product emissions embodied in imported goods in scope. Products from the glass and ceramics sectors will not be in scope of the UK CBAM from 2027. [The EU CBAM scheme](#) is already in part operational, with further changes introduced from 2025.

Government “will not fight” judicial review of Rosebank and Jackdaw oil licences – The Department for Energy security and Net Zero (DESNZ) announced in August 2024 that it would not resist the judicial review challenges of the previous government’s decisions to grant development licences for the Rosebank and Jackdaw oil fields (based on the environmental impact assessments (EIA)). This follows the Supreme Court decision in the separate case of *R (Finch on behalf of the Weald Action Group) v. Surrey County Council and others* [2024] UKSC 20 (see [frESH newsletter April to June 2024](#)), which held that EIA must take account of downstream greenhouse gas emissions from an oil drilling project. Revised EIA guidance will form the object of a DESNZ consultation, expected in late 2024.

Biocides and pesticides: consultation in the EU/Northern Ireland and UK government pesticides committee publishes annual report – The European Chemicals Agency (ECHA) launched a [consultation](#), which closed on 9 October 2024, on potential candidates for substitution and on derogation conditions. Substances that fit certain criteria are listed as a “candidate for substitution” meaning they could potentially be replaced by safer alternatives. This consultation will be relevant to the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legal frameworks in the EU and Northern Ireland (where the EU Biocidal Products Regulation applies, in accordance with the Northern Ireland Protocol).

The consultation will collect stakeholder opinions on potential alternatives to zinc pyrethrin and will allow ECHA to submit an opinion on the approval or renewal of the active substance to the European Commission. The outcome of the consultation will not be applicable to the regulation of biocidal products in Great Britain, which illustrates the growing regulatory divergence between the UK and EU chemicals law (see also that the Council of Europe has [adopted an amendment to the EU regulation on classification, labelling and packaging of substances and mixtures](#) (CLP Regulation)). Nevertheless, [Northern Ireland’s Environmental Improvement Plan](#), which was published in late September 2024 after some delay, includes a commitment to contributing “to the development of the UK Chemical Strategy”.

Meanwhile, the Department for Environment, Food and Rural Affairs (Defra) independent Expert Committee on Pesticide Residues in Food (PRiF) has published its thirteenth [annual report \(2023\)](#). Although the report found that 2.14% of the 2,574 samples tested for 418 different pesticide residues contained a residue above the maximum residue level (MRL) set by law, it concluded that “pesticide residues in the UK food supply are generally well-controlled”. PRiF attributed most residues to pesticides used on crops and to contamination (“small amounts of pesticide that remain in the environment after legitimate use”). PRiF provides advice to the Health and Safety Executive (HSE) on strategy and scope of the UK annual pesticide monitoring scheme but does not advise on whether pesticides should be approved or withdrawn from the market.



Green claims: new guidance for the fashion industry and nongovernmental organisation (NGO) action on “recyclability” claims – In September 2024, the Competition and Markets Authority (CMA) published a guidance document aimed at the fashion industry (“[Complying with consumer law when making environmental claims in the fashion retail sector](#)”). The document explains how fashion retail businesses can follow the CMA’s [Green Claims Code](#) when making environmental claims, to avoid allegations of being “misleading” and in breach of consumer law. The fashion industry has been at the heart of the CMA’s actions on greenwashing for several years. In March 2024, the CMA secured [undertakings](#) from major fashion brands to change the way they display, describe and promote their green credentials. The NGOs Everyday Plastic and the Environmental Investigation Agency have released a report adding to scepticism around use of recyclability claims by supermarkets around soft plastics returned to store by customers.

From April 2025, the CMA will have the power to impose penalties of up to 10% of a business’s global turnover for breaches of consumer law. These new enforcement powers granted to the CMA under the Digital Markets, Competition and Consumers Act 2024 mean that green claims are likely to remain at the forefront of all business sectors, and not only the retail sector.

PFAS gain further notoriety, and UK drinking water regulator issues new guidance – We have previously reported about the EU proposed ban on per-and polyfluoroalkyl substances (PFAS) ([frESH newsletter, December 2022/January 2023](#)) and the HSE’s call for evidence on PFAS in firefighting foams ([frESH newsletter, April to June 2024](#)). Attention around PFAS, often known as “forever chemicals”, has continued to rise in the last few months with reports of PFAS [contamination in the Yorkshire town of Benthams](#), and evidence that [warnings on the threat of PFAS in firefighting foams](#) date back over twenty years. A report drafted by the firm Jacobs UK Limited in 2023 and made public in September 2024 by the Environment Agency following a [request under the Environmental Information Regulations](#) estimated that the financial cost of remediation for between 2,900 and 10,200 high risk sites would be £31 billion to £121 billion.

Over the summer, the UK Drinking Water Inspectorate (DWI) issued a [consolidated guidance document](#) to water companies with requirements on PFAS monitoring, risk assessment and strategy in relation to public water supply systems. This is in addition to the DWI’s general guidance on [PFAS and forever chemicals](#).

There are currently no standards in the Water Supply (Water Quality) Regulations 2016 (applicable to England) and Water Supply (Water Quality) Regulations 2018 (applicable to Wales) for PFAS in drinking water. The DWI has therefore provided specific guidance on PFAS concentrations in drinking water that do not constitute a potential danger to human health. The guidance states it is “reasonably practicable to achieve concentrations of individual PFAS in drinking water below 0.1 µg/L. A value of 0.1 µg/L corresponds to a daily intake of 0.0033 µg/kg body weight for a 60 kg adult drinking 2 litres per day and 0.01 µg/kg body weight for a 10 kg infant drinking 1 litre per day.” The guidance notes for regulations, procedures, and codes of practice produced by the DWI must be adhered to by the water industry. As PFAS increasingly enter public awareness, businesses and other stakeholders will increasingly look for authoritative guidance for addressing risks.



Launch of Independent Commission on the UK water sector – In October 2024, an Independent Commission (IC) into the water sector and its regulatory regime was [launched](#) by the UK and Welsh governments. It is expected that the IC will “report back next year with recommendations to the Government on how to tackle inherited systemic issues in the water sector to restore our rivers, lakes and seas to good health, meet the challenges of the future and drive economic growth.” These comments will inform further legislation. The IC’s [terms of reference](#) list a number of objectives from its recommendations, including ensuing better regulation, by rationalising and clarifying requirements for companies to secure better customer and environmental outcomes, and empowering regulators by ensuring that they have the means to effectively hold water companies to account.

£21.7 billion support announced for carbon capture projects – The UK government has [confirmed](#) a significant investment of £21.7 billion over the next 25 years to support two major carbon capture and storage (CCS) projects in Teesside and Merseyside. These projects are part of the government’s commitment to reducing CO2 emissions, with the technology set to capture emissions before they reach the atmosphere and store them under the seabed. The projects are expected to generate 4,000 jobs and attract £8 billion in private investment. The government also highlighted the potential for CCS to boost the low-carbon hydrogen sector, with plans to establish the UK’s first large-scale hydrogen production plant. The initiative is predicted to remove 8.5 million tonnes of carbon emissions annually, which is reportedly equivalent to taking 4 million cars off the road.

While industry figures welcomed the announcement, calling it a “game changer” for clean energy and green jobs, environmental campaigners have expressed concern. Critics argue that the plan uses taxpayer money to subsidise the fossil fuel industry and may delay the transition to renewable energy sources (see [Friends of the Earth commentary](#)) and that this approach risks locking the UK into reliance on gas-derived hydrogen and fossil fuel-based technologies, which they claim do not fully align with net zero goals. This development marks a significant step in the UK’s strategy towards meeting its 2050 net zero target, though the debate on its long-term sustainability continues.



Environmental, Social and Governance (ESG) – European Commission publishes FAQs on sustainability reporting provisions introduced by Corporate Sustainability Reporting Directive (CSRD) – On 7 August 2024, the European Commission published a set of [FAQs on the CSRD](#), with the aim of facilitating its implementation by undertakings. Given the complexity and new regulatory burden created for large EU entities by CSRD, these clarifications are very welcomed, although they have also raised further queries from our clients. The 90 FAQs cover varied subjects within CSRD, including:

- Which companies are in scope of the CSRD
- Sustainability statement information required regarding scope and application dates, exemption rules, European Sustainability Reporting Standards, value chain information, Taxonomy Regulation disclosures, language requirements, timing of publication and supervision
- Information on the assurance of sustainability reports, including accreditation and approval of assurance providers

CSRD applies from 2025 not only to EU entities but also applies to non-EU companies with listings in the EU or with a large presence in the EU.

CSRD requires entities in scope to disclose their net zero transition plans, their ESG impacts and the due diligence processes they have in place to fully understand these impacts across their value chain. The disclosures each entity in scope of CSRD must make are determined by a “double materiality” exercise where both a company’s impact on the environment and the environment’s financial impact on a company must be taken into account. An example of double materiality is a flooding event that can cause labour stoppages and increases costs via insurance premiums; climate change regulation that can risk stranded assets for the coal industry; or severe weather events that increase the loss of cargo at sea creating company losses and goods shortages, and increasing insurance premiums.

CSRD looks at a business from a strategic perspective to ensure its strategy is resilient to future climate events. Some elements are similar to Task Force on Climate Related Financial Disclosures (TCFD) regulation in the UK, but CSRD is much broader in scope, covering all of ESG, not just climate change risks and opportunities.

Beer importer pays £414,000 enforcement undertaking to charity for packaging waste failure – The Environment Agency investigated a beer importer for failing to register as a producer of packaging as early as 2004 under applicable packaging waste regulations. The beer importer acknowledged its “oversight” and took “immediate and proactive measures” to rectify it as soon as it was aware of its registration and packaging obligations, according to press reports.

Following the investigation, [the company contributed £414,000 to “Keep Britain Tidy”](#) for use in its Great British Spring Clean campaign – a project that will “enhance, restore and protect England’s natural environment.” The sum was paid as part of an enforcement undertaking – a voluntary offer made by the beer importer that creates a legal agreement with the Environment Agency, as an alternative action to prosecution or other monetary penalty. The payment was calculated by taking into account the amount saved by the company in not recycling or recovering packaging waste, plus a penalty of 30%. In addition, the company has covered the Environment Agency’s costs. The agreement of this undertaking is a reminder to food businesses that registration as a packaging producer may be required. Where an in-scope business has not registered, proactive steps to address this, may help to avoid a criminal prosecution.



Growing commentary on the environmental impact of artificial intelligence (AI) – A number of organisations, including the United Nations (see [September 2024 publication](#)) (UN Report), are warning that, while AI will surely help tackle some global issues and enable technological developments, it risks having a destructive impact on the environment. Examples of challenges listed in the UN Report are that the data centres necessary to power AI tools are incredibly energy and water intensive (e.g., for cooling electronic components), and that the critical materials powering ‘chips’ can be mined unsustainably. The generation of electronic waste from data centres can contain hazardous substances.

The follow up to the AI Safety Summit at Bletchley Park in November 2023 (which resulted in the [Bletchley Declaration](#)) will be [held in France](#) in early 2025 and [is expected to focus](#) on the environmental impact of powering these technologies.

His Majesty’s Treasury (Treasury) to introduce new legislation to regulate ESG rating providers – The chancellor of the exchequer, Rachel Reeves, has [stated](#) that the Treasury will propose a new law in 2025 to regulate UK providers of ESG ratings under the supervision of the Financial Conduct Authority (FCA). ESG ratings provide an assessment based on their own ESG criteria, which arguably enables investors to benchmark and better understand how sustainable certain investments are. Currently in the UK, there is a voluntary code of conduct for ESG rating agencies (launched by the International Capital Market Association in December 2023) but little oversight of how these agencies create the ESG criteria that they measure businesses against.

The new UK law would seek to address the perceived lack of transparency behind ESG ratings. Reeves has reportedly asked the Treasury to “respond quickly to an industry consultation on a new regulatory regime for ESG rating providers, and to bring forward legislation next year”.

Clarity on ESG ratings would assist Britain’s efforts to develop its sustainable finance sector, which yields broad influence over trillions of pounds’ worth of investments, particularly in light of mandatory corporate sustainability data reporting in the UK and EU.

In April this year, the EU adopted new rules requiring EU rating providers to be authorised and supervised by the European Securities and Markets Authority (ESMA) by amending [Regulation \(EU\) 2019/2088](#).



Defra publishes illustrative fees for producers of packaging in the UK – We have previously reported on the new Extended Producer Responsibility (EPR) regime, which will affect organisations that import or supply packaging, as they may be responsible for the costs of dealing with packaging waste (see [frESH newsletter April to June 2024](#)). The new Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024 came into force on 1 April 2024, but the fee payments under the new EPR regime have been deferred to 2025 based on 2024 data. However, until 2025, obligated producers of packaging will still pay producer responsibility fees for packaging based on the 2007 regulations.

On 30 September 2024, Defra published [its second release of illustrative base fees](#) that producers of packaging will likely have to pay on their packaging data from 2025 to 2026. This is a revised version of the illustrative fees published in August. Materials covered by these fees include aluminium, fibre-based composite, glass, paper and card, plastic, steel, wood and other. The base fees are based on a lower, intermediate and higher tonnage of packaging per year. For example, aluminium ranges between £320, £405 and £605 per tonne; paper and card from £135, to £190 and £250 per tonne; and glass between £110, £175 and £215 per tonne.

These fees represent how much producers of packaging that fall within the EPR thresholds have to pay for the packaging they place on the market. Only large producers will have to pay an EPR fee, namely those that both have an annual turnover of more than £2 million and have supplied or imported more than 50 tonnes of packaging in the UK. Defra has now published a [list of large producers](#) on its report packaging data service.

These illustrative base packaging fees are calculated by dividing the total costs to local authorities for managing household packaging waste by the total amount of household packaging placed on the market. The latest base fees used the most recent packaging data reported by large organisations.

[Draft legislation](#) was presented to Parliament at the end of October 2024 on packaging extended producer responsibility. Notably, this will require producers to ensure that a proportion of packaging (by material type) is recycled, breaks from shared responsibility for data reporting in favour of single producer liability, postpones mandatory recyclability labelling laws and sets of data reporting requirements for small producers and businesses selling packaging and packaged goods to end-users.

FCA grants extension on Sustainability Disclosure Requirements (SDR) – Certain asset managers will not have to comply with the SDR's naming and marketing rules until 5pm on [2 April 2025](#), but firms must submit their updated disclosures by 5pm on 1 October 2024 to qualify for this extension. The initial compliance date for naming and marketing rules was 2 December 2024.

This extension is only available to firms using terms like “sustainable”, “sustainability” or “impact” in their fund names and intending to apply for an SDR label or change the fund's name.

The FCA's naming and marketing rules are part of the FCA's rules on SDR and investment labels (PS23/16), which aim to avoid greenwashing and misleading consumers of financial products. The rules set out a UK ESG regime for certain financial products from May 2024, in order to increase transparency on so-called sustainable funds available in the UK market.

These rules are broad, covering sustainability impact disclosures, voluntary sustainability labelling for funds, naming and marketing and anti-greenwashing rules. Naming and marketing rules allowed funds that could not use green labels to use sustainability-related terms in their name, such as those listed above.

Although the FCA wishes to extend the application of the SDR rules to all portfolio managers of pension and overseas funds, the SDR rules currently apply only to managers and distributors of UK funds, with anti-greenwashing rules applying to all UK authorised firms.



Deposit return schemes (DRS) in the UK not expected until October 2027 – Plans have existed to implement DRS in the UK for several years, but these have been marked by questions on what materials the schemes will cover, what rules will apply in each UK nation, and interoperability of the schemes across the UK. Following this summer’s general election, there was [speculation](#) following comments by a minister that Labour would bring forward the Conservatives’ target date for launching DRS. However, it has now been [clarified](#) that there are no such plans and that the Labour government is also working to launch DRS by October 2027 as set by the previous government. Despite [studies](#) revealing strong public support for a comprehensive DRS, the Environment Minister has confirmed that the DRS for England and Wales [will not contain glass](#). The intention of DRS is to incentivise consumers to return drinks containers for recycling by introducing a disposal fee at the point of purchase that can subsequently be redeemed.

A policy statement published under the Sunak government in April 2024 stated that the intention was to introduce a UK-wide DRS in October 2027. The document sets out a timeline for rollout and confirms that materials in scope in all four UK nations will include drinks containers made of polyethylene terephthalate (PET), steel and aluminium. Separate statements on glass containers, which have previously been the cause of disagreement between different nations, will be issued by each administration. The Scottish government has [stated](#) that it has “agreed to move forward with a DRS in Scotland that does not include glass on day one”, but has not renounced the prospect entirely.

National Grid fined £3.2 million after pylon worker suffers serious burns – National Grid Electricity Distribution (South Wales) Plc (National Grid) has been [fined a total of £3.2 million](#) following an incident in 2020 in which a worker was electrocuted while replacing step bolts on a pylon. 4 Power Ltd also received a fine. An investigation by the HSE found that 4 Power Ltd failed to properly plan and assess the risk and that, “had this been done, it would have identified that the arms of pylon were too short to do the work safely, while maintaining the specified safety distances as per industry standard.” 4 Power Ltd pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc. Act 1974 and was fined £80,000. National Grid, which was found to have failed to ensure that the electricity was off in order for the work to be carried out safely, and pleaded guilty to breaching Regulation 14 of the Electricity at Work Regulations 1989, received a much larger fine of over £3 million.



Product Safety Database report 2023-2024 published – The Product Safety Database, introduced in 2019, helps the Office for Product Safety and Standards (OPSS) understand what products present a risk to health and safety across the UK. The database also helps to understand new emerging product safety issues, guiding regulatory safeguards and consumer protection. The OPSS administers the database and releases an annual report on it, and has just published the [2023-24 annual report](#).

The latest OPSS report recorded 2,258 notifications, involving 2,772 products, with 30% of these products deemed to present a serious risk, and 7% identified as high risk. Electrical appliances and equipment accounted for the largest share of notifications, followed by cosmetics and toys. The most reported hazards were chemical risks, electrical shocks, and injuries. In terms of corrective actions (see [data tables provided](#)), over 36% of cases involved rejecting imports at the border, 18.6% of cases involved removing product listings from online marketplaces, and 14.4% of cases led to the destruction or recall of products.

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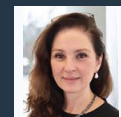
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