

frESH Law Horizons: Key Developments in UK and EU Environment, Safety and Health Law and Procedure

April 2018



Civil engineering and heating firms fined total of £2 million following conviction. The Health and Safety Executive (HSE) has [reported](#) on Sheffield Crown Court fines following the death of a worker who suffered fatal crush injuries. The companies were fined £1 million each after being found guilty of breaching Section 3(1) of the Health and Safety at Work etc. Act 1974. The case highlights the continuing trend of fines over the £1 million mark for health and safety offences becoming commonplace.

Surveyor fined following failure to detect asbestos. The HSE has also [reported](#) that EAS Asbestos Limited (a specialist asbestos company) were commissioned to conduct refurbishment and demolition surveys by a construction company who were contracted to demolish garages for Hyndburn Homes. EAS Asbestos stated in their surveys that asbestos was only present in the cement roof sheets, there were no areas that could not be accessed, and that there was no asbestos insulation board present in the garages. The HSE investigation found that the survey was incorrect and misleading. This case demonstrates that liability for asbestos-related safety issues extends beyond the construction company.

Consultation on Proposal to Allow Pet Food Production in Food Establishments. The Food Standards Agency (FSA) has launched a [consultation](#), seeking views on proposals to allow, under certain criteria to ensure strict separation, the commercial production of pet food from animal by-products (ABPs) in businesses also producing food for human consumption. The FSA view is that such production is permitted, given that Regulation (EC) No. 142/2011, containing implementing measures for Regulation (EC) No 1069/2009 on ABPs prescribes conditions of strict separation designed for processing plants located on the same site as slaughterhouses, or other establishments approved or registered under EU regulations governing hygiene. The consultation closes on 30 May.

Fine reduced by Court of Appeal from £475,000 to £200,000 to reflect agreement between parties. In [R. \(on the application of Health and Safety Executive\) v ATE Truck & Trailer Sales Ltd \[2018\] EWCA Crim 752](#) the Court of Appeal held that the sentencing judge had had no sufficient justification for departing from the parties' agreement following a company's guilty plea to an offence under the Management of Health and Safety at Work Regulations 1999. This is one of a number of reported appeals against fine levels over recent months. It seems such appeals are becoming more common against a background of higher fines resulting from the application of sentencing guidelines.

Opera House liable to viola player in orchestra after he suffered acoustic shock due to noise levels during a rehearsal. In [Goldscheider v Royal Opera House Covent Garden Foundation](#), the court found that the Opera House had breached duties under the Control of Noise at Work Regulations 2005. It had failed to carry out an adequate risk assessment, failed to do everything reasonably practicable to eliminate the risk of noise exposure, failed to designate its orchestra pit as a mandatory hearing protection zone, and failed to train orchestra members about the risks. The court considered causation and found a clear link between the breaches of duty and the claimant's damaged hearing. On the issue of causation, there was a clear causal connection link between the breaches of duty and the claimant's damaged hearing and the acoustic shock suffered by him was consistent with the evidence and attributable to those breaches of duty.





Company and two of its managers prosecuted for using forged documents to obtain asbestos licence from the HSE. The company was employed to remove asbestos from a major city centre redevelopment, but it later transpired it had used faked medical and training certificates. The case was reported by [local press](#), as well as by the [HSE](#).

Breach of body piercing licence as to age held to be strict liability offence. The High court has decided ([London Borough of Hounslow v Aslim \[2018\]](#)) that whether or not the defendant took reasonable steps to establish the age of a customer was irrelevant when considering whether or not he was guilty and in breach of a licence he held to provide body piercing services (contrary to section 14(2) of the London Local Authorities Act 1991).

Logistics company fined £373,000 following conviction for health and safety breach. The HSE has [reported](#) that, on 29 March 2018, the company pleaded guilty to breaching section 3(1) of the Health and Safety at Work etc. Act 1974 and was fined £373,000 at Southend Magistrates' Court. The case involved an agency worker unchaining a vehicle ramp from a delivery lorry. The HSE investigation found that the company had failed to fully control the risks. With the HSE commenting that the company failed to appropriately brief visiting drivers, the case is a reminder that non-permanent workers must be considered when assessing and controlling risks.

New Proceeds of Crime Act 2002 (POCA) Codes of Practice in force from 16 April 2018. As a result of amendments to POCA under the Criminal Finances Act 2017, the Home Office has published two new codes of practice: the revised [Code of Practice for the Exercise of Search Powers to Recover Cash](#); and the new [Code of Practice for Recovery of Listed Assets](#).

£40,000 fine after two employees injured in fire at adhesive manufacturer. The fire stopped production at the site for five months. The HSE [report](#) notes that enforcement action had been taken prior to the incident, amid concerns with poor conditions in the handling, storage and management of risks from flammable liquids.

The new European acrylamide legislation came into effect on 11 April 2018. The rules under the [regulation](#) require food manufacturers to identify sources of acrylamide and put in place steps to manage it within their food safety management systems. Acrylamide is a carcinogen and typically forms when foods such as potatoes, other root vegetables and bread are fried, roasted or baked at high temperatures. [Trade press reports](#) have raised concerns at the EU failure to provide guidance to date. However, the FSA does make information available [online](#).

Derby Crown Court fines Severn Trent Water £350,000 after hazardous chemical leak from treatment works. [Trade press reports](#) indicate that it was also ordered to pay almost £70,000 to the Environment Agency in costs. An estimated 30,000 dead fish and 5 kilometres of damaged ecology in the River Amber led to proceedings.





EU Regulation on criteria for endocrine disruptors under pesticides regime published and

coming into force on 10 May 2018. It sets criteria under the Plant Protection Products Regulation (EC) 1107/2009 (which prohibits pesticides that contain substances of very high concern, including endocrine disruptors being placed on the market). The development of the criteria has faced controversy. The European Parliament rejected an earlier version of the draft Regulation, in October 2017.

European Parliament adopts four proposals of circular economy package.

The proposals adopted relate to amendments on European Directives on end-of life vehicles, batteries and accumulators and waste batteries and accumulators and waste electrical and electronic equipment; packaging and packaging waste; waste; and landfill of waste.

New measures to ensure lower emission lorries will pay less to use UK roads.

As part of plans to improve air quality across the UK, the government has [announced new measures](#) to change the rates paid by hauliers of "less polluting lorries". From February 2019, lorries meeting the latest Euro VI emissions standards will be eligible for a 10% reduction in the cost of the heavy goods vehicle (HGV) levy, and the lorries that fail to meet the standards will be expected to pay 20% more. Anyone running HGVs should be aware of these measures and consider them when changing vehicles/adding to the fleet.

VW to face spotlight as group action gets green light.

A vast [group action case](#) pitting more than 50,000 UK car owners against Volkswagen (VW) will likely go to trial early next year following a complex three-day hearing last week. Last week, consumer rights firms were at the High Court where they successfully applied for a group litigation order (GLO) allowing affected car owners to have their claims managed together rather than every car owner having to sue VW individually. This is one of very few mass GLOs to be granted in the UK courts and it will be interesting to see how this moves forward.

Commonwealth bins single use plastic.

Countries across the Commonwealth have [united to eliminate avoidable single use plastic](#) in an "ambitious" bid to clean up the world's oceans. It has been announced that New Zealand, Sri Lanka and Ghana have joined the UK and Vanuatu-led Commonwealth Clean Oceans Alliance (CCOA) – an agreement between member states to join forces in the fight against plastic pollution. The Prime Minister has also announced a £61.4 million package of funding to boost global research and help countries across the Commonwealth stop plastic waste from entering the oceans in the first place.

The Department for Environment, Food and Rural Affairs (Defra) has announced a deposit return scheme for single-use drinks containers.

Its aim is to address the problem of landfill and littering of these containers. The [proposed scheme](#) will apply to metal, glass and plastic containers. Defra will consult on details of the scheme later in 2018, as part of a wider consultation on packaging waste and improving recycling. The Prime Minister has also [announced](#) that there will be a consultation later this year on the potential to ban plastic straws and cotton buds in England.

Open cast coal mine planning refused due to climate change impact.

Plans to extract coal from Druridge Bay in Northumberland [have been refused](#) by the government because of environmental, and specifically climate change, impacts. The applicant, Bank Mining, is understood to be reviewing the precise reasons for the Secretary of State's decision before deciding on the most appropriate next steps to take.



The Environment Agency has issued new forms and guidance for the waste, water and energy sectors in England. The [new forms](#) follow the strategic review of charges and the coming into effect of the new charging scheme on 1 April. If you are involved with permit or similar applications to the Environment Agency, you will need to be aware of the new forms, guidance and charges.

Defra has announced that the **Environment Agency “definition of waste panel” will reopen in June 2018**. After the [announcement](#), it published a [checklist](#) for those who wish to use the service. This is expected to be a welcome development and provide some much-needed certainty to questions around the definition of waste for certain materials.

EU will seek “non-regression” clause to tie UK to environmental standards. The EU’s chief negotiator, Michel Barnier, [has warned](#) that Brussels will not rely on Michael Gove’s pledges over the environment but instead insist on a “non-regression” clause in any future deal after Brexit to tie the UK to the bloc’s high standards. Barnier said he welcomed Defra’s 25-year plan published in January by Gove, under which the UK vowed to be a “global champion” of greener policies after 29 March 2019.

Defra has confirmed support for EU circular economy package in upcoming EU vote. The [government says it supports the package](#) because it wants the UK to be a world leader in resource efficiency and, in addition to backing this package, it will publish its own Resources and Waste Strategy in 2018, consistent with the EU package and in some respects going beyond it.

Environmental coalition warns time is running out for “green Brexit”. [Greener UK](#), a coalition of 13 environmental organisations, is tracking Brexit to make sure that environmental protections are not weakened or lost. It has published a call to action, urging the government to fulfil its “green Brexit” promises by bringing forward ambitious new legislation.

Industry reacts to ECHA proposal to list lead as a REACH substance of very high concern (SVHC). The proposal to place [lead on the Candidate List](#) was made by Sweden and published for consultation on 8 March by the European Chemicals Agency. If lead is classed as a SVHC and added to the Candidate List, it would lead to consideration of further risk management options, such as authorisation. The Lead Reach Consortium, which represents REACH registrants of lead, said that it agrees with the objective to reduce risks associated with lead exposure but questions the proportionality and regulatory effectiveness of REACH authorisation. If you are involved in the lead supply chain then you can get involved in the consultation through the ECHA website.

Nations meeting at the International Maritime Organization (IMO) have adopted an initial strategy on the reduction of greenhouse gas emissions from ships. It [sets out a vision](#) to reduce greenhouse gas (GHG) emissions from international shipping and phase them out, as soon as possible in this century. The initial strategy envisages, for the first time, a reduction in total GHG emissions from international shipping by at least 50% by 2050, compared to 2008. The initial strategy represents a framework for member states, setting out the future vision for international shipping, the levels of ambition to reduce GHG emissions and guiding principles. Those involved in shipping will need to keep track of the development of this strategy.





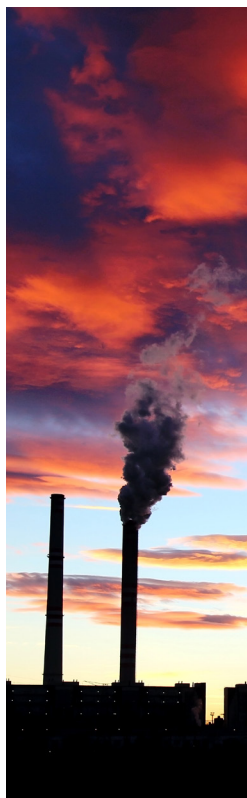
The Green Finance Taskforce published its first report on how the government can achieve the investment the UK needs to meet its carbon budget and related environmental goals. The [recommendations](#) are wide-ranging and include measures to strengthen the market for green mortgage products, clarification of environmental, social and governance aspects, a sovereign green bond and strengthening non-financial narrative reporting on climate change matters. This is likely to be of particular interest to those involved in financial services.

The European Commission has published new technical guidance on the classification of hazardous waste. The [guidance](#) relates to the waste framework directive and the list of wastes and provides guidance in particular on identifying hazardous properties, assessing waste for a hazardous property and determining if a waste is hazardous or not. The correct classification of waste has important consequences for how it can be managed, recycled, recovered or disposed of.

The European Parliament has approved the revised Energy Performance of Buildings Directive (EPDB). [The Directive](#) sets out a route to a low and zero-emissions EU building stock by 2050, underpinned by national roadmaps to decarbonise buildings. It also encourages the use of smart technologies to ensure buildings operate efficiently. This is the first to be finalised of eight pieces of proposed legislation in the “Clean Energy for All Europeans” package. The updated EPDB now needs to be agreed by the Council of Ministers.

The government will introduce civil sanction powers for breaches of offshore oil and gas environmental regulations. It [confirmed](#) this in response to the recent consultation. Previously the only sanctions were criminal prosecution. Draft Offshore Environmental Civil Sanctions Regulations 2018 will give the Offshore Petroleum Regulator for Environment and Decommissioning powers to impose civil penalties, and will come into force on 1 October 2018. Anyone dealing with offshore operations should note this development.

Government consults on changes to exclusions and exemptions for flood risk activities. The [proposed amendments](#) are to clarify definitions and cut the conditions that apply to exemptions and exclusions for low risk activities involving work in or around main rivers and sea defences. The consultation closes on 20 June 2018.



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