

# frESH Law Horizons – Key Developments in UK and EU Environment, Safety and Health Law, Procedure and Policy

February 2019



**Contractor fined £600,000 in Scotland for serious breach of the Construction (Design and Management) Regulations 2015** – The Health and Safety Executive (HSE) [press release](#) comments that the principal contractor had failed to organise a construction site so that pedestrians were not working on or near traffic routes whilst vehicles were in operation. This led to the death of a labourer on 5 December 2016, who was run over by a dumper truck, driven by an employee of another company. The HSE website includes [“a guide to workplace transport safety”](#), which is a guide for employers on complying with laws on transport at work.

**Food company fined £274,000 for thumb and finger injuries after two incidents of workers being trapped in machinery** – A HSE [press release](#) reported that in the first incident, the company failed to ensure that measures were in place to mitigate the consequences of a worker becoming trapped in a shackle; and in the second, the company failed to ensure safe isolation procedures were followed. The company pleaded guilty to breaching the Provision and Use of Works Equipment Regulations 1998 (a £200,000 fine) and the Health and Safety at Work Act etc. 1974 (a £74,000 fine) and was also ordered to pay costs totalling over £8,000. The HSE publication, [“a recipe for safety”](#), provides guidance and practical advice on managing the most common hazards in the food and drink industries.

**Two construction companies fined total of over £860,000, after a worker fell to his death** – The HSE [press release](#) comments the worker had been working on a temporary platform, which collapsed under him. He died from the injuries he suffered from the fall. Oliver Connell and Son Ltd plead guilty to breaching the Work at Height Regulations 2005 and was fined £360,000. The company had failed to ensure that work at height was properly planned, supervised appropriately and carried out in a safe and practicable manner. Rydon Construction Ltd pleaded guilty to breaching the Construction (Design and Management) Regulations 2015 for failing to ensure that work on the temporary platform was properly planned and monitored and was fined £500,000. HSE inspector comments after the hearing underlined the importance of managing risks associated with temporary works.

**Electrician successful in asbestos compensation claim against previous employer** – The claimant had worked for Vauxhall Motors’ truck division, during which time he had come into contact with asbestos. Solicitors for the family told [BBC News](#) that his wife had been diagnosed with mesothelioma, a lung cancer caused by exposure to asbestos and had died prior to the hearing. The High Court accepted the claim that work clothes had been contaminated with significant quantities of poisonous dust and that his wife had been exposed to asbestos when washing these clothes. The Control of Asbestos Regulations 2012 provide minimum standards for protecting employees from risks associated with exposure to asbestos and place a specific duty to manage asbestos on the owners and/or those responsible for maintenance in non-domestic premises. The [HSE Approved Code of Practice on Managing and Working with Asbestos](#) provides practical advice on how to comply with those requirements.



**Commercial vehicle repair firm fined and custodial sentence for managing director after engineer crushed to death** – The employee was working underneath a bus, carrying out work on the rear brakes. The bus fell from the two bottle jacks it had been raised on onto the engineer killing him instantly. The HSE [press release](#) states that its investigation found that the company “failed to plan and organise the lifting of the bus in a manner that ensured the safety of their workers” and that the two jacks used to support the bus were inadequate. The company was fined £50,000 and ordered to pay costs of £22,282.54 for breaching Section 2(1) of the Health and Safety at Work, etc., Act 1974. The director also pleaded guilty and received a six-month custodial sentence suspended for 18 months. The case highlights the importance of ensuring that a safe system of work is put in place and adhered to and the possibility of custodial sentences for directors for breach of health and safety laws.

**Channel 4 not entitled to a costs order in respect of its resistance to the making of a production order sought by Metropolitan Police (Met)** – The Met applied for a production order for a documentary produced by Channel 4, which contained footage of an individual charged with terrorist offences. The production order had been dismissed because the Crown had decided there was no realistic prospect of a conviction and so had not put forward any evidence. Channel 4 sought a costs order for the successful opposition of the production order application. The Crown Court dismissed the application on two separate grounds. Firstly, the Terrorism Act did not provide any jurisdiction for making a costs order in relation to successfully opposing a production order application. Secondly, the Prosecution of Offences Act 1985 could not be understood to confer a general discretion to make a costs order in favour of a person not a party to criminal proceedings, such as making a costs order in favour of a party that had successfully opposed an application for production order.

**Government consultation on National Air Pollution Control Programme** was issued on 14 February by Defra and the devolved administrations. It sets out proposals for a draft National Air Pollution Control Programme (NAPCP), which is required under the National Emissions Ceilings Directive 2016 and provides limits for NOx, ammonia non-methane volatile organic compounds, fine particulate matter and sulphur dioxide. It closes on 14 March 2019 and will be of interest to those following the government Clean Air Strategy.

**Government launches four consultations on waste and resources:** (1) The [Consultation on consistency in household and business recycling collections in England](#) looks to standardise and streamline household recycling collections with the intention of improving recycling rates; (2) The [Consultation on introducing a Deposit Return Scheme in England, Wales and Northern Ireland](#) proposes a 15p fee, which customers could claim back if they returned their drinks containers; (3) The [Consultation on Reforming the UK Packaging Producer Responsibility System](#) aims to make producers pay more of the cost of dealing with packaging and incentivise smarter/less use; (4) The [Plastic packaging tax: consultation](#) sets out plans for the tax announced in the last budget, on plastics with less than 30% recycled content. All the consultations close on 13 May except the plastic tax, which is 12 May.

**Millmore v Environment Agency considered what amounts to obstruction of the Environment Agency** (EA) under Environment Act 1995 (EA 1995). Five employees of Southern Water appealed to the High Court to have their convictions under [section 110\(1\) EA 1995](#) quashed. [Section 108 EA 1995](#) gives an authorised person specific investigative powers. The EA officers claimed the appellants had refused to cooperate and had intentionally frustrated the inspection of the appellant’s premises. The High Court allowed the appeals in part (two of five convictions were quashed). It was held that for an omission to act to be obstruction, the individual must be under a duty to act. In this case, the appellants had not actively obstructed the officers, as they had been under no duty to carry out a specific act. However, the High Court made it clear that no consent was required under section 108 EA 1995, as the purpose of the section was to authorise officers to perform their investigative duties without consent. This case clarifies the important distinction between the types of behaviour that do/do not amount to obstruction for the purposes of the EA 1995.



**Court of Appeal clarifies the distinction between the “storage” and “treatment” of sludge for the purposes of environmental permitting exemptions** – There is a permitting exemption for the storage of residual agricultural sludge pending agricultural use. The Court of Appeal in [R \(on the application of Cleansing Service Group Ltd\) v Environment Agency](#) refused the appellant’s application for judicial review and clarified that “storage” under the relevant exemption meant “storage”, and that by screening sludge to remove debris, the appellants were clearly carrying out “treatment”. Therefore, the screening activity was not covered by the exemption and did require a permit.

**ECHA has published guidance on EU REACH regulation if there is no-deal Brexit**, which includes more detail on how UK companies can transfer REACH registrations to EU27 companies in order to retain EU market access, and confirms that ECHA would open a “Brexit window” in REACH-IT from 12 to 29 March 2019 to enable UK companies to transfer registrations. ECHA has also issued [How to transfer your UK REACH registrations prior to the UK withdrawal from the EU](#) which provides instructions for using the “Brexit window”.

**BEIS published updated Environmental Reporting Guidelines**, including guidance on streamlined energy and carbon reporting for businesses under the Companies (Directors’ Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations. Additional reporting on greenhouse gas emissions, energy consumption and energy efficiency action will be required in financial years starting on or after 1 April 2019 by quoted companies, large unquoted companies and large LLPs. Companies who are or are unsure if they are affected by these new requirements should consult the guidance which covers which organisations are in scope and what they need to report.

**WEEE compliance scheme fraudster required to repay £1,373,060 proceeds of crime** or serve a further eight years in prison. In 2016, Terence Dugbo was convicted of conspiracy to defraud WEEE compliance schemes and is currently serving seven and a half years in prison (the longest sentence for environmental crime ever secured by the EA). The EA took follow-up action under the Proceeds of Crime Act. Leeds Crown Court concluded that only 10% of the company’s activities were genuine. This case demonstrates some of the different types of enforcement powers available to the EA and the very significant sums that can be involved in waste crime.

**35 MPs call for a complete ban on the export of the UK’s plastic waste to developing countries.** Their motion underlines the fact that many countries receiving imports of plastic waste have inadequate waste management systems, meaning that waste could end up being landfilled, burned or leaking into the environment. In July 2018, a [report](#) from the UK National Audit Office (NAO) highlighted that risk.

**EU co-legislators agree on new regulation of persistent organic pollutants (POPs).** It aligns the existing regulation with the latest amendments to the UN Stockholm Convention and more closely with the general EU chemicals legislation. The flame retardant decaBDE is added to the list of substances and the unintentional trace contaminant value (UTC) is set at 10mg/kg for cases where decaBDE is present in substances. In addition, the UTC value is set at 500mg/kg for the sum of all BDEs, including decaBDE, where they are present in mixtures and articles, with a two-year review clause. Specific exemptions concerning the use of decaBDE are introduced for aircrafts, motor vehicles and electronic equipment, an in case of imports. The compromise text (not yet officially published) would normally go through the formal approval and adoption process in the Parliament and Council without substantive changes. However, COREPER 1, the body of Deputy Permanent Representatives of the member states, has reportedly postponed a vote to endorse it, as several countries are unhappy with the agreement, and the current Romanian Council Presidency is working behind the scenes with Parliament to change the deal.



**ECHA publishes inventory of plastic additives.** It is the result of a two-year project in cooperation with 21 industry sectors, including [Cefic](#), PlasticsEurope and European Plastics Converters (EuPC), academics and member state representatives to screen some 1,000 substances. The [inventory](#) focuses on substances registered under REACH in the >100 tonnes band. It identifies 419 high volume substances used as additives in plastics and categorises them by function (e.g. light stabilisers, plasticisers, antioxidants, flame retardants, etc.). ECHA [said](#) that it and member states will rely on the use and release information together with information on hazard potential in the prioritisation of groups of substances for in-depth assessment under REACH. The project also aims to assist industry in identifying what use and exposure information is relevant to determine safe use for substances in articles and hence trigger a need for updating their registration dossiers.

**OECD considers criteria for sustainable plastics from a chemicals perspective.** In January, the OECD published a [report](#) recommending the development of “a global manufacturing restricted substances list (MRSL) for plastics”. The list would be aimed primarily at plastics designers and expected to “support quality and consistency in recycling”. The OECD does not offer suggestions on who could lead on the development of the list.

**NGOs call on European Commission to urgently present a non-toxic environment strategy (NTE).** EDC-Free Europe and the Green 10, a coalition of 10 of the largest EU environmental NGOs sent a [letter](#) to the Secretary General of the Commission, underlining that the [7th Environment Action Programme](#) (EAP) called for the development of such a strategy by 2018 and the European Commission had not respected this deadline. According to multiple reports, the current Commission, which will be in office until autumn, will not come forward with a NTE strategy (please see frESH Law Horizons January 2019).

**Court ruling on car emission limits appealed.** The European Commission, Germany and Hungary have lodged appeals (cases [C-177-179/19 P](#)) against a judgement of the EU General Court, which annulled parts of Commission Regulation 2016/646 amending Commission Regulation 692/2008, which in turn implements Regulation 715/2007 as regards emissions from passenger cars and light commercial vehicles (Euro 6). On application of Paris, Brussels and Madrid, the General Court had ruled in December that the Commission had exceeded its competence when recalculating nitrogen oxide limits for cars under the Euro 6 standard, in the context of the expansion of car emissions tests from laboratory to road tests, so-called RDE tests (joined cases [T-339/16](#) and T-352/16).

## Contacts



**Rob Elvin**  
Partner, Manchester  
T +44 161 830 5257  
E [rob.elvin@sqirepb.com](mailto:rob.elvin@sqirepb.com)



**David J. Gordon**  
Partner, Birmingham  
T +44 121 222 3204  
E [dave.gordon@sqirepb.com](mailto:dave.gordon@sqirepb.com)



**Ken Huestebeck**  
Associate, Brussels  
T +322 627 11 02  
E [ken.huestebeck@sqirepb.com](mailto:ken.huestebeck@sqirepb.com)



**Nicola A. Smith**  
Director, Birmingham  
T +44 121 222 3230  
E [nicola.smith@sqirepb.com](mailto:nicola.smith@sqirepb.com)



**Anita Lloyd**  
Director, Birmingham  
T +44 121 222 3504  
E [anita.lloyd@sqirepb.com](mailto:anita.lloyd@sqirepb.com)



**Gary Lewis**  
Director, Manchester  
T +44 161 830 5373  
E [gary.lewis@sqirepb.com](mailto:gary.lewis@sqirepb.com)