

frESH Law Horizons

July, August, and September 2023





Government publishes guidance on UK Sustainability Disclosure Standards. On 2 August 2023, the DBT released guidance outlining the framework for creating UK Sustainability Disclosure Standards. Key points include that the new UK standards will be based on the new IFRS Sustainability Disclosure Standards issued by the ISSB in June 2023 ([IFRS S1](#) and [IFRS S2](#)), and they should be in place by July 2024. Two committees, the UK Sustainability Disclosure Technical Advisory Committee (TAC) and the UK Sustainability Disclosure Policy and Implementation Committee (PIC), have been formed to support the assessment, endorsement, and implementation of these standards. On 19 July 2023, the Financial Reporting Council, acting as the Secretariat to the TAC, initiated a [call for evidence](#) to gather opinions regarding the potential endorsement of the ISSB standards, which remains open until 11 October 2023.

Publication of UK Single Use Plastics (SUP) Ban. The [Environmental Protection \(Plastic Plates etc and Polystyrene Containers etc\) \(England\) Regulations 2023](#) were published on 7 September and enter into force on 1 October 2023. The regulations ban the supply of the following single use plastic items: cutlery, balloon sticks, expanded and foamed extruded polystyrene (EPS/XPS) cups and food/drink containers, as well as plates, trays and bowls supplied to the end user (but not where those latter items are serving as 'packaging'). This means that the ban does not cover single-use plastic plates, trays, or bowls that are pre-filled with food before sale or filled with food at the counter of a takeaway. The ban provides for civil sanctions and monetary penalties in cases of non-compliance, and grants rights of entry and examination on those businesses accused of offending. Failure to pay civil sanctions can result in a criminal prosecution.

Farmer and haulier fined for tipping waste on farm in Plympton. A Devon farmer allowed waste over his permitted level (which was at 1000 tonnes maximum under the U1 exemption) to be deposited soil and stones. The defendant was fined £1,340 and ordered to pay £94,000 for the economic benefit he gained, plus costs totalling £6,380, after earlier pleading guilty to operating a waste facility without an environmental permit. The hauliers were also ordered to pay a fine of £6,667 after pleading guilty to depositing controlled waste. The company was also ordered to pay a total of £3,180 in costs and a further £11,109 for the economic benefit gained from the offending.

High Court decides that Local Authority can vary Statutory Nuisance Abatement Notice. In *R (Ball) v Hinckley and Bosworth BC [2023] EWHC 1922 (Admin) (1 August 2023)*, the High Court decided that a local authority has the power to subsequently vary an abatement notice for a statutory nuisance under s.80 of the Environmental Protection Act 1990 (as well as the power to withdraw the notice confirmed in previous case law). The notice had been issued in relation to a car and motor-cycle racing circuit and related to noise abatement.

Water company fined for taking too much water from the environment. United Utilities Water Limited ("UU") has been fined [£800,000](#) for abstracting 22 billion litres of water from an aquifer in Lancashire. An Environment Agency (EA) investigation found that UU had taken more water than allowed by 5 of its abstraction licences. This resulted in stress on the environment during a dry period of weather in 2018. Prosecutions relating to abstraction licenses breaches are rare, but the magnitude in this case may have been a driving factor and serves to remind companies of the potential consequences of over-abstraction.



Company director and manager plead guilty for waste offences. Samuel and Jacinta Hunter of Hunter Group (Yorkshire) Limited have [pleaded guilty](#) to waste offences and been given a 24 month and a 12 month custodial sentence, suspended for 2 years, and must also undertake 300 and 80 hours of unpaid work respectively. The defendants had kept an estimated 825 and 1,383 tonnes of waste that was deemed to pose a fire risk in a manner likely to cause pollution or harm to human health. The site was inspected by the EA in 2015 and 2016 and was found to be repeatedly in breach of its permit. Despite orders from the EA for the defendants to rectify this, the breach continued. The EA officer estimated the total cost to dispose of the waste to be between £98,880 and £165,912. A fire later broke out on site, and the local council paid £1,142,131 for clearance of the site. In sentencing, the judge was satisfied that both defendants had committed the offences deliberately with a “flagrant disregard for the law”, which he described as a financial decision. The ruling stresses the importance of taking action in the face of EA warnings.

United Nations’ (UN) “Zero Draft” text of Global Plastics Treaty published. The UN Intergovernmental Negotiating Committee on Plastic Pollution has published a 31-page [Zero draft version](#) of a proposed global plastics treaty. This is the draft that delegates will amend during the 3rd set of negotiations to create a UN Treaty to End Global Plastic Pollution, which will take place in Nairobi in November 2023 with a hope have a formal treaty in place by end of 2024. The draft, which is by no means in final form, states that nations should develop and implement national plans for contribution to the treaty, and make regular, public progress reports. The language calls for reductions in plastics production and for the phased-out elimination of certain polymers and chemicals of concern, which has been seen by commentators as positive steps. Some environmental groups, such as WWF, have raised concerns about the voluntary nature of some bans, which “miss the benefits of harmonized regulations and take us no further than the status quo in addressing the most problematic plastics at a global scale”.

Government issues consultation on regulations for extended producer responsibility (EPR) for packaging. On 25 July 2023, DEFRA [announced](#) that implementing EPR for packaging in the UK is being delayed from October 2024 to October 2025. This delay is to allow the Government another year to continue discussing the scheme’s design with industry and reduce the costs of implementation wherever possible. Packaging EPR aims to ensure producers pay the full net cost of managing their products at end of life to incentivise them to design their products with sustainability in mind. The Government recently introduced regulations to require producers to provide data, which will be used to calculate the fees that producers will be required to pay to cover the cost of managing packaging EPR from 2025. The deadlines for data submission have been deferred but the EA published a regulatory position statement ([RPS 288](#)) that notes the new deadlines for large producers and compliance schemes to submit the first and second reports containing the data (1 October 2023 and 1 April 2024), but these reports must be submitted on or before 31 May 2024. Reports must be submitted separately. This RPS expires on 30 June 2024 but those subject to packaging data requirements should look to submit data sooner than later and check for any applicable extensions. In the same month, DEFRA published a [consultation](#) (closes on 9 October 2023) on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024, which will implement EPR for packaging in the UK.



ClientEarth refused permission to proceed with Shell climate case. On 24 July 2023, the High Court confirmed that the environmental NGO, ClientEarth (**CE**), failed to present a sufficiently strong case to continue a derivative claim against Shell plc’s directors for alleged breaches of their duties, related to climate change risk management. This followed an earlier dismissal ‘on the papers’ in May 2023, and the latest decision was issued after an oral hearing in which CE requested the judge to reconsider. The court applied the test under section 263(2)(a) of the Companies Act 2006 and found that CE had failed to establish a prima facie case for granting permission to proceed. This judgment highlights the significant challenge for shareholders looking to bring derivative claims against a company and its directors. It emphasises the general nature of the directors’ duties to promote the success of the company, and that they have a wide discretion on commercial decision making. It also signals that climate risks do not have a greater status than other competing risks which directors must balance and manage. The Judge’s remarks on good faith are noteworthy, possibly cautioning activist shareholders trying to use derivative claims for pushing changes in company behaviour, especially on issues like climate change. CE has indicated that it is seeking permission to appeal the decision.

EA publishes 2022 environmental performance report citing “disappointing” performance of water companies. In July 2023, the EA issued its [annual reporting for 2022](#) environmental performance of the nine English water and sewerage companies. The EA’s concluding remark was that the report shows “minimal sector improvement in star ratings compared to 2021” and that the majority of water companies are not meeting basic environmental requirements. The document reports that, for 2022, 5 water companies were rated as requiring improvement (2 stars) in their environmental performance assessment (**EPA**), 3 water companies were rated as good (3 stars) and 1 water company achieved 4 stars. Noteworthy figures highlighted in the report include the number of serious pollution incidents (categories 1 and 2). Although this had reduced from 62 in the previous year to 44 in 2022, this was still ‘unacceptably high’, and the EA expected to see numbers trending towards zero. Conversely, the total number of pollution incidents from sewerage and water supply assets increased from 1,883 in 2021 to 2,026 in 2022. On the whole, self-reporting of pollution incidents by water companies increased to 82%, the best since the start of the EPA in 2011, however only 48% of serious incidents were self-reported. The publication of this report comes at a time of broader scrutiny of water companies, as has been covered in past editions of our newsletter (see [June 2023](#) for our comments on recent Advertising Standards Agency guidance and rulings on green claims).

Environmental collective claim issued against water company for allegedly underreporting polluting discharges and overcharging consumers. A collective environmental action on behalf of Severn Trent’s 8 million customers has been brought against the company. The UK’s biggest water companies may also face legal action in the coming months on a similar basis. The claim states that the company abused a dominant market position and is being brought by an environmental and water consultant, who stated: *“It appears that because of the serial and serious under-reporting at the heart of these claims, water companies have been avoiding being penalised by Ofwat. I believe this has resulted in consumers being unfairly overcharged for sewage services.”* These claims have the potential to be incredibly significant for the water companies. The law firm acting for the claimant has [stated](#) that the value of the claim against Severn Trent alone is estimated at over £330 million, if successful. The action is being made on an opt-out basis, so all customers are entitled to compensation unless they opt out. Trade body Water UK has commented that claims were ‘without merit’.



Office for Environmental Protection (OEP) issues notices of possible failures to regulators. On 12 September 2023, the OEP [announced](#) that it had issued information notices under section 33 Environment Act 2021 to the Water Services Regulation Authority (Ofwat), the EA and the Department for Environment Food and Rural Affairs (**DEFRA**) in relation to possible failures to comply with their legal duties in regulating combined sewer overflows in England. The OEP's investigation was launched after a complaint alleging failures to comply with legal duties relating to the monitoring and enforcement of water companies' management of sewage discharges. The aim of this OEP investigation is to create clarity as to the roles and responsibilities of the public authorities and see where any failure lies. To facilitate this, the OEP has issued information notices out to the authorities with a 2 month deadline to respond. The OEP's Chief Regulatory Officer, has said: *"As a result of our investigations so far, we think there may have been misinterpretations of some key points of law. The core of the issue is that where we interpret the law to mean that untreated sewage discharges should generally be allowed only in exceptional circumstances, such as during unusually heavy rainfall, it appears that the public authorities may have interpreted the law differently, permitting such discharges to occur more often."*

NGO's claim regarding storm overflows dismissed by UK court. The High Court refused an application for judicial review against DEFRA's storm overflows discharge reduction plan (**Plan**) brought by WildFish Conservation, the Marine Conservation Society, and others. The claim challenged the lawfulness of the Plan, which proposed several targets, including that a discharge may not have any local adverse environmental effect (to be met no later than 2035 or 2045 for sensitive areas and otherwise by 2050), a public health target for designated bathing waters to be met by 2035; and a backstop target for 2050 (by 2050, storm overflows will not be permitted to discharge above an average of 10 heavy rainfall events a year). The claimants argued that the Plan's timescales did not consider the Urban Waste Water Treatment Regulations 1994 and that the discharge of sewage into the waterways was unlawful, but the court rejected the application on all grounds.

Biodiversity Net Gain Guidance. On 27 July 2023, the government published long-awaited guidance linked to biodiversity net gain on the price of statutory credits and the process for registration of a "responsible body". This article summarises the details proposed and considers some of the practical points arising from this next phase of guidance in anticipation of the mandatory implementation of biodiversity net gain in November. For a fuller update on this topic, please see our separate here: [UK Biodiversity Net Gain Update](#). On 27 September, it was [reported](#) that the implementation of BNG is being delayed (later clarified by government as being delayed until January 2024).

Removing cap on environmental civil penalties: DEFRA issues response to consultation. DEFRA has published a response to its [consultation](#) confirming that the £250,000 cap on variable monetary penalties (**VMPs**) would be removed, and that the EA and Natural England can issue VMPs for unlimited amounts. In parallel, the Government proposed introducing VMPs as a civil sanction option under the Environmental Permitting regime, which currently only allows enforcement undertakings or issue enforcement, suspension, revocation, and remediation notices instead of prosecution. This requires an amendment to the Environmental Permitting (England and Wales) Regulations 2016. The Environmental Permitting (England and Wales) (Amendment) (England) (No 2) Regulations 2023 set out the changes proposed for VMPs. The changes will apply in England only, to operators who commit offences after the changes come into force in December 2023.

DEFRA has not yet updated its enforcement guidance to reflect the removal of the cap, but we expect more detail on how VMPs will operate alongside existing options and how the amount of any penalty will be calculated will follow. VMPs will not be imposed under the amended legislation until their guidance has been updated. The EA has already issued its [consultation](#) on an updated enforcements and sanctions policy, to reflect these changes, which closes on 8 October 2023.



Nutrient Neutrality Update – House of Lords rejects Government’s amendment. The House of Lords has [voted against](#) the Government’s [proposed amendment](#) to the Levelling-up and Regeneration Bill 2022-23 (**LRB**) on nutrient neutrality requirements to be met by new housing developments. This proposal would effectively have disappplied previous EU laws that required housing developers, in areas facing nutrient pollution, to fund measures designed to ensure they have no negative impact on water quality. The amendment will remove the Habitats Regulations requirements on Natural England to issue guidance to local planning authorities on the nutrient neutrality to be achieved by new housing developments. Government [claimed](#) this amendment would allow the delivery of 100,000 new homes by 2030, however peers voted (203 votes to 156) to reject it with the argument that this is ‘regression’ in environmental policies. Given the stage of the Bill, the Government will not be able to reintroduce the amendments in the House of Commons now that it has been defeated in the House of Lords. The outcome is still to be determined, though the prospect of a clarified answer for developers is slim.

LRB proposed amendments relating to London air quality charging scheme. On 25 August 2023, additional House of Lords’ [amendments](#) to the LRB were published, focusing on road user charging schemes in London. The proposed new clause would enable London borough councils that meet air quality standards under the Environment Act 1995 or have approved plans for it, to opt out of Transport for London’s road user charging schemes for air quality improvement (known as the ULEZ). On 27 August 2023, the Secretary of State for Transport confirmed government support for this amendment. The bill is currently in the report stage in the House of Lords. For more details, refer to the [UK Parliament’s Levelling-up and Regeneration Bill news](#).

New reporting guidance issued for electrical and electronic equipment (EEE) producers. This government guidance document outlines reporting requirements for producers of EEE in the UK. It covers what ‘place on the market’ means; how to record and report your data; when you can deduct exported EEE from placed on the market data, and how to contact the regulator. These are not new obligations, but the new guidance is intended to clarify various aspects of these producer obligations.

DEFRA responds to POPs proposal consultation. DEFRA issued a [call for comments](#) in March 2023 requesting comments on draft risk profile and risk management evaluations for 3 chemical substances proposed as persistent organic pollutants (POPs) under the United Nation’s Stockholm Convention. POPs proposals are sent to and reviewed by the Convention’s POPs Review Committee (POPRC). The relevant substances are chlorpyrifos, chlorinated paraffins with carbon chain lengths in the range C14 to17 and with chlorination levels at or exceeding 45 percent chlorine by weight, known as medium-chain chlorinated paraffins (MCCPs); and long-chain perfluorocarboxylic acids, their salts, and related compounds (LC-PFCAs). Responses were used to inform the UK’s submission as part of the information gathering and rounds of commenting on draft documents between meetings of the POPRC. Later drafts of these documents will be considered at the next POPRC meeting in October 2023 as part of the process towards adding these substances to the Convention (which means they would effectively become banned).

EA issues a regulatory position statement (RPS 283) on waste take-back collection points. Businesses are increasingly getting involved in waste take-back schemes, which involve collecting, moving, and storing wastes, and which are regulated by environmental permitting and waste management legislation. There is an existing exemption (NWF4) for temporary storage of waste at a collection point, but waste would normally still need to be accompanied by a waste transfer or consignment note, and this can be an obstacle to the success of such schemes. This RSP clarifies that transfer and acceptance of such waste can be completed without the transfer/consignment note if it meets the other requirements of the RPS.



Taskforce on Nature-related Financial Disclosures (TNFD) publishes final version of recommended disclosures, and additional [guidance](#) documents The TNFD is a framework for nature-related disclosures, based on the same structure as the Taskforce for Climate-related Financial Disclosures (TCFD) which is well established. The four recommendation pillars are governance, strategy, risk and impact management, and metrics and targets. TNFD will track voluntary market adoption on an annual basis through an annual report which will begin in 2024. There have been concerns amongst some NGOs that TNFD has failed to respond to evidence and specific concerns that its framework will facilitate corporate greenwashing. GlaxoSmithKline plc (GSK) has been the first company formally to commit to publishing TNFD disclosures from 2026, based on 2025 data. The TNFD is inviting early adopters to signal their intention to adopt the recommended disclosures for an announcement in January 2024.

A new edition of SPB's Sustainability Outlook newsletter will be published shortly, with updates on a range of EU environmental and regulatory developments. While you wait for further EU updates, you may be interested in these recent insights from our Public Policy team: [Revision of the Waste Framework Directive – New Obligations for the Textile Industry](#); [Fuel EU Maritime Regulation](#); [End-of-Life Vehicles: The New Proposed EU Rules To Make the Automotive Sector Circular](#); [New EU Legislative Proposal on ESG Ratings](#).

Environmental, Social and Governance Newsletter. In July 2023, we published the latest edition of our [ESG Newsletter](#). In this edition, we focus on product lifecycle regulation, the growing field of the EU's ESG regulations, and green leases.

The post-Brexit Border Target Operating Model (BTOM) in Great Britain (GB). The 'final' BTOM was [published](#) at the end of August (the 'draft' having been published earlier this year). The BTOM relates to border controls (namely sanitary and phytosanitary measures) for the import into GB of products of animal origin and plant products (as well as live animals and plants). It will be particularly relevant to food business operators importing such products from the EU, which were not previously subject to controls (pre-Brexit). Certain composite food products (i.e. products which are not themselves animals or products of animal origin, but which contain them) are low risk under the BTOM but will still require pre-notification data. Some other products will require export health certificates and full pre-notification and may be subject to physical checks at the border.

Government backs away from mandatory food waste reporting and faces legal challenge. Alongside an [update to its Waste prevention programme for England: Maximising Resources, Minimising Waste](#), the government [responded](#) to its 2022 consultation on food waste reporting. The government has decided not to make such reporting mandatory (as was proposed in 2022) but will instead look at various options to improve the number of food businesses reporting on a voluntary basis, until at least 2026. The government considers that a regulatory approach is not currently suitable, considering additional costs that would be passed to consumers, and despite 80% of consultation responses supporting mandatory reporting. Feedback, a campaign group, has [launched a legal challenge](#) against that decision on the grounds that the government's decision is not based on a reasonable or rational view of the evidence it received, is based on an inadequate impact assessment, ignores advice from the Climate Change Committee, and does not take into account the carbon emissions savings that would result from mandatory food waste reporting.



Food NGO seeks permission for judicial review of UK free trade agreement with Australia on climate grounds.

On 7 July 2023, Feedback (a food and environmental NGO) announced its application for permission to seek a judicial review of the UK's free trade agreement with Australia, specifically concerning the trade of beef and dairy products. Feedback's challenge asserts that the UK government's impact assessment of the agreement did not adequately evaluate the carbon intensities of beef produced in the UK and Australia. The government cited inconclusive and variable evidence in its assessment, but Feedback contends that there is consistent proof that Australian beef has a significantly higher carbon intensity compared to UK-produced beef. Feedback argues that the UK government has violated its obligations to consider climate change, biodiversity, and emissions reduction when forming trade policies, in accordance with international agreements such as the UNFCCC and Paris Agreement. Additionally, Feedback seeks cost protection under the Aarhus Convention, but the government disagrees with this request.

Publication of new Food and Drink Federation (FDF) Guidance on Allergen Change Management and Food Standards Agency (FSA) Publishes Updates to Best Practice Guidance on Food Allergen Labelling.

On 4 September 2023, the FDF published a [new guidance document](#) on change management of allergen information, which has been welcomed by the Chair of the FSA (and is therefore likely to be persuasive to enforcement authorities considering whether precautions taken by businesses to ensure food safety in relation to allergens, are reasonable). The guidance includes separate recommendations for the intentional and the unintentional presence of allergens, including guidance relating to the addition or removal of allergens intentionally and the addition or removal of precautionary allergen labelling (PAL) otherwise known as "may contain" labelling. On the same day, and in support of the FDF's guidance, the FSA published an best practice update to its technical guidance on food allergen information labelling and information requirements, following a consultation which closed in May. The update includes [best practices around PAL statements](#); and guidance on statements regarding "No Gluten Containing Ingredients" in non-prepacked food (confirming that only the terms "gluten free" or "low gluten" should be used, indicating that other terms can be confusing).

Windsor Framework Agreement – Deadline for Northern Ireland Retail Movement Scheme Registration.

At the end of July, the UK Government issued [new guidance](#) on how the Windsor Framework will work in practice. From October 2023, a broad range of products moving from GB to Northern Ireland (NI) (and that are intended for "final consumption" in NI) will be processed through a "green lane" and be subject to fewer checks and controls. While this will ultimately facilitate movements of various products, there are implications for businesses in the short term, including general labelling requirements for boxes or crates of agrifood products being moved to NI, as well as requirements for labelling of individual products for some product-types. This new arrangement will replace the Scheme for Temporary Agrifood Movements into Northern Ireland (STAMNI). For further details, please see our [article](#).



Office for Product Safety and Standards (OPSS) consulting on general review of product safety laws in the UK. The [press release](#) from the government, indicates that there is a focus on: the better regulation of modern technology such as connected devices (like smart watches and speakers) and artificial technology; and the introduction of e-labelling (with a stated intention to go 'further and farther' than the EU with its e-labelling proposals). The [consultation](#) closes on 24 October and responses can be submitted [online](#). The questions appear generally to be fairly broad and high-level, centred around principles such as examining options for a "simpler and fairer system" that "reduces compliance costs for lower-risk products", and establishing "a derogation process, enabling businesses to apply for temporary regulatory easements to speed up supply of essential products in emergencies", as opposed to detailed and specific proposals for how the existing scope and arrangements under the General Product Safety Regulations 2005, should change. It is interesting, though, that there is a stated intention to diverge from what the EU will require, and a focus on "allowing businesses to innovate and take advantage of new technologies," which arguably is only possible because of Brexit. It is also interesting that one of the specific proposals is to remove the requirement for conformity marking and manufacturers' details to be provided physically on products – it seems that the government intends to give businesses the option to supply this information on the screen of a device instead where a device has an integrated screens or is a product designed for use with a screen (as well as not having to provide a physical label).

Government announces indefinite extension to use of CE marks on many products. The UK government has announced an indefinite extension for the use of CE marking in GB for all 19 products which fall under the Department for Business and Trade (DBT). There are different rules for [medical devices](#), [construction products](#), [cableways](#), [transportable pressure equipment](#), unmanned aircraft systems, [rail products](#), [marine equipment](#) and eco-design. The relevant government departments covering these products will make separate announcements in due course. CE marking was set to be replaced by the UK Conformity Assessment (UKCA) mark, with the phase-in date being postponed several times since the UK left the EU. This extension aims to reduce burdens and regulatory uncertainty for businesses, many of which called for more time to adapt to the change. CE marking will continue to be recognised for goods in the UK. However, the UKCA mark remains necessary for products intended for the UK market that have been assessed by a UK-based certification body, and CE marking (and assessment by an EU notified body where applicable) is still required for goods going to the EU market.

Consultation on Fire Safety of Domestic Upholstered Furniture. OPSS has also opened a [consultation](#) into its proposed new approach regarding matters currently governed by the Furniture and Furnishings (Fire) (Safety) Regulations 1988. The proposals are intended to apply to the whole of the UK and to start to apply from October 2024, with an 18-month transitional period to allow products compliant with the existing regime to continue to be placed on the market. With some specific exceptions, the scope will include supplies of new and second-hand upholstered furniture and upholstery and will include items such as mattresses (newly within scope above a certain size), sofas and cushions and pet beds above a certain size. It is proposed that there should be new duties for various operators in the supply chain (including manufacturers, importers, and distributors/ further suppliers) focused on essential safety requirements and conformity assessment, plus labelling requirements. The consultation document is seeking views on the removal of baby and children's products from scope because in normal use they do not pose the same risks as domestic upholstered furniture (e.g., car seats, prams, and pushchairs) but not explicitly listing them as excluded, because they don't meet the proposed definition of upholstered furniture (and therefore, this of itself, would mean they are out of scope). Of course, furniture and furnishings rarely have a short shelf-life, so this transitional period does not appear to be particularly generous. Responses to the consultation, closes on 24 October 2023, can be submitted [online](#).



Building Safety Regulator announces first step towards regulating the building control profession. The Building Safety Competence Foundation and the Chartered Association of Building Engineers (CABE) is the first organisation to become an independent competence assessor for all building control surveyors in England. The competence assessment is part of the pathway for building control professionals to become registered building inspectors. More than 4,500 practicing building control professionals will need to be assessed and certified by April 2024. They will no longer be able to work in Building Control across the whole built environment in England without certification. Registration is required by the Building Safety Act 2022. The register will open in October 2023, with registration mandatory from April 2024, when Building Control will officially become a regulated profession. From that date (April 2024), individual building control professionals, working for both the private sector and local authorities, will need to have passed an independent competence assessment to operate, and they will be required to be registered on the Building Safety Regulator's register of building inspectors. BSR will provide a programme of support and guidance ahead of registration to help individuals and employers understand what they need to do to meet the requirements, as well as how to register.

Consultation launched on proposed changes to Cost Recovery. The Health and Safety Executive (HSE) has been seeking views on proposed changes to Cost Recovery. The HSE has reviewed the scope of its regulatory activity and identified where current cost recovery mechanisms do not recover the full cost of the regulatory activity. The main proposal is that HSE recovers the full cost of all its regulatory activities in the following three sectors: Oil, Gas and Chemicals Pipeline Systems; Onshore Oil, Gas and Geothermal Exploration and Production; Wind and Marine Energy (Renewables). The consultation sets out the activities for which HSE proposes to introduce new cost recovery regimes, some simplifications to existing regimes and changes to cost recovery rates to ensure full cost recovery. This proposal focuses on high hazard activities and emerging technologies with strategic national importance. The implementation of these cost recovery proposals will not change HSE's regulatory approach to these sectors, which are evidence-based, but will provide a sustainable financial model to ensure effective regulation now and in the future. The consultation closed on 4 September 2023.

HMRC launches consultation on Plastic Packaging Tax (PPT) and mass balance approach for chemically recycled plastic. A new [consultation](#) has been published seeking views on whether a mass balance approach should be a permitted method of accounting for chemically recycled plastic used in packaging, for the purpose of PPT, and if so, what controls would be required. A "mass balance approach" is described as "that is used by industries to track materials through a complex value chain. It enables recycled or sustainable inputs which are mixed with virgin material during the process to be allocated to particular outputs." The Government's view on these issues will be informed by the need to maintain the integrity of the PPT and that the tax meets its objectives and encourage investment in recycling infrastructure to increase the amount of recycling. The deadline to respond to this consultation is 10 October 2023 and HMRC wishes to engage with industry and professional bodies to gain their insights. The Government has also made updates to its guidance titled "Check which packaging is subject to Plastic Packaging Tax" in July and August 2023 in relation to what constitutes recycled plastic, and to clarify how to account for the tax on different packaging components.



Network Rail fined £6.7m for health and safety failings. Network Rail Infrastructure Limited (NR), responsible for GB railway infrastructure, pleaded guilty to health and safety violations related to a train derailment in Aberdeenshire in 2020. The tragic incident resulted in three fatalities and injuries to six passengers. Extreme rainfall led to landslips and flooding, washing debris onto the track. A joint investigation by various authorities found that Network Rail failed to ensure proper construction of the drain and neglected inspections. Additionally, staff lacked comprehensive weather analysis training. A Fatal Accident Inquiry will be conducted to examine the circumstances, lessons learned, and prevent future incidents. NR were fined £6.7m, the largest fine of this nature to date. This prosecution follows a complex investigation and industry-wide changes, emphasising the importance of rail safety in the face of climate change challenges.

Waste management company fined £3m following HSE investigations. Valencia Waste Management Limited has been fined £3 million following two separate incidents that led to the deaths of two workers. In 2019, a worker was crushed by bales of wastepaper at the company's Northamptonshire site, and in 2020, another worker was killed in a skip-related incident at a depot in Devon. The HSE conducted investigations and found safety lapses in both cases. HSE guidance is available for [loading and unloading](#) operations, as well as on [skip hire and waste transfer](#) for those operating in waste and recycling industries.

Tissue manufacturer fined £1million after employee loses an eye. A company that manufactures kitchen and toilet tissue paper has been fined £1million after an employee was seriously injured when he was struck in the face by a crane hook. An investigation by the HSE found that the company failed to carry out a suitable and sufficient risk assessment to identify the hazards posed by paper reels which did not eject correctly from the machine. They also failed to ensure that control measures were in place and that employees were provided with information and instructions on what to do should this situation arise. The issue was happening regularly, yet no risk assessment had been undertaken despite operators being provided with basic equipment to use in these circumstances. The company pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974. The HSE commented that the "incident could so easily have been avoided by carrying out a suitable risk assessment which included non-routine operations such as clearing of blockages, and by implementing appropriate control measures and safe working practices".

Leading workwear company fined £400,000 after woman suffers horrific injury. A leading workwear company has been fined £400,000 after an employee had the skin ripped off the palm of her left hand. An investigation by the HSE found that the company had inadequately guarded machinery, did not have a suitable and sufficient risk assessment for the machinery that caused the injury and inadequate health and safety management systems in place. The company pleaded guilty to breaching Regulation 11(1) of Provision and Use of Work Equipment Regulations 1998 (PUWER). This emphasises the importance of employers assessing risk and applying effective control measures to minimise the risk from dangerous parts of machinery.

Company fined £200,000 after workers injured by explosion. A manufacturing company in West Yorkshire was fined £200,000 after three workers were injured in an explosion in February 2020. The workers sustained burns while operating a furnace, due to water entering the furnace as they added scrap metal. The HSE investigation revealed that the company was aware of the risk but did not adequately implement and maintain protection measures. Weir Minerals Europe Limited pleaded guilty to breaching health and safety regulations and was fined £200,000, with additional costs. The HSE emphasised in the sentencing exercise the importance of maintaining safety standards to avoid such incidents.



Haulage company fined £150,000 after employee death. A family run haulage and storage business has been fined £150,000 following the death of an employee after he raised the body of his tipper vehicle and made contact with overhead powerlines, which resulted in his death by electrocution. An investigation by the HSE into the incident revealed that a failure to ensure suitable control measures were in place resulted in the employee being electrocuted. Had the risks been recognised and simple controls been implemented, his death could have been avoided. This led to the company pleading guilty to breaching Regulation 4(3) of the Electricity at Work Regulations 1989. The HSE says that "This incident could so easily have been avoided by simply ensuring suitable control measures and safe working practices were in place. HSE guidance clearly sets out the requirements to avoid the risk, or where this is not reasonable, implement suitable controls including establishing safety zones".

Manufacturer fined £100,000 after worker partially severs two fingers. A manufacturing company has been fined £100,000 and pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974, after one of its employees partially severed two fingers while trying to find a fault in a machine. Following an investigation by the HSE, it was discovered that although the company had carried out several risk assessments on the machine, they failed to identify the hazards presented by the cutting and trimming units from the front of the edge bander. They also failed to provide suitable and sufficient, information, instruction, and training to enable their staff to carry out activities such as cleaning, fault finding and minor repairs safely. Therefore, this demonstrates the importance of employers devising safe methods of working and providing employees with the necessary information and training.

Tyre company fined £100,000 for breaking disposal rules. Exhaust Tyres and Batteries (Worcester) Limited was fined 100,000 positing 250,000 tyres at Synergy Tyres Limited's ("STL") site. STL did not have an environmental permit to store or treat large numbers of tyres on site (it only had an exemption with much lower limits) and was required to keep these to a minimum (40 tonnes over 7 days). The District Judge said he was satisfied that the fine imposed would "send a message to the Directors and Shareholders that they need to comply with environmental legislation."



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