

frESH Law Horizons

October to Mid-December 2023



Health and Safety Executive (HSE) has [published its annual statistics on work-related ill health and workplace injuries](#). Key findings are that 1.8 million workers had reported they were suffering from work-related ill health in 2022/23, with 875,000 of those workers suffering from stress, depression or anxiety. The report also details that an estimated 35.2 million working days were lost this year due to self-reported work-related ill health or injury. The report assessed that the total costs of the prior year (2021/22) of workplace injuries and new cases of work-related ill health were around £20.7 billion.

Terrorism (Protection of Premises) Bill to be introduced to Parliament. On 7 November 2023, King Charles III, in the king's speech, referenced introducing the Terrorism (Protection of Premises) Bill as legislation. The king stated that "legislation will be introduced to protect public premises from terrorism in the light of the Manchester Arena attack". The proposed scope of the legislation is wide and aims to cover all publicly accessible locations with a capacity of 100 or more people, including stadiums, sports grounds, academic institutions, leisure centres, shopping centres, supermarkets and tourist attractions. This bill proposes legal obligations for those individuals and companies responsible to take reasonable steps to reduce the threat to the public from terrorist attacks and enhance public security.

Fire and building safety changes post-Grenfell. On 1 October 2023, significant [changes took effect in the post-Grenfell Tower regime](#) governing fire and building safety in high-rise domestic buildings in England. The Building Safety Regulator (BSR) transitioned to become the new building control authority (BCA) for higher-risk buildings (HRBs), which are 18 metres tall or higher, or with at least seven storeys. Developers are no longer able to choose the building control body for such projects. The BCA, housed within the HSE, oversees the new building control framework for HRBs, ensuring a rigorous process for building work approval. The day also marked the [registration deadline for HRBs with the BSR](#), a requirement under the new regulations. Additionally, responsible persons for buildings are now legally obliged to record completed fire risk assessments and cooperate with accountable persons in HRBs. Enforcement of building safety, particularly the remediation of fire safety defects, will be carried out by the BSR, which aims to shift transparency and power towards residents.

BSR's new strategic plan for building safety. The BSR has [initiated](#) a new three-year plan to change the culture and behaviour in the built environment industry to ensure that competency and responsibility is prioritised. The [plan](#) ensures higher safety especially in those high risk buildings through delivering consistent standards within the building control profession, overseeing improvements for the whole built environment, ensuring responsibility is held for occupied higher-risk buildings, and working in partnership with co-regulators. This tightening of the regime during the next three years is in line with BSR's aim to continue working across all sectors to ensure that those working in the building sector engage fully with the new regime.

BSR charging scheme. The BSR has published its charging scheme, which came into effect on 1 October 2023. The scheme refers to all the chargeable functions and amounts payable for services undertaken by the BSR. The triggers for chargeable functions include the determination of an application for building control approval, the inspection and testing of any work to which building regulations are applicable (including the testing of services, fittings, and equipment), any action taken by the regulator in relation to the notification of a notifiable change, and any regulatory intervention undertaken by BSR to secure compliance with a building enactment or requirement.



Roofing firm and company business partner fined following HSE investigations. Roofing company, Mitie Tilley Roofing Limited, has been fined a total of £881,000 (and ordered to pay over £100,000 costs) after two workers were seriously injured during two separate incidents. A business partner of its contractor was also sentenced to 120 hours of unpaid community service and ordered to pay over £20,000 in costs. The HSE investigation found that the company, as principal contractor, failed to properly plan and carry out the work undertaken by its subcontractor to replace a skylight. A business partner at the contractor also failed to plan the work properly and ensure staff had appropriate skills, knowledge and experience, and failed to provide appropriate fall protection on the roof.

Care home fined £125,000 after teenager's death. Alexandra House, a specialist residential care service for adults, has been fined £125,000 for not doing enough to keep people safe from vulnerable patients who posed a danger to themselves and others. The HSE investigation and prosecution follows the death of Melissa Mathieson at Alexandra House on 12 October 2014. On 1 December 2023, the care service pleaded guilty to breaching S3(1) Health and Safety at Work Act 1974 (HSWA) and the Management of Health and Safety at Work Regulations 1999 (HSWA regs). They were fined £125,000 and ordered to pay £41,000 in costs.

Dog food company director received suspended sentence for safety breaches. The director of dog food company Finer by Nature was [handed a six-month suspended sentence](#) for each of three offences (to run concurrently), and ordered to do 180 hours of unpaid work, after a machine severed the finger of a 16-year-old worker on his first day. Despite an interlock guard on the machine, the young worker was instructed to use a step ladder and put his hands into the hopper bowl, resulting in a severe injury. The HSE found that the risks were not adequately assessed, and the director neglected to manage employee safety. Finer By Nature was also fined £34,000 for multiple offences, including failure to assess risks, employing a young person without proper safety assessment, and not ensuring measures to prevent access to dangerous machinery parts.

Cladding company receives fine for unsafe removal of cladding. Green Facades, a company acting as the principal designer and principal contractor for a cladding removal project in Liverpool, has been fined £240,000 with costs of £5,405 for unsafe practices similar to those on Grenfell Tower. The company was contracted to remove combustible cladding from an eight-storey building. An HSE inspector found exposed combustible material and inadequate escape routes during the project. Green Facades had previously received enforcement notices for similar issues during cladding removal elsewhere. The HSE served improvement notices, but the company failed to address the risks, putting lives at risk. The court ruled a high culpability level, categorising it as a small company, leading to a £240,000 fine.

Three companies fined a total of £600,000 after engineer electrocuted in hospital kitchen. Three companies (a hospital, catering and manufacturing company) have been fined a total of £600,000 after an engineer was fatally electrocuted while repairing an appliance in a hospital kitchen. The employee came into contact with a metal section of the macerator that had been electrified as water had entered the machine's wiring. An HSE investigation found that design of the macerator had serious flaws. The manufacturer's instructions were not followed when installing the macerator, which required that a residual current device (RCD) was fitted. The hospital did not identify that the RCD had not been fitted and the machine was operated for several years before the incident occurred. The hospital pleaded guilty to breaching Section 2(1) and Section 3(1) of the HSWA and was fined £450,000. The catering company was found guilty of breaching the same provisions and was fined £70,000. The manufacturing company pleaded guilty to breaching Section 6(1) of the HSWA and was fined £80,000.



Waste firm fined £260,000 after worker suffers severe crush injuries. A waste and recycling company has been fined £260,000 after a worker became trapped between a conveyor and a metal bridge during maintenance work. An investigation by the HSE found that the company had failed to provide a suitable means to isolate the machinery from all sources of energy. The isolator switch had been broken and was therefore inoperative. The company also had no formal maintenance arrangements for the machinery. The company pleaded guilty to breaching Section 2(1) of the HSWA and was fined £260,000.

Companies fined a total of £420,000 as child suffers fractured skull at a hotel construction site. Three companies (a hotel, designer and contractor) have been fined a total of £420,000 after a slate tile fractured the skull of a 3-year-old child at a hotel construction site. An HSE investigation into this incident found scaffolding was not fit for purpose because it did not have sufficient measures to prevent items falling. The hotel ignored requests and failed to put in measures to address an obvious hazard of falling objects striking members of the public using the busy thoroughfare to the swimming pool. The contractor pleaded guilty to breaching Regulation 13(1) of the Construction (Design and Management) Regulations 2015 and was fined £160,000. The designer pleaded guilty of breaching Regulation 11(1) of the Construction (Design and Management) Regulations 2015 and was fined £60,000. The hotel was found guilty of breaching Section 3(1) of the HSWA and was fined £200,000. This demonstrates how companies should always remember their legal duty to keep both workers and members of the public safe. The hotel, principal designer and principal contractor all have a duty to work together to implement the industry standards to ensure members of the public are safe, particularly if a venue is to remain live during construction works.

Manufacturing company fined £500,000 after forklift truck death. A man died when the forklift truck he was operating overturned. An investigation by the HSE found that The Barcode Warehouse Ltd failed to enforce the use of seatbelts by forklift truck operators. They should have properly risk assessed the use of forklift trucks on their premises and enforced the use of seatbelts. Instead, it was left to individuals to choose whether to wear a seatbelt or not. The company pleaded guilty to breaching Section 2(1) of the HSWA.

Two firms fined over £600,000 after a man dies from fall. Two companies have been fined after a man died following a fall from the roof of a building site. The man was lowering the access equipment from the roof, using a rope attached to a frame at roof level and a handrail at ground level. As he did so, both he and the frame fell from the roof to the ground. The HSE investigation found that the principal contractor for the project and the contractor in control of the electrical installation package failed to ensure that the lightning protection work was properly planned and failed in their duties to manage and monitor the work to ensure it was carried out safely. Due consideration had not been given to safer methods of working at height, such as the use of scaffolding or a mobile elevating work platform (MEWP), and the workers had been given no instruction or safe means of getting their equipment down from the roof. The principal contractor pleaded guilty to breaching Regulation 13(1) of the Construction (Design and Management) Regulations 2015 and was fined £600,000. The contractor in control of the electrical installation package was found guilty of breaching Regulation 15(2) of the Construction (Design and Management) Regulations 2015 and was fined £30,000.

Cider manufacturer fined £1.4 million following a man's death. A cider manufacturer has been fined after a security barrier speared through a vehicle's windscreen and fatally crushed a worker. An HSE investigation found that the company had installed the barrier a month earlier, and failed to undertake a suitable and sufficient risk assessment. The company also failed to implement a safe system of work to ensure the barrier could be secured safely when open and closed. The company pleaded guilty to breaching Regulation 3(1) of the HSWA regs and Section 2(1) of the HSWA.



Office for Product Safety and Standards (OPSS) seeks consultation on revised enforcement policy. On 2 November 2023, the OPSS published a [draft enforcement policy](#) and invited feedback on the proposals by 15 December 2023. The [previous draft](#) policy dates from June this year. The more recent draft still echoes the broad principles of the previous draft in respect of efficient enforcement procedures to minimise the risk of product risk safety.

UK Food Standards Agency (FSA) focuses on local authority enforcement, achieving business compliance and the operation of the Border Target Operating Model. The [agenda and papers](#) published for the FSA board meeting in December indicate that the board is reviewing the performance of local authorities, the programme for “Achieving Business Compliance” and the Border Target Operating Model, as well as progress on food hypersensitivity, and other matters. The report on local authority performance highlights resourcing challenges, staff shortages, difficulties in recruitment and retaining competent officers as key challenges for the enforcement of food law, with particular concerns around backlogs in inspections of “lower risk” establishments; challenges in meeting required intervention frequencies; and sampling and enforcement levels, in comparison to pre-pandemic levels.

OPSS quarterly enforcement action roundup for product safety. In November, the [publication](#) by OPSS of the latest figures for enforcement action indicates that the majority of actions were enforcement notices (withdrawal, recall or suspension notices) taken against online sellers in China and elsewhere. This included numerous products posing electric shock risks, including hair care and lighting products. Additionally, remedial action under regulations on timber and timber products was taken against a UK-based business for failing to conduct due diligence on imported plywood, to reduce the risk of illegally harvested timber entering the supply chain. The figures underline the risks of enforcement action and information being released to the public domain, if a product placed on the UK market poses a safety risk, or is otherwise noncompliant with product rules.

Product Safety Database annual reports for 2021-22 and 2022-23 published. The OPSS has also released the [annual reports](#) for its Product Safety Database (PSD) for 2021-22 and 2022-23. The PSD is an online tool for local authorities to report unsafe and noncompliant products. The annual reports indicate that the overall number of reports between 1 April 2022 and 31 March 2023 was lower than the same period in 2021 to 2022. However, the percentage of reports that were serious or high risk was greater. In both years, electronic and electrical products and toys were the two categories most commonly reported on the PSD. Corrective actions frequently involved online marketplaces removing listings and the rejection of imports at the border. The reports are a useful reminder to retailers and others in the supply chain, particularly of those products where safety reports are commonly made, of the possibility of safety risks and the action that may be necessary if such risks are identified. The list of “Top 10 hazards” in the reports are also potentially useful to consider in the context of the risk assessment process. Topping the “hazard charts” for 2022 to 2023 is electric shock, with chemicals next on the list.



UK FSA and Food Standards Scotland (FSS) “Our Food” report highlights food safety and standards resourcing challenges.

The FSA and FSS have released their second annual [“Our Food” report](#) since Brexit. The report concludes that despite external pressures such as inflation, labour shortages and the situation in Ukraine, overall food standards remained stable. In fact, there was a slight decrease in the number of food and feed incidents reported. However, the report highlights shortages in key roles essential for ensuring food safety, including vets and local authority food inspectors (an issue also “on the table” in the FSA board report for December, as summarised above). It also confirms that meat and meat products continue to be the category that is most associated with incidents, although dietetic foods, food supplements and fortified foods represented 9% of incidents reported, largely due to unauthorised ingredients, with a similar proportion of cases for cereals and bakery products. There were 322 reports involving allergens and 83 allergy alerts published by the FSA and FSS.

Government withdraws response to consultation on improved food waste reporting by businesses. In November 2023, the Department for Environment, Food and Rural Affairs (DEFRA) published its response to the [consultation](#) on a proposal to improve food waste reporting by large businesses. The initial response to the consultation published in July 2023 indicated that reporting would be mandatory and looked at options to improve voluntary reporting. This has since been withdrawn and further [response is awaited](#).

DEFRA issued a host of waste-related announcements. There have been a number of developments on waste policy in the last few months, including the following:

- **Household and business recycling collections** – The UK government published the response to its 2022 consultation on recycling. The main features are that people across England will be able to recycle the same materials (whether at home, work or other), and weekly collections of food waste will be introduced for most households by 2026. The document confirms that all waste collection authorities (WCA) must collect the same recyclable waste streams (including paper and card, plastic, glass, metal, and food waste) for recycling or composting. Under new exemption proposals, WCA could collect all dry recyclables together in one recycling bin. In addition, a mandatory label on packaging will be required to simplify the messaging around what can and cannot be recycled.
- **Waste carrier, broker and dealer regime** – DEFRA responded to a consultation and confirmed that two key policies would be taken forward as part of work to tackle fly-tipping and other waste crime. First, the environmental permitting regime will replace the current scheme that requires registration with the Environment Agency (EA). Three permit types will be introduced, and further detail on the types of standard rules, permits and conditions will be outlined in an EA consultation. Businesses with an upper-tier registration will need to apply for a relevant permit at the point their registration is due for renewal, while lower-tier waste carriers will need to either register for an exemption or apply for a permit within one year. Next, DEFRA will simplify the terminology of waste carriers, brokers and dealers to distinct roles of “waste controllers”, “waste transporters” and “transport controllers”. The aim of this measure is to more effectively link responsibility for the waste to those making decisions on its fate. Moving waste transporters and controllers into the realm of the Environmental Permitting Regulations (EPR) means the enforcement measures and offences available under EPR will become applicable to affected businesses.
- **Mandatory digital waste tracking to be introduced in the UK from April 2025** – In a joint response, DEFRA and the Welsh government confirmed that digital waste tracking requirements will replace existing requirements to complete waste transfer notes and hazardous waste consignment notes. The digital waste tracking system will be available from 2024 and will provide real time information on the origin of waste, who it is handled by, and what happens to it. DEFRA and the EA’s policy paper was first published in April 2022 sets out the aims of digital waste tracking



Government consults on banning wet wipes containing plastic in the UK. The UK government and devolved administrations issued a [consultation](#) outlining proposals for banning the manufacture, sale and supply of wet wipes that contain plastic. This follows the recent single use plastics ban in England that was brought into force October 2023. The proposed wipes ban, if implemented, would be applied by individual devolved nations. The consultation closed on 25 November 2023, and further update is awaited. Stakeholders were invited to provide views on a range of issues, including the likely impact of the proposed ban on manufacturers, suppliers or sellers of wet wipes containing plastic, the likely impact for consumers, and the proposed timeframe for the commencement of the ban.

Waste operator is “clear winner” of judicial review on compliance assessment reports (CAR). In a November 2023 [judgment](#), the High Court allowed Suez Recycling and Recovery UK Ltd’s (Suez) claim for judicial review in respect of the lack of any appeals process for CAR scores, which directly impact environmental permitting fees. Suez’s claim for judicial review was allowed on the basis that the EA had “failed to comply with its duty under the 2006 Act in relation to the 2014 Code in considering the provision of a right of appeal against an adverse score on a CAR”. The judgment held that a CAR is a regulatory decision, and the EA should consider the provision of a right of appeal.

Prison terms and director bans for illegal waste sites at Codicote Quarry. Two quarry operators have received [prison sentences](#) for unlawful disposal of large quantities of household and business waste. The disposal of the estimated 200,000 cubic metres of banned material will mean the site requires monitoring for many years in order to minimise risk of pollution a local river and groundwater sources. In addition to the waste being stacked on site, the two directors were also burying it under a layer of chalk some 12 metres down. The site’s environmental permit was suspended in 2017. The EA prosecuted the directors under the Environmental Permitting (England and Wales) Regulations 2016 and Environmental Protection Act 1990. One director was handed a 17-month prison term while the other was sentenced to 12 months, suspended for two years (a costs award and/or confiscation order would be considered at a later date). Both have been banned from being company directors for the next eight years. The case serves as a reminder that the EA will not tolerate waste being held in quantities above what is authorised, and there are consequences for failing to engage meaningfully with the authorities during site visits.

Manufacturer of heavy goods vehicles successfully appeals against £200,000 civil sanction. Scania (Great Britain) Limited (Scania) [successfully challenged](#) a civil penalty imposed on it by the EA, resulting in the penalty being reduced from £200,000 to £90,500. The sanction was imposed as a result of repeated failures to meet requirements of EU Regulation 517/2014 on fluorinated gases. Scania accepted during its appeal that it had failed to obtain enough quotas before placing hydrofluorocarbon (HFC) on the market, but subsequently attempted to cover the shortfall by purchasing credits. The EA argued that it had arrived at the £200,000 penalty following the steps of its enforcement and sanctions policy; meanwhile, Scania argued the penalty was too high and disproportionate, and that the EA had “failed to have regard to the absence of any actual environmental harm resulting from the breach”. The judge ultimately concluded that the penalty imposed did not reflect Scania’s financial gain from not purchasing sufficient credits. There was also “considerable mitigation” in the case, and cooperating with the EA and self-reporting breaches can reduce the burden of a penalty.



Appeal dismissed in ClientEarth shareholder litigation. NGO ClientEarth recently suffered a setback in its dispute with Shell plc (Shell) when it was [refused](#) permission by the Court of Appeal to appeal a High Court [judgment](#) from July 2023. The High Court had found that ClientEarth had not made out a case to continue its derivative claim against Shell's directors. ClientEarth's case was that Shell's directors had breached their duties to promote the success of the company (under S.172 of the Companies Act 2006) and the duty to exercise reasonable care, skill and diligence (under S.174). ClientEarth, which holds a small shareholding in Shell, has [described](#) the case as the "first derivative action worldwide to seek to hold directors personally liable for climate risk management".

Latest round of EA civil sanctions published. On 30 November 2023, the EA [published its latest roundup of enforcement undertakings](#) for environmental permitting and packaging breaches. This included the largest enforcement undertaking to date, agreed with Yorkshire Water for £1 million (£500,000 payable to the Yorkshire Wildlife Trust and £500,000 to the Yorkshire Dales Rivers Trust) for six unauthorised discharges of sewage. Others included Müller UK & Ireland Group Limited Liability Partnership (£100,000 payable to the Shropshire Wildlife Trust for unauthorised discharge of processing effluent), and, for packaging producer responsibility offences, Sazerac UK Limited, paid £45,088.49 to the Surrey Wildlife Trust.

Extension of the climate change agreements (CCA) scheme and consultation on new target periods. CCAs are voluntary agreements in which members commit their facilities to improve energy efficiency in return for a reduced Climate Change Levy (CCL) payment. They are made between sector organisations, their membership, and the EA. The most recent CCA is scheduled to end in 2025, but the scheme is being extended to 2027 by the [Climate Change Agreements \(Administration and Eligible Facilities\) \(Amendment\) Regulations 2023 \(SI 2023/1226\)](#), that will come into force on 31 December 2023. This will also make other changes such as amending the terms that the scheme administrator must include in a CCA to increase the buy-out fee, and increase the penalties that can be imposed. In late November 2023, the Department for Energy Security and Net Zero (DESNZ) published a [consultation](#) detailing proposals for a further six-year CCA scheme to begin in 2025. The new scheme would add three new target periods running from 2025 to 2030, resulting in three certification periods running to 31 March 2033. It will provide further reductions in the CCL for eligible participants and would be open to new entrants that qualify under the current eligibility criteria. The consultation closes on 14 February 2024.

UK REACH update. DEFRA has issued a [policy paper](#) on its alternative transitional registration model (ATRm) for the UK chemicals regime. The ATRm is being considered in response to concerns raised by the chemicals industry about the costs of accessing EU data packages to support registrations under UK REACH. Its primary aim will be to minimise the financial burden on the chemicals industry. A key comment made by DEFRA is that "[UK] regulators do not need to hold a complete replica of all the registration data on all chemical substances held under EU REACH in order for UK REACH to undertake its regulatory work." Instead, DEFRA will focus on a "more targeted" approach by using information already available. The policy paper has been described as a "[pivotal moment](#)" for the UK chemicals industry, but the challenge will be to save costs to companies while not compromising on environmental protection and human health, amid [fears](#) that the UK is falling behind the EU. A consultation will run in early 2024 to gather views on the details of DEFRA's envisaged policy.



The future of the Energy Savings Opportunity Scheme (ESOS). ESOS is a mandatory energy assessment scheme for UK organisations that meet certain qualification criteria. It requires them to undertake ESOS audits every four years. Following a consultation in 2021 and [government response](#) published in 2022, the [ESOS \(Amendment\) Regulations 2023](#) came into force on 29 November 2023. These will make various changes to ESOS, including reducing the 10% minimum exemption to 5% for energy use that does not need an ESOS audit; add a new energy intensity metric; require ESOS reports to set out more information on how recommendations should be implemented; and requiring organisations to collect additional data for compliance, monitoring and enforcement. Energy and carbon reporting obligations are on the rise across the EU and UK, and these amendments to ESOS appear to recognise the importance of the scheme evolving to keep up with other commitments such as net zero. The government's [guidance on ESOS](#) has been updated to include the changes for phase 3.

PFAS chemicals branded as “new asbestos” by institutional investors. The Investor Initiative on Hazardous Chemicals (IIHC) has written a [letter](#) to the CEOs of the world's 50 largest stock-listed chemical companies warning of the similarities between the “deep liability and insurance risks [of PFAS chemicals], reminiscent of those historically linked to asbestos, which could materially adversely harm the long-term value of companies” and calling for production and use to be phased out. PFAS “forever chemicals” as a group have received growing attention worldwide as high-profile litigation and settlements are increasingly publicised. In the EU, a [restriction proposal](#) was published in February 2023 that would, if implemented as currently envisaged, massively restrict the use, manufacturing and placing on the market in the EU of some 10,000 PFAS substances (see our recent blog of the proposal [here](#)). [Commentators](#) are reporting that investor intervention appears to be on the rise in the chemical sector, with PFAS being the perfect example of a pervasive group of dangerous substances becoming a focal point for discussions.

UK government review climate disclosure process. On 12 October 2023, the Task Force on Climate-related Financial Disclosures (TCFD) published its final [report](#) on companies' progress in their disclosure obligations. This report also provides an update on which jurisdictions are applying the TCFD's recommendations. TCFD has now been superseded by International Financial Reporting Standards (IFRS) following the publication of two IFRS sustainability disclosure standards (IFRS SDS), which mark the introduction of a global benchmark for corporate sustainability reporting. Individual jurisdictions will now determine whether to apply the IFRS SDS and to whom, but they are likely to lead to more consistency in reporting requirements. On 19 October 2023 the DESNZ published a [call for evidence](#) on Scope 3 greenhouse house gas (GHG) emissions and the effectiveness and impact of the Streamlined Energy and Carbon Reporting (SECR) framework. The report indicates a support towards streamlining regulation for businesses, and this call for evidence will assesses whether the International Sustainability Standards Board (ISSB) standards should be applied in the UK. The deadline for response is 14 December 2023, with the government aiming to provide a response 12 weeks later. In a connected development, on 16 October 2023, the Department for Business and Trade announced that the [government has withdrawn](#) the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023, in response to concerns raised by companies about the burden of these additional reporting requirements. The government advised that instead it “will pursue options to reduce the burden of red tape to ensure the UK is one of the best places in the world to do business”.



New guidance issued for anti-greenwashing and green agreements. On 12 October 2023, the Competition and Markets Authority (CMA) published a final version of its [Green Agreements Guidance](#) for companies to use to avoid potential breach of the Competition Act 1998. This guidance and open-door environment have been issued to allow companies to seek informal advice without concern that the CMA will take enforcement action. This initiative will hopefully encourage companies to prioritise acting on climate change without the fear of a possible cause of breach.

Sustainability disclosure and labelling regime issued by Financial Conduct Authority (FCA). In November 2023, the [FCA issued](#) a new regime on sustainability disclosure and labelling with hope that this will minimise greenwashing. It will come into effect from 31 May 2024. These measures introduce an “anti-greenwashing rule” to ensure that companies are not being misleading, as well as naming and marketing requirements to ensure that products are not being described as having a positive impact when they do not. This transparency will allow for more informed decisions to not only investors, but also consumers, and follows the trend of anti-greenwashing in the market.

Advertising Standards Agency (ASA) publishes report on green disposal claims. The ASA has [published research](#) on consumers’ interpretation of green disposal terms like “recyclable”, “biodegradable” and “compostable”. The main conclusion is that these terms, without further explanation, could be “considered irresponsible and even (for some) ‘false advertising’”. By way of example, the consumer assumption about the term “biodegradable” was that a biodegradable item would “fully decompose”, whereas the correct definition is that these items will eventually break down after an unlimited timeframe which could ultimately result in more toxins in the process. The director of complaints and investigations at the ASA highlighted that the regulator will be cracking down on the use of these terms to be clearer to the consumer, as part of their action on greenwashing.

River basin management plan found unlawful. The High Court has [upheld a judicial review claim](#) brought by an angling club against DEFRA and the EA concerning the Humber River Basin Management Plan (HRBMP). The judge ruled that DEFRA and the EA had not discharged their duties to review, update and put in place measures for each waterbody under the [Water Environment \(Water Framework Directive\) Regulations 2017](#). River basin management planning is intended to set environmental objectives for all waterbodies in England and Wales and prescribes a binding target of December 2027 for compliance. The angling club considered that the HRBMP was made up of “wholly generic or yet-to-be formulated steps and so lacked the legally required measures necessary” (see [press release](#)) to achieve the restoration of the Upper Costa Beck. This ruling is significant as it could lead to further challenges to the EA’s programmes of measures for other river basin management plans.

Publication of draft biodiversity net gain plan and guidance. On 26 October 2023, DEFRA [published a blog](#) detailing its draft biodiversity plan template and [guidance](#) for developers. Following from this, on 2 November 2023, the [Environment Act 2021 \(Commencement No 7\) Regulations](#) were brought into force. These implement biodiversity net gain requirements as well as obligations in water quality monitoring for sewers and storm overflows. Further [guidance](#) has been issued to assist interpretation of these regulations. The government has issued a package of guidance giving [further detail on biodiversity net gain](#).



COP28 Outcome. On 13 December 2023, delegates at the COP28 UN Climate Summit agreed to a [deal](#). Further to the introduction of its concept back in 2015 under the Paris Agreement, the first Global Stocktake Agreement has called for countries to transition away from fossil fuels. This deal calls on nearly 200 countries to contribute towards [transitioning away from using fossil fuels](#), with a plan to fast-track the move to clean energy sources and “slash” emissions before 2030. However, there has been criticism that the deal does not protect small islands enough, as there no requirement for increased financial support from richer countries to facilitate this transition. There is also critique that the initial suggestion of a phaseout of fossil fuels and the inclusion of methane in the list of fossil fuels to be reduced was not confirmed in the final draft. At the time of publication, we were awaiting the UK government’s statement on the outcome.

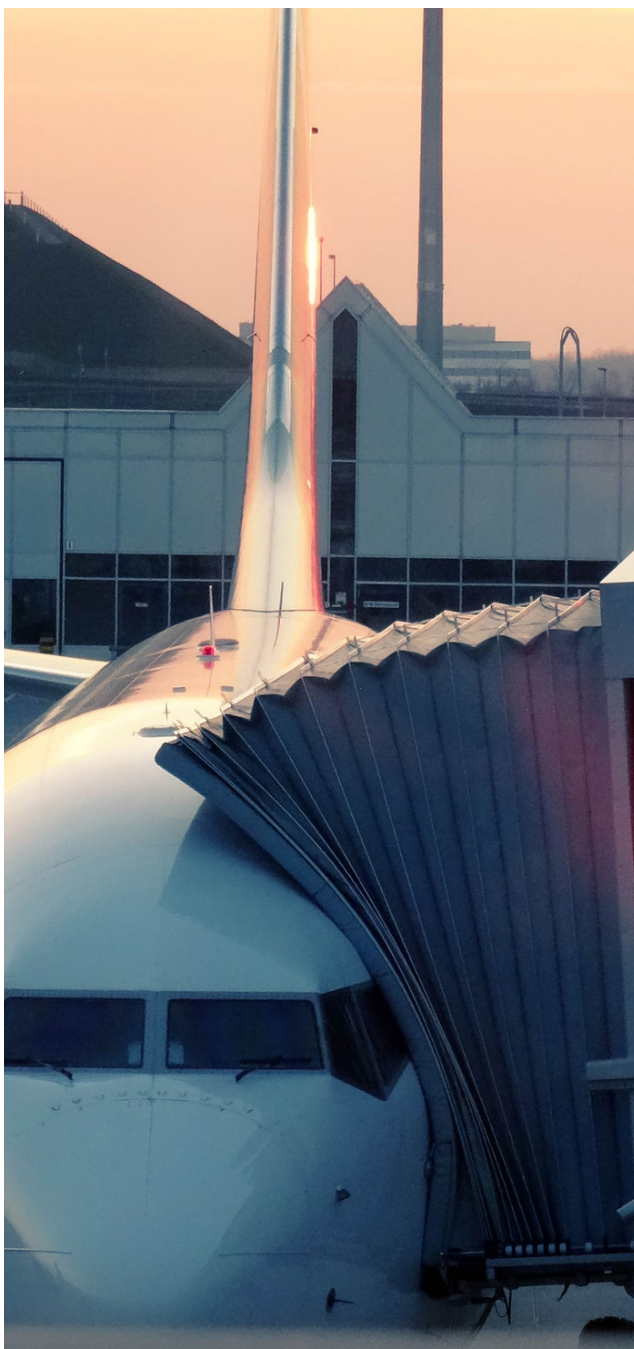
CMA announces investigation into green claims by Unilever. The CMA announced in January 2023 that it would be investigating green claims in the fast-moving consumer goods (FMCG) sector. Following this more general investigation, it has announced that it will further investigate green claims made by Unilever about certain household goods. The concerns to be investigated by the CMA include whether vague and broad statements may mislead shoppers regarding the environmental impact of products, whether “green” product features have been exaggerated, and whether recyclability claims may be unclear. If its investigation concludes that there have been breaches of consumer law, the CMA may use enforcement powers, which include prosecution and securing undertakings. This is the first specific investigation arising from the FMCG sector investigation, but there may be more to come.

UK government confirms it will move forward with deforestation legislation. The government consulted back in 2021 on a deforestation products due diligence regime, following the enabling provisions in the Environment Act 2021, but we had not heard anything since a [response](#) to that consultation in June 2022. On 9 December, connected to meetings being held at COP 28, the government announced that it would introduce the forest risk commodities legislation “when parliamentary time allows”. The commodities now in scope for this law appear to be less than the full list under consideration. The December announcement refers to non-dairy cattle products (beef and leather), cocoa, palm and soy. The consultation had also considered maize, rubber and coffee, but these are not included. The announcement also confirmed that the law will apply to organisations using those commodities in UK supply chains with a global turnover of over £50 million. It is not yet clear when the law is proposed to come into effect, and we await the draft legislation.

EU

In October 2023, we published the latest edition of our EU-focused newsletter, [Sustainability Outlook](#). We have also summarised below some notable more recent EU developments.

ASA sanctions three airlines for greenwashing. On 6 December, the ASA issued decisions against [Lufthansa](#), [Air France-KLM](#) and [Etihad](#) in relation to separate adverts running on Google, which all made climate and sustainability claims. These were picked up by the ASA’s “Active Ad Monitoring system”, which uses artificial intelligence to proactively search for online adverts that might break the rules. In each case the ASA banned the adverts, principally due to lack of supporting information. ASA emphasised in two of the cases that there were “no initiatives or commercially viable technologies in operation within the aviation industry that would adequately substantiate absolute green claims”.



Packaging and Packaging Waste Regulation (PPWR). The negotiations on the file are advancing and agreement on the proposal should be achieved before the June elections. The European Parliament's (EP) position on the PPWR was adopted on 22 November 2023. The PPWR endorsed by the EP differs significantly from PPWR proposed by the European Commission in November 2022. Notably, the text adopted by the EP removes the ban on the use of single-use packaging (such as plates, cups, boxes, sachets of sauces or condiments) for on-site consumption, easing the new regulatory regime for the food-service sector. However, not all the amendments adopted by the EP were favourable to the business. The EP included an EU-wide ban on food contact packaging containing intentionally added PFAS (forever chemicals) or Bisphenol-A, which is to take effect 18 months after the entry into force of the PPWR. This new provision is likely to be challenging for the food packaging industry. The EU Council is expected to adopt the general approach for the PPWR on 18 December 2023.

Ecodesign for Sustainable Products Regulation (ESPR). On December 4/5 the EU co-legislators reached a political agreement on the proposal for the ESPR. The ESPR will serve as a framework for future eco-design requirements. As the next step, the EU Commission will develop the first working plan setting out the list of product groups to be prioritised for ecodesign requirements. Negotiators agreed that iron, steel, aluminium, textiles (including garments and footwear), furniture (including mattresses), tyres, detergents, paints, lubricants, chemicals, ICT products and other electronics, as well as energy-related products for which existing eco-design requirements need revision, should be included in the first working plan. This list is indicative, and the EU Commission may exclude some of the proposed products or add others with a justification for doing so. Based on the working plan, the EU Commission will adopt delegated acts establishing the actual eco-design requirements. The first set of these requirements is expected to target textiles and be finalised in 2025. Companies will be given at least 18 months to comply with the eco-design requirements once they are adopted. ESPR is expected to be formally adopted before April 2024.

Revision of the Waste Electrical and Electronic Equipment (WEEE) Directive. This was concluded by a political agreement reached by the co-legislators on 21 November 2023. The WEEE Directive needs to be amended as a result of the judgment of the Court of Justice of the European Union (CJEU) in case [C-181/20](#), issued on 25 January 2022. The CJEU ruled Article 13(1) of the directive to be invalid to the extent to which it imposed on producers the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012. The revised Article 13(1) of the WEEE Directive will establish clear rules on the applicability of producer responsibility schemes to WEEE. Negotiators have also agreed that the EU Commission should assess the need for a revision of the WEEE Directive before the end of 2026. The formal adoption and publication of the text should take place in Q1 of 2024.

Breaking News – Provisional agreement on the corporate sustainability due diligence directive (CSDDD). We will report more fully on this when the text has been published, but on 14 December, the EU Council and the EP reached a provisional deal on the CSDDD. CSDDD will set obligations for in-scope companies regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries, and those carried out by their business partners. It also requires companies to adopt and put into effect a transition plan for climate change mitigation. CSDDD will apply to EU companies with more than 500 employees and a net worldwide turnover of €150 million. For non-EU companies, it will apply if they have a €300 million net turnover generated in the EU, three years from the entry into force of CSDDD. The Commission will have to publish a list of non-EU companies that fall under its scope. CSDD also provides frameworks for penalties (including turnover-based penalties) and civil liability. The provisional agreement now needs to be endorsed and formally adopted by both the EP and the Council, and we will provide further details when available.



Contacts



Rob Elvin
Partner, Manchester
T +44 161 830 5257
E rob.elvin@squirepb.com



Nicola A. Smith
Partner, Birmingham
T +44 121 222 3230
E nicola.smith@squirepb.com



David Gordon
Partner, Birmingham
T +44 121 222 3204
E dave.gordon@squirepb.com



Anita Lloyd
Director, Birmingham
T +44 121 222 3504
E anita.lloyd@squirepb.com



Nina Kusnierkiewicz
Associate, Brussels
T +32 2 627 1102
E nina.kusnierkiewicz@squirepb.com



Gary Lewis
Director, Manchester
T +44 161 830 5373
E gary.lewis@squirepb.com

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PATTON BOGGS
squirepattonboggs.com