

# frESH Law Horizons

April to June 2024





**Health and Safety Executive (HSE) runs [call for evidence](#) on per- and polyfluoroalkyl substances (PFAS) in firefighting foams (FFF)** – Between April and June 2024, stakeholders were invited by the HSE to respond to a call for evidence to support the preparation of a restriction dossier on PFAS in FFF. As part of its role under the Great Britain (GB) regime on the registration, evaluation, authorisation and restriction of chemicals (UK REACH), the HSE sought information on:

- The use, storage, and management of PFAS-containing firefighting foams on sites within GB
- The use, manufacture/formulation, import and/or distribution of firefighting foams in GB that contain PFAS
- The transition away from PFAS containing firefighting foams and the suitability of alternatives

The HSE expects the final restriction proposal to be published on its website for further comments in March 2025. PFAS, or “forever chemicals” are a group of substances that are persistent and bioaccumulative. The HSE’s [Risk Management Options Analysis](#) (RMOA) concluded that PFAS have a number of properties that pose a concern to the environment and human health, including uncertainties over the long-term adverse impacts of this group. A restriction was one of the RMOA’s primary recommendations.

**Supreme Court confirms environmental impact assessments (EIA) should consider downstream greenhouse gas emissions (GHG) of projects** – The UK Supreme Court has delivered a significant judgment on the extent to which local planning authorities are required to consider indirect effects and scope 3 emissions of projects in EIA. The court concluded that the decision of Surrey County Council to grant planning permission to expand production from an onshore oil well, without assessing the project’s downstream GHG on combustion of oil, was unlawful. The purpose of the planning permission was to maintain and expand an existing onshore oil well and to develop four new crude oil wells over a 25-year period. The EIA for the project considered only the environmental impacts of “the direct releases of greenhouse gases from within the well site boundary resulting from the site’s construction, production, decommissioning and subsequent restoration over the lifetime of the proposed development.” The appellant argued that “effects of the project” within the meaning of the EIA legislation included an assessment of the combustion GHG emissions. The [judgment](#) in *R (Finch on behalf of the Weald Action Group) v Surrey County Council and others [2024] UKSC 20* to allow the appeal by 3 to 2 majority was reached with the assistance of the Office for Environmental Protection as third intervener ([press release](#) and [submission](#)). For Lord Leggatt, it was ‘not merely likely, but inevitable, that the oil extracted will be sent to refineries and that the refined oil will eventually undergo combustion, which will produce GHG emissions. This is likely to lead to greater consideration of scope 1, 2 and 3 emissions from new projects, meaning additional assessments for developers.



### UK government publishes response to consultation on Persistent Organic Pollutants (POPs) Regulation –

The Department for Environment, Food and Rural Affairs (DEFRA) has published the UK government response to the consultation on potential amendments to the POPs Regulation, which was held from 2 March to 27 April 2023. The [consultation outcome](#) is now available and there is also [a summary of all responses received](#). The document highlights the UK government’s intention to move forward with a number of proposed changes to the POPs Regulation that received support:

- New waste concentration limits for perfluorooctanoic acid (PFOA), perfluorohexanesulfonic acid (PFHxS), phencyclidine (PCP) and dicofol, and amended limits for flame retardants like polybrominated diphenyl ethers (PBDEs)
- New maximum concentration limits for PFOA, PFHxS, PCP and Dicofol and amended limits for PBDEs, and additional European Waste Catalogue codes in Annex V
- New unintentional trace contaminant (UTC) limits, or amendments to existing limits, for PFOA, PCP, and hexachlorobenzene (HCB)
- Finalising expiry dates for existing specific exemptions for PFOA

**Consultation published on UK REACH “alternative transitional registration model” (ATRm)** – The UK government is consulting on changes to reducing costs to businesses moving from EU REACH regime to UK REACH, while upholding existing human health and environmental protections. The ATRm is designed to uphold existing human health and environmental protections (by gaining better information on the use of and exposure to substances in GB), while reducing costs to businesses transitioning from EU REACH to UK REACH. The consultation, which closes on 11 July 2024, seeks views on:

- Proposals to amend the current transitional provisions under UK REACH for submitting registration information to the HSE
- Proposals for changes to the restriction and reporting process
- Proposals to introduce further protections against unnecessary animal testing





### **Publication of UK government's [Sustainability Disclosure Requirements \(SDR\): Implementation Update 2024](#)**

– As part of its commitments under the 2023 Green Finance Strategy, in May 2024, the UK government published a document setting out information, timeframes and milestones for each element of SDR, and how this will fit across the financial sector and wider economy. SDR is a framework designed to “facilitate and streamline the flow of robust, decision-useful information between corporates, consumers and investors and capital markets”. The document notably states that the UK government aims to make the UK-endorsed International Sustainability Standards Board (ISSB) standards available in the first quarter of 2025. In addition to sustainability reporting standards, the implementation update includes information about UK green taxonomy and transition plan disclosures. On the same day, a policy paper titled “[Framework and Terms of Reference for the Development of UK Sustainability Reporting Standards](#)” was published.

### **Extended producer responsibility (EPR) – Draft legislation and updates to [guidance on packaging data and what to collect](#)**

– The guidance page has been updated to include a link to the newly published [list of large producers](#) on the report packaging data service. EPR will shift the full cost of managing household waste onto producers. The [draft Producer Responsibility Obligations \(Packaging and Packaging Waste\) Regulations 2024](#), which will introduce EPR in the UK were published in May.

### **United Nations Intergovernmental Negotiating Committee (INC-4) continues to negotiate treaty to end plastic pollution**

– DEFRA have released a [statement](#) on progress to agree a global treaty to end plastic pollution. 170 states were represented at the [fourth INC-4 meeting](#) in Canada intended to develop an international legally binding instrument on plastic pollution, including in the marine environment. While progress was made on identifying chemicals of concern, some groups have [commented](#) that the talks did not address the key topic of reducing production of primary plastic polymers. 28 nations (not including the UK) have launched the “[Bridge to Busan: Declaration on Primary Plastic Polymers](#)”, which states, “Left unaddressed, production of primary plastic polymers is projected to increase exponentially through 2050 and could overwhelm national waste management and recycling programs, even after significant improvements supported by the new instrument. Addressing the unsustainable production of primary plastic polymers is not only essential to ending plastic pollution worldwide; it also represents one of the most efficient and cost-effective approaches to managing the plastic pollution problem.”

**NGOs [successful judicial review](#) of UK government carbon delivery plan** – We have previously reported on various examples of NGO-led climate litigation. In this latest development, the High Court found that the Secretary of State for Energy Security and Net Zero had failed to comply with its obligations under the Climate Change Act 2008 in relation to its approval of the proposals and policies in the Carbon Budget Delivery Plan published in March 2023.

**Sentences [issued](#) to six defendants for waste storage offences** – Waste operators who ignored Environment Agency advice that their three sites presented significant fire risks have been sentenced following fires that burned for many days (and in some instances failed to comply with enforcement notices). Punishment included prison sentences for three individuals together spanning 6.5 years and fines totalling more than £103,000, highlighting the risks of both operating illegally and repeatedly disregarding Environment Agency communications.





**Regulations on waste collections come into force** – The [Separation of Waste \(England\) Regulations 2024 \(SI 2024/666\)](#) came into force at the end of June 2024, requiring:

- Waste collection authorities in England to collect six recyclable waste streams separately (plastic, paper and card, glass, metal, food waste and garden waste, the latter only where requested)
- Certain premises referred to as “relevant non-domestic premises” (i.e. places of worship, penal institutions, charity shops, residential hostels and public meeting premises) and businesses to arrange for collection of recyclable waste streams (not including garden waste)

The [explanatory memorandum](#) accompanying the new regulations provides additional background information and the rationale for the new measures. Two government responses to publications have also been published in respect of:

Proposed exemptions to the requirement to collect core recyclable waste streams ([see response](#))

Simpler recycling in England – additional policy proposals to extend the non-domestic premises that will be subject to separate recycle collections and the recording by waste collectors of comingling as part of digital waste tracking ([see response](#)).

**Supreme Court decision on Japanese knotweed in nuisance case** – The Supreme Court has allowed an appeal by a local authority of a decision in a case involving nuisance and Japanese knotweed encroaching from adjoining land. In *Davies v. Bridgend County Borough Council [2024] UKSC 15* ([judgment](#)), a landowner (A) claimed their property had diminished in value on account of Japanese knotweed encroaching from neighbouring local authority land. The encroachment had existed at the time A bought their property, and therefore the local authority’s failure to treat the Japanese knotweed did not materially contribute to the diminution in the property’s value (i.e. there was no causal link between the local authority’s breach of duty and the property’s diminution in value).

**Corporate Sustainability Due Diligence Directive (CSDDD) formally adopted** – On 24 May, the Council of the European Union (EU) [announced](#) that it had formally adopted the final text of CSDDD. In our [last edition of frESH](#), we reported that the text of CSDDD had been watered down, resulting in fewer companies falling within the scope and a narrowing of the definition of supply chains. CSDDD will affect EU registered companies, or parents, of more than 1,000 employees with a turnover of more than €450 million, and their activities ranging from the upstream production of goods or the provision of services, to the downstream distribution, transport or storage of products. CSDDD will also apply to non-EU companies who have generated €450 million in the EU and there are also still provisions regarding how to calculate the turnover, and applicability of CSDDD, for groups who have entered into franchising or licensing agreements in the EU. Once the CSDDD has been signed, it will be published in the Official Journal of the EU and will enter into force on the twentieth day following publication. EU member states will then have two years to implement the necessary regulations to comply with the directive. Businesses will be affected by CSDDD in tranches depending on corporate size.



**New EU regulation on ecodesign** – On 28 June 2024, a new regulation establishing a framework for the setting of ecodesign requirements for sustainable products was [published](#) in the Official Journal of the EU. It will replace the existing ecodesign directive (Directive 2009/125/EC) and enlarges its scope, beyond energy products, to a wider range of goods placed on the EU market. New requirements, in particular regarding product durability, reusability, upgradability and reparability, will be of particular interest to industry. In addition, the new framework introduces rules on the presence of substances that inhibit circularity. Regulation (EU) 2024/1781 was first proposed by the EU Commission on 30 March 2022, and was [approved](#) by the EU Council in May 2024. It amends Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repeals Directive 2009/125/EC. Its date of entry into force is not yet known, but its date of effect has been set as 18 July 2024.

**Next edition of our firm's [European Sustainability Outlook](#) newsletter published** – Our European Public Policy team is pleased to share with you the latest version of our EU Sustainability Outlook which looks at a selection of relevant developments in EU sustainability law and policy over the last few months. This edition includes updates on various areas, including:

- Green Value Chain and Reporting
- Green Deal Industrial Plan
- Circular Economy
- Chemicals
- Greenwashing
- Climate
- Next Steps and Rules of Procedure Under the Current Term of the European Parliament

**Construction company [fined £2,345,000](#) after worker drowned in river** – In June 2024, a construction business was fined over £2 million for failing to plan works on a bridge, resulting in the death of a worker in October 2017. The worker had been on a boat removing debris at the bottom of the weir gates at Knostrop Weir in Leeds when the boat capsized as a result of the considerable flow of water flowing over the top of the weir.

The resulting HSE investigation found that the employer had several operatives who were trained and authorised to control the weir gates to slow the flow of water down. However, this control measure was not carried out on this occasion. The HSE commented that the company “failed to carry out any assessment of the risks involved with the task. It failed to have any regard to the recognised hierarchy of controls to reduce the risk associated with removing debris from the water. It failed to ensure that suitable safety measures were in place and failed to put in place a safe system of work.” The company pleaded guilty to breaching section 2(1) of the Health and Safety at Work etc. Act 1974 and was fined £2,345,000 and ordered to pay £25,770.48 in costs.





**Company and director [sentenced](#) following workers exposure to asbestos** – A company in Stretford was inspected by the HSE in 2019 following concerns over employees working at height during demolition and construction of new residential premises. The inspection revealed the presence of asbestos-containing materials found in the debris of roof sheets from demolished units. The HSE found that the asbestos removal work was carried out under the direct control and instruction of the director who, having arranged an asbestos demolition survey prior to the works, was aware of the potential dangers of the asbestos on site.

The director was found to have breached Section 3(1) and Section 33(1)(g), by virtue of Section 37(1), of the Health and Safety at Work etc. Act 1974. On 25 April 2024, Manchester Crown Court ordered that the director, who pleaded guilty, receive a 20-week custodial sentence (suspended for 12 months), a fine of £75,000, and that he pay costs of £18,783.61. In addition, his company was fined £20,000 and ordered to pay costs of £18,783.61 having pleaded guilty to breaching Section 2(1) and Section 3(1) of the Health and Safety at Work etc. Act 1974.

The case highlights the personal consequences for senior leadership overlooking known dangers to staff. The HSE has updated its [guidance on asbestos](#) and has launched two campaigns ("[Asbestos and You](#)" and "[Asbestos: Your Duty](#)" in 2023 and 2024) to improve awareness of risks and legal duties.

**HSE reminds industry of guidance on [machinery safety](#)** – The HSE has drawn attention to its guidance on machinery safety following a drinks company being [fined](#) for breaches of Provision and Use of Work Equipment Regulations 1998 (PUWER). In 2022, an employee's finger was amputated when the capper head of a machine he was attempting to un-jam descended onto his finger. An HSE investigation revealed that the business had failed to properly guard against access to dangerous parts of machinery. In particular, the machine's fixed guarding had been removed and the interlock device was inoperable, meaning the employee could access dangerous parts of the machinery. Sourcing International Limited t/a Drinks Chef was fined £14,000 and ordered to pay costs of £4,175.79 after pleading guilty to breaches of Regulation 11(1) of the PUWER. The HSE guidance on [machinery safety](#) requires employers to have adequate maintenance arrangements in place to ensure it remains safe to use.

**Housing company [fined](#) £528,000 after employee suffers burns** – The employee suffered burns to the face after striking an underground electric cable while breaking through concrete to repair a fence post. The housing company had not provided the employee information on nearby underground services (which included an electrical cable and a gas service) or the necessary excavation equipment, despite these risks having been identified in an earlier risk assessment. The HSE's report of the case suggests that it was a frequent practice for the business to excavate the ground but not provide information to employees on the underground services nor provide suitable equipment to detect and safely excavate them. In this instance there was a heightened risk of fire or explosion on of a nearby gas station, and the HSE highlighted the risk to property and to the lives of employees and members of the public. The company pleaded guilty to breaching Regulation 16(2), by virtue of noncompliance with Regulation 25(4) of the Construction (Design and Management) Regulations 2015.



**HSE's [Building Safety conference](#) calls for industry to step up and commit to change** – The Building Safety Regulator (BSR) held its second industry conference in May 2024 following the new building safety regime (contained in the Building Safety Act 2022) being fully established in law in April. Central to the conference was the BSR's "resident-centric approach", highlighting the need for industry accountability and ownership, as well as the importance of giving residents a stronger voice in building safety decisions affecting their homes. The conference also covered the BSR's approach to enforcement (described as "firm but fair"); the role of building control professionals in raising standards; and the need for continued collaboration between industry, regulators and residents. The conference was a timely opportunity for dialogue between the regulator and professionals.

**Company [fined £30,000 for unsafe removal of asbestos](#)** – In 2021, DOV Servies Ltd (t/a Asbestos Gone) (Asbestos Gone) removed loose-fill asbestos insulation from sites, which the HSE inspector described as "the most dangerous asbestos-containing material", without the required licence. Around the same time, Asbestos Gone removed asbestos cement sheets from a school without adequate control measures or a safe system of work to protect its own workers, or pupils or staff at the school. While not a licensed activity, this also attracted regulator scrutiny. As a result of the "shambles of safely removing such a dangerous substance", Asbestos Gone was fined £30,000 and ordered to pay costs of £7,260.85 after pleading guilty to breaching Section 2(1) and 3(1) of the Health and Safety at Work etc. Act 1974 and Regulation 8 of The Control of Asbestos Regulations 2012. A company director was also fined £5,000 and ordered to pay costs of £7,260.85. This is a reminder to all companies that could have responsibilities around asbestos, that a licence may be necessary, and that control measures and safe systems of work are crucial – it is also a reminder that officers such as company directors may face personal liability in some circumstances.

**Waste company director [sentenced over failure to comply with HSE notices](#)** – On 20 May 2024, a director of a waste company was disqualified from being a company director for five years, sentenced to two 12-month community sentences (concurrent), and ordered to pay £10,000 towards prosecution costs for his role in his company's failure to comply with two improvement notices. An August 2020 inspection had found that employees were manually sorting through waste in a yard and at risk of being struck by heavy machinery, and that there were inadequate rest facilities for them to use during break times. As a result, the company was served with two improvement notices in September 2020, and following a further inspection in February 2021, the company was found to be noncompliant and was prosecuted and fined £150,000 in March 2023. The director was found guilty in May 2024 of breaching Sections 37(1) and 33(1) of the Health and Safety at Work etc. Act 1974, which serves as a reminder of the personal consequences for failure to act on regulator communications.





**Studies find most personal and protective equipment (PPE) still fails basic safety and regulation criteria and does not fit women** – [Research](#) carried out by the British Safety Industry Federation (BSIF) found that only 21% of the 123 items spot-sourced between December 2022 and December 2023 met legal safety and regulation criteria. The BSIF has advocated for greater proficiency in PPE procurement to elevate safety standards and prevent future crises.

PPE was also the subject of recent [research](#) by the Women’s Engineering Society, which surveyed approximately 1,500 wearers of PPE, showing that PPE is still based on male body types. 60% of male PPE wearers reported comfortable or perfectly fitting PPE, whereas only 26% of female wearers reported the same. Another key finding of the research was that there a lack of appropriate maternity PPE, with 61% of pregnant workers not being provided with the correct items to allow them to work safely.

**British Safety Council (BSC) publishes [article](#), “What did the 2019-2024 Parliament mean for workers’ health, safety, and wellbeing?”** – The BSC has examined the UK Parliament’s 2019-2024 legislative impact on workers’ health, safety and wellbeing, and published its key takeaways. In particular, the BSC highlights key legislation, such as the Automated Vehicles Act, Worker Protection Amendment, Strikes (Minimum Service Levels) Act and the Employment Relations (Flexible Working) Act, which collectively aimed to enhance worker rights and safety. Private members’ bills like the Paternity Leave (Bereavement) Act and the British Sign Language Act also marked significant strides. However, the article criticises Parliament for insufficiently addressing modern slavery and air quality issues, suggesting a need for ongoing legislative attention in these areas.

**Indefinite [extension](#) of EU conformity marking regime to GB** – Legislation has been made to continue recognition of the current European conformity (CE) marking on goods placed on the market in GB, removing the previous expiry date of the end of 2024. The [Product Safety and Metrology etc \(Amendment\) Regulations 2024 \(SI 2024/696\)](#) were made on 23 May 2024. As part of this legislation, a new fast-track provision is being introduced that will allow manufacturers to place products on the GB market where they meet the EU essential requirements and, where required, have been conformity assessed by an EU-recognised conformity assessment body. Separate government guidance has been published to ensure products are properly checked for conformity and that technical documents are managed correctly.

**Food Standards Agency (FSA) identifies likely source of the E. coli outbreak** – The FSA has published a [press release](#) with advice and information on the E. coli outbreak. As of 25 June, the total number of confirmed cases of E. coli was 275. Based on information from 249 cases, 49% of those infected were admitted to hospital. The FSA investigations have found that prepackaged sandwich products containing lettuce are the likely source of the outbreak. Earlier this month, the FSA published product recall information notices as a precautionary measure. Various suppliers of supermarket prepackaged sandwiches have taken the precautionary step of recalling products due to a possible contamination with E. coli. The FSA’s [guidance](#) to businesses on controlling the risk of E. coli highlights key points around preventing contamination, equipment, personal hygiene, and disinfection.



**Office for Product Safety and Standards (OPSS) updates [guidance](#) for manufacturers, importers and distributors as **Product Security and Telecommunications Infrastructure Act 2022 (Act)** and associated **regulations (Security Regulations)** take effect**

– The UK’s consumer connectable product security regime came into effect on 29 April 2024. The Act and Security Regulations apply to relevant consumer products that can connect to the internet or a network. They require that manufacturers of consumer connectable products selling to UK consumers comply with baseline security requirements, unless exempt. The intention is that the new regime will benefit consumers purchasing new connectable products as they will have world-leading security protections from the threat of cybercrime. The security requirements relate to:

- Banning universal default and easily guessable passwords
- Publishing information on how to report security issues
- Publishing information on minimum security update periods

If manufacturers fail to comply, there is also a duty on authorised representatives to take action. The new regime will be of interest to anyone that:

- Manufactures a product, or has a product designed or manufactured and markets that product under their name or trademark
- Markets a product manufactured by another person under that person’s name or trademark
- Imports a product from a country outside the UK to the UK and is not a manufacturer of the product
- Distributes (i.e. make a product available) in the UK and is not the manufacturer or importer of the product

**OPSS updates its enforcement policy** – In April 2024, the new [OPSS Enforcement Policy](#) was published, setting out the approach to be taken by the regulator to addressing noncompliance by those it regulates and to product safety risks. Enforcement policies set out the framework for a regulator’s decision-making and help industry and the public understand how and why decisions are made. In certain areas of regulation, they have available guidance on how they may use specific enforcement powers, for example, in relation to financial penalties. The OPSS has stated that the aim of this policy is to protect people and places from product-related harm, ensuring consumers and businesses can buy and sell products with confidence. This policy is reviewed every two years, or as necessary in the event of relevant changes to the legislative or regulatory environment.





**Automated Vehicles Act 2024 receives royal assent** – The [Automated Vehicles \(AV\) Act](#), which received royal assent on 20 May 2024, is a significant next step developing a framework for self-driving cars in the UK. The Department for Transport (DfT) and Centre for Connected and Autonomous Vehicles (CCAV) [press release](#) indicated that self-driving vehicles could be on British roads by 2026. Notable features are that the act prohibits certain misleading market practices, ongoing obligations on companies to keep relevant vehicles safe, and that it sets a safety threshold for self-driving vehicles at least as high as careful and competent human drivers.

Road safety is intended to be at the heart of the AV Act, with hopes that automated vehicles will improve road safety by “reducing human error”, which has been found to cause some 88% of collisions. The legislation sets rigorous safety standards and shifts liability from drivers to manufacturers. The DfT and CCAV claim that the act delivers the most comprehensive legal framework of its kind worldwide, as it sets out detailed provisions on liability for AV. Outside of the AV context, there are various potential implications of AI on product safety. We published an article, “[Reconciling Artificial Intelligence \(AI\) with Product Safety Laws](#)”, on this in December 2023.

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