

## Welcome

Welcome to the Autumn 2015 issue of **Environment and Energy Law**. If you would like further details on any of the areas covered in this newsletter then please contact one of our partners or have a look on our website at [www.burges-salmon.com](http://www.burges-salmon.com)

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## Carbon, climate change and sustainability

**President Obama, speaking at the GLACIER Conference in Anchorage, Alaska on 1 September 2015, in the run up to the United Nations Conference on Climate Change (COP 21) due to take place in Paris from 30 November -11 December 2015, declared that "This year, in Paris, has to be the year that the world finally reaches an agreement to protect the one planet that we've got while we still can." The President added –**

*"If we were to abandon our course of action, if we stop trying to build a clean-energy economy and reduce carbon pollution, if we do nothing to keep the glaciers from melting faster, and oceans rising faster, and forests from burning faster, and storms from growing stronger, we will condemn our children to a planet beyond their capacity to repair: Submerged countries. Abandoned cities, fields no longer growing. Indigenous peoples who don't carry out traditions that stretch back millennia. Entire industries of people who can't practice their livelihoods. Desperate refugees seeking the sanctuary of nations not their own. Political disruptions that could trigger multiple conflicts around the globe.*

*That's not a future of strong economic growth. That is not a future where freedom and human rights are on the move. Any leader willing to take a gamble on a future like that – any so-called leader who does not take this issue seriously or treats it like a joke – is not fit to lead."*

China meanwhile has announced ahead of the Paris conference that it plans to increase capacity of wind power to 200GW and solar power to 100GW, to cut greenhouse gases per unit of GDP by 60-65% from 2005 levels, to cap coal consumption and to "declare war" on the "blight" of pollution.

The UK's negotiating team will be led by Defra Secretary of State Amber Rudd, who has said in the summer –

*"I am absolutely committed to making sure we get this ambitious deal – and as legally binding as possible in December. The UK has been a leader in this area ... I am picking up the baton and will run with it."*

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## Back to nature

On 11 September, guests of the RSPB and Crossrail, including the European Commission, were invited to witness the next phase in the RSPB's Wallasea Island Wild Coast project. On this island, eight miles north of Southend-On-Sea in Essex, guests watched the tide rising over the land from the newly breached sea wall, as 670 hectares of farmland reverts to mudflats, coastal marshland, intertidal saltmarsh and a massive system of lagoons, constructed

with the assistance of 3 million tonnes of waste material extracted mainly from London's Crossrail project. The RSPB sees this as very good news for species such as spoonbills, black-winged stilts, avocet and Brent geese. The dramatic extent of this ambitious project may generate wider debate on the relative merits and costs of coastal defences, maintenance of farmland and coastal property and conservation.

## Circular economy package

The European Commission held a Stakeholder Conference on 25 June 2015 on its proposals to introduce a Circular Economy Package of measures in late 2015. Its aim is to move away from the "take-make-consume-and-dispose" economic model towards re-using, repairing, refurbishing and recycling existing materials and products.

The Commission is talking about aims to reduce demand for some new materials by 20%, about creating 2 million new jobs, and saving €600 million, and much of the effect of its proposed new measures will depend on the level of ambition in the initial proposals and on the levels of political support that they attract. Meanwhile, Commission materials introducing the ideas behind the Circular



Economy Package point out statistics such as the 8,000 litres of water and amount of pesticides used to make one new pair of jeans, or the 1Kg of gold that can be recovered from 50,000 mobile phones. This is an area which we expect to see undergoing rapid development, and we look forward to reporting further on its progress in forthcoming Newsletters.

**For further details please contact:**

**William Wilson, Barrister, at**  
**[William.wilson@burges-salmon.com](mailto:William.wilson@burges-salmon.com)**  
**tel +44 (0)117 939 2289.**

# Environmental permitting

## Updated standard rules for environmental permits

On 31 July 2015 the Environment Agency published its responses to a twelfth consultation on amending standard rules for environmental permits for waste activities. The Environment Agency has confirmed it will implement its proposals in relation to the Industrial Emissions Directive 2010 which will affect 12 rule sets, new conditions relating to fire prevention plans for storage of combustible waste, household waste packaging codes, asbestos waste transfer operations and sites combining WEEE and metal recycling.

The new standard rules are expected to be published by the Environment Agency in Autumn 2015.

**For further information on standard rules for environmental permits or environmental permitting more generally, please contact Ian Truman, Senior Associate, at [ian.truman@burgess-salmon.com](mailto:ian.truman@burgess-salmon.com) tel. +44 (0)117 939 2280.**

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## Air quality

### R (o.a.o. ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs

The landmark judgment delivered by the Supreme Court on 29 April 2015 continues to reverberate within government. Air quality is now at or near the top of the political agenda, and likely to be a decisively important issue in the forthcoming London Mayoral election.

The case concerned the “admitted and continued failure by the United Kingdom since 2010 to secure compliance in certain zones with the limits for nitrogen dioxide levels set by European law, under Directive 2008/50/EC” (the Ambient Air Quality Directive).

With the authority of the European Court of Justice to take “any necessary measure” to require compliance with the Directive, the Supreme Court made an order requiring the government to prepare revised plans.

Lord Justice Carnwarth, delivering the unanimous judgment of the Supreme Court, stated that-

*“In addition to the declaration already made, I would make a mandatory order requiring the Secretary of State to prepare new air quality plans under article 23(1), in accordance with a defined timetable, to end with delivery of the revised plans to the Commission not later than 31 December 2015”.*

That is the work presently being undertaken, with some urgency, within government. The practical results of these revised plans will have impacts on many businesses’ operations, with sectors most likely to be affected, including transport, diesel engine users, motorists, airports, and all those affected by a national framework of Low Emission Zones.



The investigations in the USA of emissions from Volkswagen diesel cars will also ensure that this issue receives far greater scrutiny in the coming months.

**The government has now, on 12 September 2015, published a consultation draft of its proposed revised air quality plans to address breaches in nitrogen dioxide limits. This is receiving critical scrutiny from environmental NGOs and risks further legal action from *ClientEarth*. There are particular risks in the government leaving responsibilities to local government without doing enough to address gaps in local authority powers to address air pollution.**

For a more detailed analysis of the background to the *ClientEarth* case, see the article by William Wilson, Barrister in In House Lawyer, September 2014 “Failing Health: Why Air Quality Legislation is Not Working”.

For further information on air quality issues and legislation, please contact William Wilson on [William.wilson@burgess-salmon.com](mailto:William.wilson@burgess-salmon.com) tel. +44 (0)117 939 2289.

# Chemicals and product stewardship

## Landmark ECJ ruling on REACH “articles” and components

On 10 September 2015 the European Court of Justice (ECJ) delivered a landmark ruling that the 0.1% threshold for notification of Substances of Very High Concern (SVHCs) under the REACH Regulation applies to “each of the articles incorporated as a component of a complex product” rather than to the entire article.

The ruling applies to duties on producers and importers of articles to notify the European Chemicals Agency (ECHA) and to inform the recipients of the articles and respond to consumer inquiries, where SVHCs are present at a concentration higher than 0.1% by weight.

The ruling follows an earlier Advocate General’s opinion which has divided opinion in ECHA and the regulators in EU Member States, and will have wide implications for all businesses dealing in articles and components covered by REACH.

**Burges Salmon will be issuing a revised and updated version of the briefing note prepared on Advocate General Kokott’s preliminary ruling in this important case. To receive the revised briefing or for further information please contact William Wilson on tel. +44 (0)117 939 2289, email [William.wilson@burges-salmon.com](mailto:William.wilson@burges-salmon.com) or Simon Tilling on tel.+44(0)117 902 7794.**

## REACH 2018 Registration deadline

**The final EU REACH chemicals Regulation deadline for Registration is now in prospect.**

For those manufacturing, or importing from outside the EU, any chemical substance above one tonne per year, Registration

requirements may now apply from 31 May 2018, and pre-registration needs to be completed by 31 May 2017.

This last step in the phased introduction of REACH Registration requirements to much smaller tonnage bands is likely to have wide impacts, to catch many smaller companies, and to create considerable pressures for larger companies, for example on availability of laboratory capacity for Registration work.

ECHA continues to urge companies to prepare for the 2018 Registration deadline well in advance.

## CLP 2015 deadline 1 June 2015

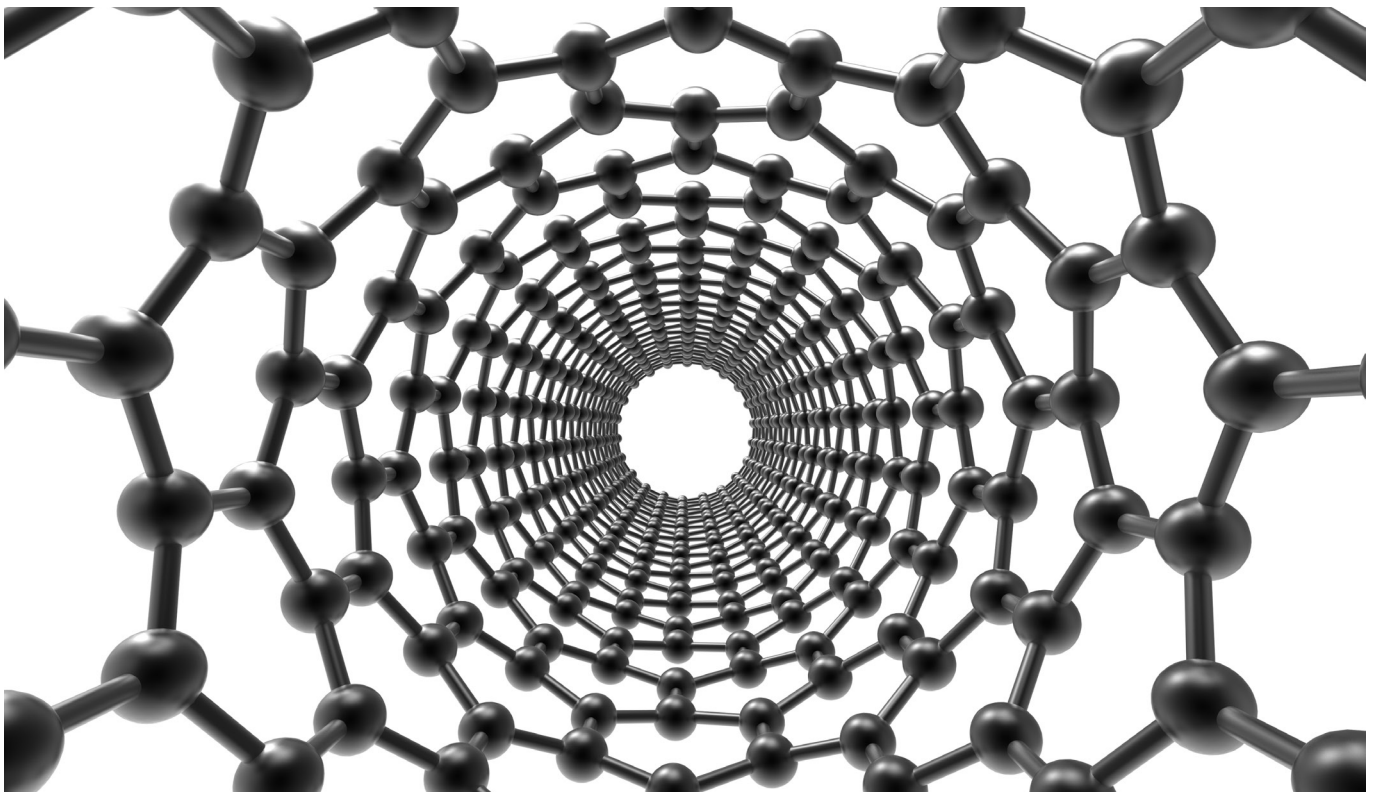
1 June 2015 was the date by which the EU Classification, Labelling and Packaging ‘CLP’ Regulation became the only legislation applicable to the labelling in the EU of both substances and mixtures.

The Dangerous Substances Directive and the Dangerous Preparations Directive have now been repealed, and replaced by the CLP Regulation, which implements in the EU the Globally Harmonised System ‘GHS’ agreed at UN level.

Businesses should be assured that all Safety Data Sheets now meet the revised requirements and that classification and labelling of their substances are up to date.

## Biocidal Products Regulation – 1 September 2015 deadline

ECHA has been carrying the warning on its website for some months “**Biocides - 1 September 2015 – Apply now to stay on the market**”, and we have referred to this in earlier briefings.



From 1 September 2015, a biocidal product consisting of, or containing or generating a relevant substance cannot be made available on the EU market if the substance supplier or product supplier is not included in the Article 95 List for the product type or types to which the product belongs.

It would appear from the Article 95 List, which is available on the ECHA website, that the very small number of suppliers listed for some product types suggests that a number of product and substance suppliers may not have taken action in time, and we expect to see considerable disruption in some supply chains as a result.

## European Commission reports on the definition of Nanomaterials

On 10 July 2015 the Joint Research Centre (JRC) of the European Commission published the last of three reports on the EU definition of nanomaterials as set out in Recommendation 2011/696/EU. The aim of the tripartite review, based on feedback from stakeholders, was to improve the clarity and practical application of the EU definition.

The final report endorses the broad scope of the EU definition which encompasses natural, incidental as well as manufactured nanomaterials; it retains size as the defining property of a nanoparticle and a nanoscale range of between 1 nm to 100 nm. The maintenance of a threshold of 50% of particles within the nanoscale range in a given material and the measurement unit of particle number-based size distribution rather than mass-based are also supported.

However, the JRC highlights the need for clarification and guidance on issues such as role of the volume specific surface area and the measurement of agglomerates and aggregates. Indeed the wider issue raised by several industry representatives in respect of the shortage of standardised methodologies for identifying nanomaterials under the particle number-based size distributions criterion is recognised by the JRC.

The EU definition feeds into legislation ranging from the Health & Safety at Work etc Act 1974 to the REACH Regulation, and Biocidal Products Regulation. It impacts the treatment of products from car wax to plastic products to cosmetics and food or drinks. Therefore, it is important to industry and consumers that definitions adopted in legislation promote consistency and effective risk management.

The EU definition diverges from that of the International Organization for Standardization (ISO), which has been used as a working definition in Australia, Canada and USA. Some commentators have remarked that the adoption of different definitions across jurisdictions and indeed legislations means that a substance could be considered a nanomaterial and subject to specific risk assessments when included in a certain type of products (e.g. biocide) but not subject to the same requirements in another application (e.g. cosmetics). Similarly, a material could be considered a nanomaterial in certain jurisdictions (e.g. in the EU) and not so in others (e.g. the USA).

## Nanomaterials - ECHA's request for "nano-level" information challenged

In a series of related appeals, a number of major companies are challenging decisions taken by ECHA that would require the registrants of substances such as Silicon dioxide to submit detailed information regarding their "nano-forms". The basis for ECHA's request is a concern that small nanoscale particles can have specific characteristics, including hazardous properties, which are distinct from the non-nano particles of the same material. Further information is therefore requested from registrants so that ECHA can evaluate this risk.

The companies are arguing in response that there is no legal basis under the REACH Regulation that allows ECHA to request information on "forms" of substances, so are seeking an annulment of the decision. The grounds for annulment include that there is no legally binding European definition of nanomaterial to justify the request, and that ECHA has failed to identify a valid concern which necessitates the evaluation of nanoparticles.

The outcome of these cases will be significant for the regulation of nanomaterials across Europe. The key point is whether ECHA can use decisions addressed to registrants to request detailed information on nanomaterials for the purpose of evaluation under REACH, in the absence of a clear legal basis. If ECHA's decision is upheld by the Board then it is likely that ECHA will go on to evaluate more nanomaterials in this way.

## EU Food Contact Regulation (10/2011) fully in force on 1 January 2016

Regulation No.10/2011 on plastic food contact materials came into force in May 2011 and included a three year transition period to allow industry to get to grips with the new rules. The transition period ends on 31 December 2015 which means that from 1 January 2016 the rules in Regulation No.10/2011 will apply in full. Suppliers of plastic food contact materials and also food business operators that use plastic food contact materials should check in advance of 1 January that the plastic food contact materials supplied or used are fully compliant with the new rules. It is worth noting that the new tests for plastic food contact materials are stricter than the previous regime. It is also important moving forward that plastic food contact materials are accompanied by a Declaration of Compliance confirming compliance with Regulation No. 10/2011.

## Glyphosate and IARC report

The International Agency for Research on Cancer (IARC), the specialised cancer agency of the World Health Organisation, has produced a report (*IARC Monographs Volume 112*, 20 March 2015) on its assessment of the carcinogenicity of five organophosphate pesticides.

The herbicide **glyphosate** and the insecticides **malathion** and **diazinon** were classified by the IARC as probably carcinogenic to humans (Group 2A).

The insecticides **tetrachlorvinphos** and **parathion** were classified as possibly carcinogenic to humans (Group 2B). The IARC noted that **tetrachlorvinphos** was already banned in the EU. In the USA it was still used for limited purposes such as pet flea collars. **Parathion** use had been severely restricted since the 1980s, with authorised uses cancelled in the EU and USA by 2003.

The IARC noted that **malathion** was currently used in substantial volumes worldwide in agriculture, public health and insect control. **Diazinon** had lower production volumes since restrictions in the EU and USA in 2006, but was used in agriculture and for insect control.

The IARC noted that “**glyphosate** currently has the highest global production volume of all herbicides. The largest use worldwide is in agriculture. The agricultural use of glyphosate has increased sharply since the development of crops that have been genetically modified to make them resistant to glyphosate.” It is also used in forestry, urban and home applications.

The IARC report is by no means the last word on this subject. Monsanto, as makers of Roundup, have expressed doubts about its conclusions, while the Soil Association has written to ministers about it. We expect this to continue to have wide repercussions as European regulators come to consider its findings in more detail.

## Conflict Minerals

On 20 May 2015, the European Parliament voted in favour of strengthening the provisions of a draft Regulation that builds on US efforts to prevent conflict minerals from entering the global market. The draft Regulation imposes tougher surveillance procedures on European companies downstream of the extraction process for imports from conflict zones – including gold, tungsten, tin and tantalum components in products such as mobile phones. The new draft Regulation takes a much more stringent stance than the voluntary system originally proposed. The European Commission estimates that the proposed Regulation will affect 880,000 European companies, the majority small or medium-sized.

If the draft Regulation is passed, all importers established in the EU that bring certain minerals sourced from “conflict-affected and high-risk areas” into the EU will be required to conduct due diligence on the origin of these minerals, consistent with the OECD Due Diligence Guidance for Responsible Supply Chain of Minerals from Conflict-Affected and High-Risk Areas or an equivalent system. In addition, the majority of smelters and refiners in the EU will be required to undergo independent third-party audit of their due diligence processes.

These companies will then need to disclose the measures they have taken to address risks of conflict minerals entering their supply chains, including products or components that may contain conflict minerals. The hope is that this will be taken into account by consumers in making their purchasing decisions and

investors in making their investment choices. It may also help inform NGO actions and campaigns to scrutinise and publicise a company and its sourcing practices, so reputational risk will also be an issue.

Whereas the US Dodd-Frank Act only concerns sourcing from a specific region in Africa, the EU Regulation draft has a much broader geographic scope of “conflict-affected and high-risk areas” anywhere in the world. The aim is to compel companies to engage in responsible sourcing throughout their entire supply chain and not just for certain countries. This implies an increased cost and administrative burden on these companies, and additionally, creates considerable uncertainty for companies in identifying these areas. Better understanding of the supply chain and traceability will be a key to successful compliance.

## Modern Slavery Act

The Modern Slavery Act 2015 mainly addresses slavery, servitude and forced or compulsory labour and human trafficking, and establishes an Anti-slavery Commission. However, the new legislation has important implications for businesses with overseas production. The UK government announced in July 2015 that businesses with a turnover of £36 million or more will have to report on slavery in their supply chains under the new Act. From October, businesses will be required to publish an annual reporting statement, which describes the steps they have taken to ensure that slavery and human trafficking is not taking place in their supply chains, or stating that no steps have been taken.

Similar to the approach of the draft conflict minerals Regulation, the real strength of the legislation is in public disclosure, and the impact of consumer and investor decisions in response to this disclosure.

## Control of Major Accident Hazard (COMAH) Regulations 2015

Revised COMAH Regulations implementing the Seveso III Directive and covering control of major accident hazards at chemical and petrochemical sites in particular came into force on 1 June 2015. The revised Regulation reference the CLP Regulation, and have notification requirements for businesses affected that need to be met by 1 June 2016. New public information requirements will also apply to lower tier COMAH sites.

## Nine EU Single Market Directives re-cast within EU New Legislative Framework

The Department for Business Innovation & Skills and HSE issued a consultation in August 2015 about the way the government planned to implement EU revisions to nine Single Market Directives. National implementation of these changes needs to be completed by April 2016.

The Directives affected are as follows –

Name	Old number	New Number
Low Voltage	2006/95/EC	<b>2014/35/EU</b>
Simple Pressure Vessels	2009/105/EC	<b>2014/29/EU</b>
Lifts and their safety components	1995/16/EC	<b>2014/33/EU</b>
Equipment for use in Potentially Explosive Atmospheres	T94/9/EC	<b>2014/34/EU</b>
Electromagnetic Compatibility	2004/108/EC	<b>2014/30/EU</b>
Measuring Instruments	2004/22/EC	<b>2014/32/EU</b>
Non Automatic Weighing Instruments	2009/23/EC	<b>2014/31/EU</b>
Civil Explosives	93/15/EC	<b>2014/28/EU</b>
Pressure Equipment	97/23/EC	<b>2014/68/EU</b>

In some cases there will be new obligations on manufacturers, importers and distributors, and detailed provisions about bodies carrying out conformity assessments and market surveillance.

**Revised Regulations to implement these changes in EU Directives will result in the replacement of a number of familiar Regulations such as the Measuring Instruments Regulations 2006, the Explosives Regulations 2014 and the Pressure Equipment Regulations 1999. Draft revised Regulations were published as part of the BIS/HSE consultation.**

For further details on chemicals regulation or product stewardship issues, or to be added to the list for webinars and separate briefings in this area, please contact William Wilson, Barrister, at [William.wilson@burges-salmon.com](mailto:William.wilson@burges-salmon.com) tel +44 (0)117 939 2289 or Simon Tilling, Senior Associate at [simon.tilling@burges-salmon.com](mailto:simon.tilling@burges-salmon.com) tel.+44(0)117 902 7794.

## Energy and power

### Shale gas

On 18 August 2015 the Oil and Gas Authority – the UK’s oil and gas regulator – made an announcement regarding the 14th Onshore Round. The OGA confirmed that 27 onshore licence blocks (a “block” is an area of land typically 10km by 10km) will be formally offered to companies later this year, once terms and conditions have been finalised. A second tranche of blocks is being consulted on as they need further environmental assessment under the Conservation of Habitats and Species Regulations 2010. That consultation closed at the end of September 2015.

The announcement by OGA is significant as it has been over a year since applicants were first invited to seek licences to explore for onshore oil and gas as part of the 14th Round. We now know that 95 licence applications were received from 47 companies covering 295 blocks in England, Scotland and Wales. Notably the UK Government will not now be awarding any licences in Scotland and Wales, to respect the devolution settlements that are due to come into force.

Companies that are granted a Petroleum Exploration and Development Licence (PEDL) will obtain rights “to search and bore for and get petroleum”. In order to carry out specific development activities, such as drilling, requires additional consents including planning permission.

In a separate recent announcement, the UK Government confirmed it will bring in changes to fast-track the hearing of planning decisions relating to shale gas projects if they are not determined (approved or rejected) by Councils within 16 weeks.

**For details on these very significant developments, or for further information, please contact James Phillips, on [james.phillips@burges-salmon.com](mailto:james.phillips@burges-salmon.com), tel +44 (0)117 902 7753**



## Recent changes to the Renewables Obligation and Feed in Tariffs

### Challenges ahead

Following the May 2015 election, the UK government has commenced a wholesale reform of the way in which renewable energy is supported and incentivised in the UK.

This review has been shaped by a number of factors, including; (i) a 2015 Conservative election manifesto commitment to end any new public subsidy for onshore wind; and (ii) an acknowledgement by the Department of Energy and Climate Change (“DECC”) that for a variety of reasons, it expects the Levy Control Framework to exceed the original 2020-2021 budget of £7.6bn (in 2011/2012 prices) by 20% in the absence of measures to control costs. This has culminated in a number of significant policy changes being proposed in the past few months which present a profound challenge to the renewables sector.

### Early closure of the Renewables Obligation (RO) to wind and solar

On 18 June 2015, Amber Rudd announced via a written statement to Parliament that the Government will close the RO to onshore wind generating stations from 1 April 2016, subject to allowing certain onshore wind generating stations that satisfy specific eligibility criteria a grace period under which they can accredit under the RO until 31 March 2017. The draft bill, which was introduced in the House of Lords, will prevent the issuing of ROCs in relation to electricity generated by onshore wind generating stations accredited after 31 March 2016. The precise grace period criteria remain unclear.

Quickly thereafter, DECC published on 22 July 2015 its consultation on changes to the RO for solar pV generating stations with an installed capacity of 5MW or below (“Small pV”). The following main changes have been proposed:

- Small pV projects which fail to meet certain grace period eligibility conditions as at 22 July 2015 will no longer be able to accredit under the RO after 31 March 2016, and will also cease to have their applicable RO banding grandfathered (even if accredited before 31 March 2016). Grandfathering is the policy that once a generating station is accredited and receiving RO support at a certain level/band it will continue to receive that level of RO support for the full 20 year support period.
- For those Small pV projects which do meet the relevant grace period eligibility conditions, they will continue to be eligible to accredit under the RO up to 31 March 2017 and will have their ROC banding grandfathered at the level which applies at the date of accreditation. However, the Government has also announced that it is reviewing the current ROC bandings for Small pV and significant reductions in support levels are expected to be implemented. The timing of this is currently unclear and could potentially be implemented before 31 March 2016.

As a result, the onshore wind and Small pV RO grace periods will now be a key factor in almost all construction, sale and financing transactions involving such new generating stations.

### Proposed changes to the FIT

**As part of the Government’s review DECC has also proposed significant changes to the FIT regime.**

On 22 July 2015 DECC published a consultation on the removal of the preliminary accreditation and preliminary registration option for solar PV, wind, hydro and anaerobic digestion generating stations under the FIT (meaning that developers will have no certainty on the FIT generation tariff for a generating station until that station is fully accredited). On 9 September 2015, the Government confirmed in its response to consultation that preliminary accreditation will be removed from 1 October 2015.







On 27 August 2015, DECC published another consultation proposing (among other things):

- a. significantly reduced generation tariffs for almost all generating technologies with amended tariff bandings. A separate consultation on the generation tariff for anaerobic digestion generating stations is expected to occur later on this year;
- b. a quarterly default degeneration mechanism for all technologies with contingent degeneration of 5% and then 10% occurring where deployment (across technology and then all technologies together) exceeds specified thresholds;
- c. that the generation and export tariffs for new installations be indexed by CPI rather than RPI; and
- d. an overall budget expenditure limit of £75-£100 million for the FIT to 2018/19 which will be enforced by a complex system of deployment caps followed by the removal of the generation tariff in 2018/19. The consultation makes clear that the generation tariff could be removed at an earlier date if consultation responses indicate that deployment caps will be an ineffective means of controlling costs.

DECC has indicated that it intends to bring into effect the changes as quickly as legislatively possible (potentially around January 2016). The consultation closes at 11:45am on 23 October 2015 and a link to the consultation can be found below.

<https://www.gov.uk/government/consultations/changes-to-feed-in-tariff-accreditation>

The overall picture is that the Government is seeking to apply a brake to the further deployment of renewables. Given RO and FIT developments and the general shift in government policy, this is likely to have a significant impact on deployment affecting not only commercial developers, investors and the supply chain, but also community energy projects and individual householders wanting to install and commit to green energy.

## Planning Changes for Onshore Wind

The Conservative onshore wind election manifesto commitment led the Government to announce on 18 June 2014 that it was introducing a new planning policy with the stated aim of giving local communities a much greater say on decisions in relation to onshore wind planning applications. As a result of this policy, local authorities should only grant planning permission for wind turbines (including community projects) in their area if (i) the site is in an area identified as suitable for wind energy as part of a Local or Neighborhood Plan; and (ii) following consultation, the planning impacts identified by affected local communities have been fully addressed and therefore has their backing. It is widely predicted that this will result in more application refusals, and this is already starting to happen.

## The End of LECs for Renewable Electricity

Unrelated to the review of the RO and FIT but nevertheless significant, George Osborne announced in the Summer Budget that from 1 August 2015 electricity from renewables projects would no longer benefit from the exemption from the Climate Change Levy (CCL).

The exemption had operated to enhance revenue from renewable projects since Levy Exemption Certificates ("LECs") could be obtained by a generator and these in turn, could be traded alongside other certificates like ROCs with electricity suppliers. The long term value of the CCL exemption and the longevity of the CCL, had been the subject of much debate in recent years with many licensed electricity suppliers taking a cautious approach. Even so, the announcement has had an impact on financial models and for those with existing projects and long term power purchase agreements, advice may need to be sought on the impact of this change in law to assess whether the contracts can be or are likely to be reopened.

Affected parties will also be following closely the recently commenced judicial review proceedings by the Drax Group and Infinis Energy (jointly) in relation to the removal of the Climate Change Levy (CCL) exemption for electricity generated from renewables.

## Contracts for Difference: Delay

Reflecting the Government's desire to put in place cost cutting measures to ensure the Levy Control Framework budget will not be breached, the indications are that there will be no contract for difference ("CfD") allocation round this October and that the government will set out its plans in respect of the next CfD allocation round this autumn.

## Summary

Whilst the challenge of eventually reducing grid parity has always been accepted by the renewables industry, the speed and extent of the proposed changes to renewables legislation has caused much alarm within the industry. It is widely regarded by the industry as putting the long-term future of the UK as a leading centre for renewable energy under threat.

In the meantime, developers and investors will be keen to make the most of current short term opportunities, with speed of deployment and grace period eligibility playing a crucial part in almost all renewable projects. In both cases, sound professional advice will be important to help maximise those opportunities.

**For further information on any of the proposed government changes to the renewable electricity incentive schemes, grace period eligibility, or for further details about Burges Salmon's market leading Renewable Energy practice, please contact Ross Fairley, Partner, on +44 (0)117 902 6351 or email [ross.fairley@burges-salmon.com](mailto:ross.fairley@burges-salmon.com).**

# Reporting & management

## Change to UK Shareholder Voting Guidelines on environmental, social and governance issues.

In April 2015 Pensions Investment Research Consultants published its 2015 UK Shareholder guidelines to all listed companies its analyses which explain its views on good corporate practice on issues from board structure to reporting of social and environmental issues. Chapter 8 of the 2015 guidelines that relates to sustainability and corporate responsibility reporting has been restructured with voting advice on environmental and social concerns being removed.

The remaining guidelines cover areas such as management of environmental, social and governance issues, publication of environmental policies and data, influencing the environmental and social performance of supply chains and the auditing and reporting of environmental and social impacts.

# Waste

The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 came into force on 1 July 2015. They update existing environmental legislation to reflect the alignment of the Waste Framework Directive 2008 and Decision 2000/532/EC (on the List of Wastes) with the EU Classification, Labelling and Packaging Regulation 2008.

A range of environmental legislation has been updated, including the:

- Batteries and Accumulators (Placing on the Market) Regulations 2008;
- Environmental Permitting (England and Wales) Regulations 2010;
- Environmental Protection Act 1990;
- Hazardous Waste (England and Wales) Regulations 2005; and
- Waste (England and Wales) Regulations 2011.

Perhaps the most significant amendment is the revocation of the List of Wastes (England) Regulations 2005. In addition the Environment Agency has published new guidance "WM3" on the classification and assessment of waste to reflect the new system of chemical classification introduced by the CLP Regulation 2008.

**For further information on waste issues, please contact Nick Churchward, on tel +44 (0)117 307 6998 or email [nick.churchward@burges-salmon.com](mailto:nick.churchward@burges-salmon.com).**

## Single Use Carrier Bags Charge (England) Order 2015

From 5 October 2015, large shops (with 250 or more full time equivalent employees) will be required under this new order to charge 5p on each single use plastic bag.

# Water

## Water Framework Directive 2015 "good status" Deadline

With limited exceptions, the Water Framework Directive requires member States to achieve "good status" ("good chemical status" and "good ecological status") in all surface water bodies and groundwater bodies in the EU by 22 December 2015. This key deadline is expected to drive further developments as regulatory attention shifts from more obvious polluters that can affect "good status" to secondary sources such as diffuse pollution.

Meanwhile WWF, the Angling Trust and Fish Legal have announced that they have been given permission for a judicial review challenge against Defra and the Environment Agency over the level of protection given to Natura 2000 sites.

## ECJ 'Weser' Case

In the highly important European Court of Justice case concerning dredging operations in the River Weser, Case C-461/13, the Court had to consider what constituted "deterioration" for the purposes of the "no deterioration" rule in the Water Framework Directive.



As noted above, the Water Framework Directive requires Member States to achieve "good status" of all surface water bodies and groundwater bodies by 22 December 2015. Tighter regulations to address areas where this requirements cannot be delivered are likely in a number of areas.

"Good status" consists of elements of "good chemical status" and "good ecological status", and Member States are required not only to achieve improvements, but also to prevent deterioration in status, for example when consenting major infrastructure projects such as hydropower, ports, industrial facilities and wastewater discharges.

The "Weser" case establishes that "deterioration" is to be measured not just overall, but by reference of deterioration in status (from grades rated high-good-moderate-poor-bad) in any individual component of ecological status.

The case will therefore impact on Member State consenting decisions for infrastructure projects whenever these can be shown to impact the relevant status of invertebrates, macro invertebrates, flora, aquatic flora and fish, physio chemical parameters, hydromorphological parameters, river basin specific pollutants and global overall ecological status.

We expect this case to have major impacts on many development proposals.

**For further details please contact William Wilson, Barrister, at [William.wilson@burges-salmon.com](mailto:William.wilson@burges-salmon.com) tel +44 (0)117 939 2289.**

## Upcoming events

Ella Curnow will be speaking on the Energy Act and Minimum Energy Efficiency Standards (MEES) at the RICS Autumn CPD series in Wales on 6 October 2015. Burges Salmon will be preparing a separate briefing on Minimum Energy Efficiency Standards (MEES).

**For further information or to receive the MEES briefing, please contact Ella Curnow at [ella.Curnow@burges-salmon.com](mailto:ella.Curnow@burges-salmon.com) tel +44(0)117 307 6814.**

William Wilson will be speaking on air quality regulation, the legal implications of the recent *ClientEarth* judgment from the Supreme Court and implications of current diesel emissions investigations in the USA at the National Autumn Conference of Environmental Protection UK in Birmingham on 18 November 2015.

### Water law and regulation update webinar

Noel Beale, Director, Competition-Regulation and William Wilson, Barrister will be presenting a lunchtime webinar on **25 November 2015** with an update on competition and regulation issues relevant to water law and regulation and water companies.

**For further details please contact Noel Beale on +44 (0)117 307 6050, [noel.beale@burges-salmon.com](mailto:noel.beale@burges-salmon.com) or William Wilson, Barrister, Burges Salmon on tel +44 (0)117 939 2289, [william.wilson@burges-salmon.com](mailto:william.wilson@burges-salmon.com).**

### Chemicals regulation and product stewardship update webinar

As reflected in this newsletter, there are a number of significant regulatory and commercial developments in the area of chemicals regulation and product stewardship. We will be aiming to provide a short round up of significant developments at a lunchtime webinar on **11 November 2015**, in conjunction with Paul Ashford, Managing Director of Caleb Management Services/Anthesis.

**For further details please contact William Wilson, Barrister, Burges Salmon on tel +44 (0)117 939 2289, [William.wilson@burges-salmon.com](mailto:William.wilson@burges-salmon.com). or Simon Tilling, Senior Associate at [simon.tilling@burges-salmon.com](mailto:simon.tilling@burges-salmon.com) tel.+44(0)117 902 7794.**

## Burges Salmon news

### New team member



Sarah Farr has joined our environmental & energy law team as a Solicitor. Sarah has previously worked for the environment practices of two firms in the North West. She has experience of both contentious and non-contentious environmental and regulatory work, and has advised clients on product stewardship issues and due diligence on corporate and property transactions.

## Newly Qualified Lawyers

Richard Manning and Sarah Raby have completed their training contracts and qualified as Solicitors into the Environment & Energy Unit.

## Recent Publications

### *Burges Salmon Guide to Nuclear Law 2nd Edition*

The second edition of the Burges Salmon Guide to Nuclear Law has now been published. This edition has been greatly expanded and extensively updated and revised, and benefits from a number of contributions from leading experts in the field.

### *Nuclear Law and regulation Training*

Burges Salmon has developed a flexible modular nuclear law and regulation training package, adaptable to client needs and which can be broken down into one or two week sessions as required.

For further information, or to receive our separate nuclear law briefing, please contact Ian Salter, Partner, Head of Nuclear on [ian.salter@burges-salmon.com](mailto:ian.salter@burges-salmon.com) tel +44 (0)117 939 2225.

## Environment and Energy partners



**Ian Salter**  
Partner

+44 (0) 117 939 2255  
[ian.salter@burges-salmon.com](mailto:ian.salter@burges-salmon.com)



**Ross Fairley**  
Partner

+44 (0) 117 902 6351  
[ross.fairley@burges-salmon.com](mailto:ross.fairley@burges-salmon.com)



**Michael Barlow**  
Partner

+44 (0) 117 902 7708  
[michael.barlow@burges-salmon.com](mailto:michael.barlow@burges-salmon.com)



**Nick Churchward**  
Partner

+44 (0) 117 307 6998  
[nick.churchward@burges-salmon.com](mailto:nick.churchward@burges-salmon.com)



**James Phillips**  
Partner

+44 (0) 117 902 7753  
[james.phillips@burges-salmon.com](mailto:james.phillips@burges-salmon.com)



**Nathan Curtis**  
Partner

+44 (0) 117 307 6215  
[nathan.curtis@burges-salmon.com](mailto:nathan.curtis@burges-salmon.com)

## Publications list

**13 May 2015**

Enforcement trends and targets – environmental offences (LexisPSL)

[http://www.burges-salmon.com/practices/environment/publications/lexispsl\\_enforcement\\_trends\\_and\\_targetsenvironmental\\_offences.pdf](http://www.burges-salmon.com/practices/environment/publications/lexispsl_enforcement_trends_and_targetsenvironmental_offences.pdf)

**20 May 2015**

All change in green energy: results of the first Contracts for Difference auction (In House Lawyer – May 2015)

[http://www.burges-salmon.com/sectors/energy\\_and\\_utilities/publications/in\\_house\\_lawyer\\_article\\_may\\_2015.pdf](http://www.burges-salmon.com/sectors/energy_and_utilities/publications/in_house_lawyer_article_may_2015.pdf)

**3 June 2015**

The Queen's Speech – Implications for Planning, Energy and Housing

[http://www.burges-salmon.com/practices/planning%20and%20cpo/publications/the\\_queens\\_speech\\_implications\\_for\\_planning\\_energy\\_and\\_housing.pdf](http://www.burges-salmon.com/practices/planning%20and%20cpo/publications/the_queens_speech_implications_for_planning_energy_and_housing.pdf)

**4 June 2015**

A-Z of issues in renewable energy projects (Q to S)

[http://www.burges-salmon.com/sectors/energy\\_and\\_utilities/publications/az\\_of\\_issues\\_in\\_renewable\\_energy\\_projects\\_q\\_to\\_s.pdf](http://www.burges-salmon.com/sectors/energy_and_utilities/publications/az_of_issues_in_renewable_energy_projects_q_to_s.pdf)

**9 June 2015**

Burges Salmon Glossary of Nuclear Terms (June 2015)

[http://www.burges-salmon.com/sectors/energy\\_and\\_utilities/nuclear/publications/burges\\_salmon\\_glossary\\_of\\_nuclear\\_terms\\_june\\_2015.pdf](http://www.burges-salmon.com/sectors/energy_and_utilities/nuclear/publications/burges_salmon_glossary_of_nuclear_terms_june_2015.pdf)

**7 July 2015**

A-Z of issues in renewable energy projects (T to V)

[http://www.burges-salmon.com/sectors/energy\\_and\\_utilities/publications/az\\_of\\_issues\\_in\\_renewable\\_energy\\_projects\\_t\\_to\\_v.pdf](http://www.burges-salmon.com/sectors/energy_and_utilities/publications/az_of_issues_in_renewable_energy_projects_t_to_v.pdf)

**30 July 2015**

Making sense of the RO and FIT recent changes – Q&A

[http://www.burges-salmon.com/sectors/energy\\_and\\_utilities/publications/making\\_sense\\_of\\_the\\_ro\\_and\\_fit\\_recent\\_changes\\_qa.pdf](http://www.burges-salmon.com/sectors/energy_and_utilities/publications/making_sense_of_the_ro_and_fit_recent_changes_qa.pdf)

**12 August 2015**

A difficult balance: keeping the lights on (In House Lawyer – July 2015)

[http://www.burges-salmon.com/sectors/energy\\_and\\_utilities/publications/in\\_house\\_lawyer\\_article\\_july\\_2015.pdf](http://www.burges-salmon.com/sectors/energy_and_utilities/publications/in_house_lawyer_article_july_2015.pdf)

**10 September 2015**

A-Z of issues in renewable energy projects (W to Z)

[http://www.burges-salmon.com/sectors/energy\\_and\\_utilities/publications/az\\_of\\_issues\\_in\\_renewable\\_energy\\_projects\\_wz.pdf](http://www.burges-salmon.com/sectors/energy_and_utilities/publications/az_of_issues_in_renewable_energy_projects_wz.pdf)

**11 September 2015**

The new Waste Duty of Care Code of Practice (Recycling Waste World)

[http://www.burges-salmon.com/sectors/energy\\_and\\_utilities/resource%20and%20waste%20management/publications/the\\_new\\_waste\\_duty\\_of\\_care\\_code\\_of\\_practice.pdf](http://www.burges-salmon.com/sectors/energy_and_utilities/resource%20and%20waste%20management/publications/the_new_waste_duty_of_care_code_of_practice.pdf)

One Glass Wharf  
Bristol BS2 0ZX  
Tel: +44 (0) 117 939 2000  
Fax: +44 (0) 117 902 4400

6 New Street Square  
London EC4A 3BF  
Tel: +44 (0) 20 7685 1200  
Fax: +44 (0) 20 7980 4966

[www.burges-salmon.com](http://www.burges-salmon.com)

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