

## ENVIRONMENTAL HIGHLIGHTS (JANUARY 2009)

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### REACH – End of Pre-Registration

Pre-Registration under the EC Regulation for the **R**egistration, **E**valuation, **A**uthorisation and restriction of **C**hemical Substances<sup>1</sup> was required to take place by 1 December 2008 so that companies could benefit from the staggered approach to "phasing substances" (See In Focus 20 and 21). Companies that failed to pre-register will now be required to cease trading activities, including in the substances that should have been registered, until they have submitted a full REACH registration dossier, together with a relevant fee and secured formal registration. Inevitably, there will be cost and resource implications. Those companies that did pre-register prior to the 1 December deadline must now take steps towards forming "Substance Information Exchange Forums" (SIEFs). CEFIC<sup>2</sup> guidance on the establishment of such forums is available<sup>3</sup>.

### Chemical Labelling

The EC adopted a new proposal for a regulation on the classification, labelling and packaging of substances and mixtures<sup>4</sup> in 2008, which will replace provisions in EU Directives 67/548/EEC and 99/45/EEC once adopted. The proposal comprises the classification criteria and labelling rules agreed at a UN level<sup>5</sup> and requires companies to label appropriately and package their hazardous chemicals prior to being placed on the open market. The EC formally adopted three legislative reports on classifying, labelling and packaging in 2008, complementing the EU REACH Regulation in respect of chemicals. It is anticipated that the rules for substances will come into force on 1 December 2010 and for mixtures in 2015.

### Revised Directive – Restriction on the Use of Certain hazardous Substances in Electrical and Electronic Equipment (RoHS)

The EC published a proposal to revise the RoHS<sup>6</sup> Directive, which prohibits the marketing of new electrical and electronic equipment that exceed permitted levels of certain hazardous substances in December 2008. The aim of the proposal is to clarify and simplify the legislation, whilst strengthening the enforcement aspects of the Directive.

<sup>1</sup> EC Regulation 1907/2006/EC

<sup>2</sup> European Chemical Industry Council

<sup>3</sup> [www.cefic.be](http://www.cefic.be)

<sup>4</sup> COM (2007) 335

<sup>5</sup> Globally Harmonised System of Classification and Labelling of Chemicals (GHS)

<sup>6</sup> 2002/95/EC

## New Department for Energy and Climate Change

The Department of Energy and Climate Change (DECC) came into being on 3 October 2008 and brings together the former functions of the Climate Change Group (Defra), together with the energy group (BERR). Established after the recent cabinet reshuffle, Ed Milliband's stated key objectives are to balance the challenges of climate change with the need for energy security. The Department will lead on overall strategy, key international EU negotiations, the delivery of a low carbon economy and security of affordable energy supply, low carbon energy supply, carbon budgets, development consents and planning, licensing and exploration, off-shore environment decommissioning, in addition to bringing forward the provisions of the climate change and energy acts.

Following the October 2008 cabinet reshuffle, the principal players are:

The Secretary of State for Business, Enterprise and Regulatory Reform	Lord Peter Mandleson
The Secretary of State for Environment, Food and Rural Affairs	Rt. Hon Hilary Benn MP
The Secretary of State for Communities and Local Government	Rt. Hon Hazel Blears MP
The Secretary of State for Transport	Rt. Hon Geoff Hoon MP
The Secretary of State for Energy and Climate Change	Rt. Hon Ed Milliband MP
The Secretary of State for Culture, Media and Sport	Rt. Hon Andy Burnham MP

## Batteries Directive – Update

The Batteries Directive<sup>7</sup> entered into force on 26 September 2008 and requires the collection and recycling of waste batteries. Its primary focus is to make producers financially responsible for the collection, recycling and treatment of waste batteries and accumulators, whilst also placing restrictions on the use of heavy metals and harmful materials. In a move designed to ease the regulatory impact on business, however, the EC made it clear at the time that all of those batteries and accumulators that had been lawfully placed on the market prior to the directive entering into force would not have to be withdrawn or relabelled in line with the revised legislative requirements.

In terms of UK regulation, the "Batteries and Accumulators (Placing on the Market) Regulations 2008"<sup>8</sup> came into force on 26 September 2008. The Regulations apply to all new rechargeable batteries and accumulators placed on the market after this date including portable, industrial and automotive batteries, prescribing that batteries and accumulators must not contain more than permissible levels of mercury, cadmium and lead, thereby mitigating potentially harmful effects on the environment. Those batteries that do contain more than the prescribed permitted levels of such materials must be marked with the appropriate chemical symbol. Recently, Defra issued a consultation on draft regulations to implement the producer responsibility aspects of the Batteries Directive and views are sought on the draft provisions by 13 February 2009. Whilst restricting levels of heavy metals, the new Regulations introduce labelling requirements, designed to achieve high collection and recycling rates. All new appliances into which batteries are or may be incorporated must in the future be designed so as to make it easier to remove batteries, together with clear accompanying instructions.

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<sup>7</sup> EC Directive 2006/66/EC

<sup>8</sup> SI 2008/2164

## Landfill tax and Contaminated Land

A new UK Order - the "Landfill Tax (Material from Contaminated Land)(Phasing Out of Exemption) Order 2008<sup>9</sup> was made in October 2008. It applies to England only and provides for the phasing out of the exemption<sup>10</sup> from landfill tax for the disposal at landfill of material from contaminated land reclamation<sup>11</sup>. HMRC has previously indicated that it would not accept applications for landfill tax exemption certificates after 1 December 2008. Those in possession of valid and current certificates will have until 31 March 2012 to dispose of contaminated soils at landfill if they wish to continue to benefit from such a certificate.<sup>12</sup> In a revised notice<sup>13</sup>, HMRC made it clear that landfill site operators who wish to take advantage of the current exemption had to apply for an Exemption Certificate by 30 November 2008.

The rationalisation of the Landfill Tax Regime should be considered in conjunction with the extension of Land Remediation Relief (LRR), part of the Government's environmental tax obligations and tax break systems. Businesses (not individuals) can claim LRR (relief from corporation tax) if they remediate contaminated land – up to 150% of the qualifying clean-up costs subject to certain restrictions<sup>14</sup>. It is the Government's intention, as stated in its explanatory memorandum to the new Regulations, to utilise the additional revenue to extend the revenue pool that is available for derelict land and brownfield land. A key aim of the new Regulations, as similarly stated in the explanatory notes, is to encourage the use of alternative treatments for waste in reference to disposal at landfill.

At the time the exemption was originally introduced, it helped to ensure that the redevelopment of contaminated sites was not discouraged. In more recent times, however, there have been technological advances in the treatment of various forms of waste and contaminated soils. The Government now wish to take advantage of these available technologies, promoting remediation over disposal.

## Packaging Waste Regime – Update

The EC Directive on Packaging Waste<sup>15</sup> has been implemented in the UK by the "Producer Responsibility Obligations Regulations"<sup>16</sup> and the "Essential Requirement Regulations"<sup>17</sup>. These place obligations on those business which satisfy the threshold tests to recover and recycle specified tonnages of packaging waste. Businesses will have obligations to meet if they handle more than 50 tonnes of packaging waste a year, together with a turnover in excess of £2m.

The UK Producer Responsibility Regulations were recently revised in March<sup>18</sup> and July<sup>19</sup> 2008. They increased the UK's packaging waste recovery and recycling targets, and provided the Environment Agency with greater discretion in respect of evidence that it can accept from exporters in the case of Packaging Waste Export Recovery Notes (PERNs), which require waste to be reprocessed to a satisfactory standard. The Environment Agency has also issued guidance notes on the procedural requirements for Packaging Waste Recovery Notes (PRNs) and PERNs, namely "Accreditation of Reprocessors and Exporters of UK Packaging Waste:

<sup>9</sup> SI 2008/2669

<sup>10</sup> Sections 43A and 43B of the Finance Act 1996

<sup>11</sup> The disposal of waste from the clean up of contaminated land to landfill is exempt from landfill tax, albeit that certain restrictions are applicable and a certificate must be obtained from HM Revenue & Customs (HMRC).

<sup>12</sup> HMRC Budget Advice BN80 "Landfill Tax: Exemption for Waste from Cleaning Up Contaminated Land"

<sup>13</sup> HMRC LFT2 "Explanation of How to Make an Application for a Release Certificate"

<sup>14</sup> HMRC Advice "Remediation of Contaminated Land (Entitlement Summary)"

<sup>15</sup> EC Directive 94/62/EC

<sup>16</sup> The Producer Responsibility Obligations (Packaging Waste) Regulations 2000 (as amended) SI 2007/871

<sup>17</sup> Packaging (Essential Requirements) Regulations 2003 (as amended) SI 2003/941

<sup>18</sup> SI 2008/413

<sup>19</sup> SI 2008/1941

Guidance Notes"<sup>20</sup> and "Briefing Note on New Arrangements for Accredited Exporters of UK Packaging Waste to Demonstrate 'Broadly Equivalent' Standards Overseas"<sup>21</sup>. The first sets out the eligibility criteria and requirements for accreditation, whilst the second outlines the revised mechanics for demonstrating compliance with the UK Regulations and packaging waste regime.

In conjunction with BERR, Envirowise and INCPEN developed a guide in 2008 for project and packaging designers to help them combine eco-design principles with a packaging functionality, at the same time as meeting their legal requirements. Meanwhile, WRAP<sup>22</sup> as part of a series for evolving packaging design has published a number of guidance notes including (1) "Golden Rules to Optimise Packaging, Eliminate Product Damage and Reduce Post Consumer Waste"; (2) "Eliminate, Reduce, Reuse and Recycle - a checklist that provides a framework for investigating recycling opportunities; and (3) a "Packaging Specification Brief", which identifies and prompts business to recognise opportunities for recycling and reducing waste.

### **Climate Change Act 2008**

The Climate Change Bill entered the statute books on 26 November 2008, introducing the world's first long-term legally binding framework in respect of climate change - placing a legal obligation on the UK Government to reduce carbon dioxide emissions in the UK by 80% below 1990 levels by 2050. The Act establishes a new Committee on Climate Change (CCC) to act as advisor to Government. Moreover, the Act requires the Secretary of State to set three consecutive carbon budgets capping emissions over a period of five years, the first of which is to run from 2008–2012. The new carbon budgets must take into account the UK's targets such as the 80% reduction in greenhouse gas emissions, in addition to European and international obligations and are to be approved by way of parliamentary process. Budgets may, however, be revised by Government if circumstances change. In terms of reporting, the Act provides for a new mechanism to assess the impact of, or adaption to, climate change, with the establishment of a Government reporting programme that requires annual progress reports to be made to Parliament. There is scope for new national emissions trading schemes to be established by way of regulation, such as the Carbon Reduction Commitment (CRC). Consulted upon in 2007, the CRC is expected to enter into force in 2010 and will apply to large non-energy intensive businesses and public sector organisations. Finally, the Act includes powers to pilot new waste incentive schemes for homeowners and the ability to regulate on charges for the use of plastic bags.

In terms of aviation and shipping, both of these sectors have been bought within the scope of the new Act. Emissions from aviation and shipping will not, however, count as "UK emissions" for the purposes of meeting the 80% target at the outset. Nevertheless, by the end of 2012, the Secretary of State must include such emissions in the target or explain to Parliament why not. In a recent speech given by the new Secretary of State for Environment and Climate Change, Ed Milliband stated that aviation and shipping emissions would be included in the 80% target when difficulties in measuring such emissions have been resolved.

### **The Energy Act 2008**

The Energy Bill similarly received Royal Assent on 26 November 2008, implementing the legislative aspects of the 2007 Energy White Paper (DTI). The Act comprises provisions in respect of gas importation and storage (including carbon capture and storage), renewable energy and reform of the "Renewables Obligation", decommissioning of nuclear and energy installations, oil and gas installations, and off-shore energy, electricity transmission and licensing. The Act sets out the Government's framework for tackling climate change, whilst ensuring the security of energy supply for the future.

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<sup>20</sup> Environment Agency MPWD06

<sup>21</sup> Environment Agency 2008

<sup>22</sup> Waste and Resources Action Programme (WRAP) [www.wrap.org.uk](http://www.wrap.org.uk)

## **The Planning Act 2008**

The Planning Act also entered the statute books on 26 November 2008, and provides for a number of changes and reforms to the planning regime including, a new Infrastructure Planning Commission (IPC), which is to take decisions on proposals for new Major Infrastructure Projects, in line with new National Policy Statements setting out Government policy on major infrastructure development. A Community Infrastructure Levy is to enable a new tax to be levied against the development of land and buildings, allowing charging authorities to levy a discretionary charge against most new residential and commercial development when planning permission is obtained. In land use planning terms, the new Act amends the Planning and Compulsory Purchase Act 2004, providing that Regional Spatial Strategies (RSS) should include policies on climate change, as should local Development Plan Documents (DPD). Policies should ensure developments that contributes towards the mitigation of, or adaption to, climate change.