



## Environmental compliance and reform on the horizon

### Key dates for 2019

This briefing flags a number of recent and upcoming environmental law changes and compliance deadlines for 2019. A wide range of businesses will be affected by some, if not all, of these changes, meaning that planning ahead is essential to ensure compliance.



#### What changes are being made to my organisation's energy obligations?

##### What is the Energy Savings Opportunity Scheme ("ESOS")?

The EU Energy Efficiency Directive requires Member States to introduce requirements for "large undertakings" to carry out an energy audit to identify ways to reduce energy consumption. Here in the UK, it has been implemented through the Energy Savings Opportunity Scheme Regulations 2014 ("ESOS"). A "large undertaking" is one with 250 or more employees or which has a turnover of €50 million and a balance sheet exceeding €43 million. For more information about ESOS please click [here](#).

##### When should organisations that qualify for ESOS submit a notification of compliance?

Organisations that qualify for ESOS must submit a notification of compliance (including a compliance report) to the Environment Agency ("EA") by the **5 December 2019** in relation to Phase 2 of the scheme (phase 2 runs from 6 December 2015 to 5 December 2019). Whilst the EA appeared to take a light touch approach to enforcement for Phase 1 of the scheme, it is expected that for Phase 2, a tougher line to enforcement will be taken.

### **What continuing obligations do CRC Energy Efficiency Scheme ("CRC") participants have?**

In the March 2016 budget, the government announced that the CRC Energy Efficiency Scheme ("CRC") would close from 31 March 2019 (being the end of the phase 2 compliance year). In our 2018 [Key Date article](#), we outlined how the impact of this would be revenue neutral due to increases in the main rates of the Climate Change Levy, effective from 1 April 2019.

Notwithstanding that the Scheme has been abolished, CRC participants have ongoing obligations that they must have complied with, namely, submitting an annual report for the 2018/19 compliance year by the **31 July 2019**, ordering allowances between 1 June 2019 and 31 July 2019, paying for these allowances between 2 and 19 September 2019. Sufficient allowances must be surrendered by **31 October 2019**. Additionally, participants must continue to update contact details in the CRC registry until **31 March 2022** and maintain an evidence pack until **31 March 2025**. Regulators will continue to carry out compliance audits after April 2019.

### **What reporting requirements do participants have under the Streamlined Energy and Carbon Reporting Framework ("SECR")?**

Although not a direct replacement for CRC, CRC participants may be subject to similar energy reporting requirements under the new Streamlined Energy and Carbon Reporting ("SECR") Framework which applies in respect of financial years beginning on or **after 1 April 2019**. The regime requires additional reporting on GHG emissions, total global energy use and information relating to energy efficiency action by UK quoted companies, large unquoted companies and large limited liability partnerships. This information is to be included in the relevant Directors' Reports disclosed at Companies House.

For the purposes of qualification for the SECR, "large" means companies that meet two or more of the following criteria in the relevant year: at least 250 employees, annual turnover greater than £36M and/or an annual balance sheet total greater than £18M. There are however smoothing provisions that apply where a company crosses over one of those thresholds. There are also limited exemptions relating to low energy use and circumstances where making such reports are not practical or would prejudice the company or LLP's interests.



### **What changes have been made to RoHS?**

#### **What changes have been made to the EU Restriction of the Use of Certain Hazardous Substances in Electronic and Electrical Equipment Directive 2011 ("RoHS")?**

On 22 July 2019, amendments to the EU RoHS Directive came into force meaning that RoHS now applies to all electrical and electronic goods unless a specific exemption applies. Under this legislation, placing on the EU market electrical and electronic equipment ("EEE") that contains certain hazardous substances above certain concentrations is prohibited. From 22 July 2019 this prohibition was extended to include four additional substances (Bis (2-Ethylhexyl) phthalate (DEHP), Benzyl butyl phthalate, Dibutyl phthalate (DBP) and Diisobutyl phthalate (DIBP).

Manufacturers, authorised representatives, importers and distributors of EEE will need to ensure they are compliant with their obligations under the legislation and consider the impact of this amendment to their stock and wider supply chain.



### What changes are being made to Environmental Permitting obligations?

From **1 October 2019** Tranche A generators in England and Wales with a thermal input above 5MWth and less than 50MWth, with emission levels of nitrogen oxides of 500mg/NM3 or above and which operate for more than 50 operating hours a year, require a permit in line with the requirements of the Medium Combustion Plant Directive ("MCPD").



### Carbon Emissions Tax – the impact of Brexit

#### What impact would a no-deal Brexit have on the EU Emissions Trading Scheme?

In the event of a no-deal Brexit, the UK would cease to participate in the EU Emissions Trading Scheme. The government has therefore proposed a tax on carbon dioxide emissions (through the Finance Act 2019) produced by UK stationary installations currently participating in the EU ETS. This tax will only apply in a no-deal scenario.

The tax was originally due to apply from 1 April 2019, with the original tax period ending on 31 December 2019. However, following the extension of the UK's exit from the EU to 12 April 2019, the former date was changed to 15 April 2019 and with the further extension of the UK's exit until 31 October 2019, that date is now **4 November 2019**. The first payment would be due in 2020.

HMRC has published a technical document setting out more details on how the tax is intended to operate. The tax would be implemented by regulations made by HMRC in the event of a no-deal Brexit. It is expected that a consultation on more detailed arrangements would then take place to consider the final design of the tax.



### Plastic straws, drink stirrers and cotton buds banned

On 22 October 2018, Defra published a consultation on banning plastic straws, stirrers and plastic stemmed cotton buds in England. The consultation outcome was published on 22 May 2019 with the Environment Secretary (then Michael Gove) announcing bans of the supply of plastic drinking straws, plastic stemmed cotton buds and plastic drink stirrers which will come into force in England from **April 2020**.

Limited exceptions will be in place relating to accessibility, medical uses and scientific research. Registered pharmacies will be allowed to sell plastic straws over the counter or online. Catering establishments such as restaurants, pubs and bars will not be able to display plastic straws or automatically hand them out, but they will be able to provide them on request.



### What else is on the horizon for environmental law in 2019, 2020 and beyond?

On the 15 October 2019 the government published its consultation on the future trajectory of the Minimum Energy Efficiency Standard for commercial properties under the Energy Efficiency (Private Rented Property (England and Wales) Regulations 2015 ("MEES"). In its consultation, the government seeks views on increasing the minimum energy efficiency standard for commercial property from E to B, or alternatively, from E to C, by the **1 April 2030**. The government is also considering views on whether the increase in the minimum standard should be introduced

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incrementally rather than a single implementation date in 2030. This consultation will close on **7 January 2020**.

The [consultation on MEES is the latest development](#) in the energy arena and comes as the Secretary for Business, Energy and Industrial Strategy also indicated on the 15 October 2019 that government intends to publish its delayed Energy White Paper in **Q1 of 2020**.

Additionally, in line with the government's waste and resource strategy published in December 2018, there are a number of consultations, government responses and legislative developments timetabled for 2019 and beyond:

- | Government has published a consultation on proposals to revise the standard rule sets for biowaste treatment, including composting, anaerobic digestion and sewage sludge activities. The consultation closes on **13 January 2020**;
- | Government has provided its initial response to the feedback received on its consultation on the reform of the UK packaging producer responsibility system and will put forward for consultation detailed proposals on the specific nature of the reformed regime in **2020**;
- | Government is expected to launch a consultation by the **end of 2019** on reforming regulations relating to the waste duty of care, and requirements for waste carriers, brokers, dealers and hazardous waste;
- | A review of the WEEE regime is expected in late 2019 and the government is expected to consult on changes for extended producer responsibility under this regime by the **end of 2020**.

For more information about our environmental team and the services we offer clients please click [here](#).

## Who to contact



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