

## 8 New and proposed legislation

This table, prepared by **Dentons UK and Middle East LLP**, provides a regularly amended guide to new and proposed legislation that will affect the construction industry. In addition to EU Directives and UK legislation, the table includes notes highlighting discussion papers issued by both government and non-government organisations, and commentary on the latest developments.

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Subject area	Title and reference	Comments
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#### UK

<b>Brexit</b>	<b>Preparing for Brexit – deal or no deal</b>	<p>The government continues to publish and update materials to help businesses deal with the UK's exit from the EU (Brexit) – whether that exit is with or without an agreement in place. With the current deadline for exiting the EU scheduled for 31 October 2019, businesses should keep up to date on the progress of the UK's negotiations with the EU and prepare their businesses for the possibility that the UK could leave the EU with 'no deal'.</p> <p>Useful information can be found on the government website. The government also continues to issue – and update – very specific guidance on certain issues such as:</p> <ul style="list-style-type: none"> <li>♦ Cabinet Office guidance on public procurement in the event of a no-deal Brexit (9 August 2019): <a href="http://www.gov.uk/guidance/public-sector-procurement-after-a-no-deal-brexit">www.gov.uk/guidance/public-sector-procurement-after-a-no-deal-brexit</a></li> <li>♦ the Department for Business, Energy &amp; Industrial Strategy guidance on Horizon 2020 funding and how it will be affected in the case of a no-deal Brexit (to help stakeholders prepare): <a href="http://www.gov.uk/guidance/horizon-2020-funding-after-brexit">www.gov.uk/guidance/horizon-2020-funding-after-brexit</a></li> </ul>
<b>Infrastructure</b>	<b>Review of HS2</b>	<p>The Department for Transport (DfT) has launched an independent review on whether and how to proceed with the High Speed 2 project (HS2). Terms of reference for the review have been published. Douglas Oakervee will act as Chair and Lord Berkeley as Deputy Chair, both of whom will be supported by a panel of experts. The review will consider HS2's benefits and impacts, affordability and efficiency, deliverability and scope, and its phasing, including its relationship with Northern Powerhouse Rail.</p> <p>The final report will be sent to the Secretary of State by the autumn who, alongside the Prime Minister and the Chancellor of the Exchequer, will use the report when deciding on the project's future. Meanwhile, the Northern Powerhouse Partnership has announced its own review into HS2 to ensure that the North's views are heard as part of the main Oakervee review.</p>
<b>Infrastructure</b>	<b>Community Infrastructure Levy</b>	<p>The Community Infrastructure Levy (Amendment) (England) (No 2) Regulations 2019, SI 2019/1103 came into force on 1 September 2019.</p> <p>For more on these Regulations, see the Commentary.</p>
<b>Housebuilding</b>	<b>Protecting wildlife</b>	<p>The government has updated its natural environment guidance and included a new principle of environmental net gain. Developers will have to ensure space for wildlife is provided in addition to the new homes they wish to build. Building on the planning rulebook adopted last year, the guidance sets expectations of developers for protecting wildlife. The guidance can be found at: <a href="http://www.gov.uk/guidance/natural-environment">www.gov.uk/guidance/natural-environment</a></p>
<b>Housebuilding</b>	<b>Creating beautiful buildings</b>	<p>The Building Better, Building Beautiful Commission is an independent body set up to advise the government on how to promote and increase the use of high quality design for new build homes and neighbourhoods. The Commission is gathering evidence to develop public policy and find solutions to ensure new developments help to grow a sense of community and place – not undermine it.</p> <p>The Commission's interim report, <i>Creating space for beauty</i>, was published on 9 July 2019. It sets out eight priorities for reform: beauty first; places not just houses; regenerative development; early collaboration not confrontation; a level playing field; growing beautifully; learning together; and making beauty count.</p> <p>The focus on 'building beautiful' has attracted challenge from those who consider beauty is not a priority in the current global climate. Evidence taken to date, however, suggests considerable consensus that beauty matters.</p> <p>The Commission is expected to publish its first report in December 2019.</p>
<b>Planning</b>	<b>Wind tunnel planning guidance for London</b>	<p>The City of London Corporation has published the UK's first wind microclimate guidelines which will apply to new development proposals within the City's square mile. The guidelines raise the benchmark for acceptable wind conditions in the City and require developers to take into account the effect of potential wind microclimate on cyclists and pedestrians.</p> <p>The new guidance can be accessed on the City of London's Design guidance website: <a href="http://www.cityoflondon.gov.uk/services/environment-and-planning/planning/design/Pages/design-guidance.aspx">www.cityoflondon.gov.uk/services/environment-and-planning/planning/design/Pages/design-guidance.aspx</a></p>

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Planning	New planning appeals guidance following the Rosewell report	<p>Following the implementation of recommendations made in the Rosewell report (the independent review of planning appeal inquiries), the Planning Inspectorate has issued new guidance and a new process relating to s 78 of the <i>Town and Country Planning Act 1990</i>. The new guidance/process relates to the submission of the statement of case and statement of common ground and, in particular:</p> <ul style="list-style-type: none"> <li>♦ recommendation 2: The Planning Inspectorate should work with representatives of the key sectors involved in drafting statements of case to devise new pro formas for these statements which can then be added to the new portal; and</li> <li>♦ recommendation 7: the Ministry of Housing, Communities and Local Government and the Planning Inspectorate should substantially overhaul the approach to the preparation of statements of common ground.</li> </ul> <p>The Planning Inspectorate has updated its appeals procedural guide to reflect the changes. The new statement of common ground guidance can be found at: <a href="http://www.gov.uk/government/publications/statement-of-common-ground">www.gov.uk/government/publications/statement-of-common-ground</a>.</p>
Planning	Welsh National Development Framework	<p>The Welsh government launched a consultation on its draft National Development Framework which will run until 1 November 2019. The consultation is intended to 'set the direction for development in Wales from 2020 to 2040' and 'addresses national priorities through the planning system'.</p> <p>The consultation documents can be found at: <a href="http://gov.wales/draft-national-development-framework">gov.wales/draft-national-development-framework</a>. Drop-in sessions will be held throughout September and October 2019 in various locations.</p>
Regulatory	ISSG report on delivering culture change	<p>The Industry Safety Steering Group (ISSG) was established in September 2018 to report on how the construction industry is delivering cultural change to support greater building safety.</p> <p>The ISSG reports it is pleased overall with the industry's work and progress on culture change, but makes clear that progress has been slow across parts of industry. The ISSG believes its ability to hold the industry to account in making these changes will be assisted by publication of the government's consultation, <i>Building a Safer Future</i>.</p>

## The latest changes to the community infrastructure levy

**T**he Community Infrastructure Levy Regulations 2010 allow local authorities to charge a community infrastructure levy (CIL) on new developments to raise money to fund local infrastructure. The latest changes to those regulations came into effect on 1 September 2019 under the Community Infrastructure Levy (Amendment) (England) (No 2) Regulations 2019, SI 2019/1103.

The changes, which are largely uncontroversial, are summarised in Box 1 below. They are aimed at extracting more value from land, more quickly, and ensuring local communities are aware of the levy. For example, penalties are more proportionate: a failure to notify a start on site will no longer invalidate exemptions and reliefs. Outline permissions granted after 1 September 2019 will no longer be exposed to CIL rate changes between grant of permission and reserved matters approval. Indexation is clearer and more certain. Communication is better: the published data will allow the developer contribution to affordable housing funding to be better understood.

But note that these changes:

- ♦ make it harder to withdraw from the CIL – withdrawal will require a consultation and explanation of how to replace lost infrastructure;
- ♦ also delete the restrictions on 'pooling' s 106

contributions and using s 106 for CIL items. This allows tariff-style s 106 charging to return, alongside CIL, as a value capture tool;

- ♦ do not deal with all the current issues with the CIL. More reform will be needed.

### Box 1: CIL changes at a glance (from 1 September 2019)

- ♦ New s 106 monitoring fees power.
- ♦ Pooling and double-dipping restrictions removed.
- ♦ Infrastructure funding statements required from 2020 (annual reporting on developer contributions, spending and CIL rates).
- ♦ Commencement notice penalties diluted.
- ♦ Indexation arrangements clarified – RICS CIL Index from 2020.
- ♦ Section 73 changes – balancing and indexation fixes, easing of relief arrangements.
- ♦ Starter homes exemption clarified.
- ♦ Charging schedule consultations reduced to one round with no mandatory timeframe.
- ♦ Consultation where CIL is dropped.
- ♦ Enforcement process upgraded: bailiffs replaced with High Court enforcement officer process.

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