

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.

State of play table 242

Subject area	Title and reference	Comments
--------------	---------------------	----------

UK

Raising standards	Mandatory licensing scheme for construction	<p>A recommendation made in Pye Tait's independent research published in July 2018 ('Licence to build: A pathway to licensing UK construction'), proposed the introduction of licensing to improve quality and deal with the public's unwillingness to carry out building works for fear of rogue builders.</p> <p>A Construction Industry Licensing Task Force has now been established and Liz Peace CBE appointed as chair. Supported by the Federation of Master Builders (FMB) and various other professional bodies and trade organisations, the Task Force aims to develop a mandatory licensing scheme for all UK construction companies.</p>
Energy performance	EC guidance on modernisation of buildings	<p>The European Commission has published guidance on the modernisation of buildings under the Energy Performance of Buildings Directive 2018. The guidance clarifies how to implement the Energy Performance of Buildings (EPB) Directive 2018 (Directive (EU) 2018/844) into national law and deals with building automation and controls, e-mobility and inspections.</p> <p>See the EC Recommendation (EU) 2019/1019 of 7 June 2019 and the EC's building renovation guidance published in May 2019.</p>
Government consultations – various	Reform of building safety	<p>Following the Grenfell Tower fire and publication of the final report of the Hackitt Review of Building Regulation and Fire Safety, the government is consulting on its proposals to reform the building safety regime. The regime, which is intended to apply to multi-occupied residential buildings of 18 metres or more in height, will:</p> <ul style="list-style-type: none"> ♦ create five dutyholder roles responsible for a building's safety during design and construction; ♦ provide for an 'accountable person' to look after higher risk buildings once occupied; ♦ give residents a right to information and an avenue for raising concerns; ♦ create a new building safety regulator to ensure compliance and building safety in England; and ♦ strengthen enforcement and sanctions to deter non-compliance with the new regime. <p>The consultation ends on 31 July 2019.</p>
Government consultations – various	Call for evidence on the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541	<p>The government is seeking views and evidence on the Regulatory Reform (Fire Safety) Order 2005 to find out how it operates in practice and to ensure that it is fit for purpose for all regulated premises. Evidence is sought from 'from enforcing authorities, fire safety professionals, those who are regulated by the order and those whose safety must be considered under the order'.</p> <p>The call for evidence ends on 31 July 2019.</p>
Government consultations – various	Redress for buyers of new build homes	<p>The government is consulting on 'a New Homes Ombudsman and the detail of proposed legislation to provide better redress for purchasers of new build homes. This includes the design and delivery of the New Homes Ombudsman, its powers, remit and funding. The consultation also seeks views on whether a Code of Practice should also be underpinned in statute'. The consultation closes on 22 August 2019.</p>
Fire safety	Guidance on the Building Regulations 2010	<p>The Ministry of Housing, Communities and Local Government (MHCLG) has announced the approval and publication of the updated Fire Safety: Approved Document B which contains guidance on the Building Regulations 2010, SI 2010/2214 on fire safety.</p> <p>The accompanying circular (Approved Document B 2019 edition: circular 02/2019) dated 5 July 2019 confirms that the changes made to the Approved Documents apply only to buildings and building work in England and sets out the transitional provisions for the changes.</p> <p>The new approved documents will come into force on 30 August 2019.</p>
Fire safety (Scotland)	Amendment to Scottish Building Regulations	<p>The Scottish Parliament has also taken action to improve fire safety and the Building (Scotland) Amendment Regulations 2019 SSI 2019/210 come into force on 1 October 2019 following a consultation in 2018. The accompanying policy note explains that the purpose of the regulations is 'to clarify the application of mandatory functional standard 2.4 which requires buildings to be constructed and designed to prevent and inhibit the spread of fire'.</p>

Subject area	Title and reference	Comments
Tax – a reminder	VAT reverse charge on construction services	Remember that the VAT reverse charge on construction services will apply from 1 October 2019. See our state of play table published 1 July 2019 for more information.
Capital allowances	New structures and buildings allowance	At the Autumn Budget 2018, the government published a technical note for consultation outlining a new capital allowance for non-residential structures and buildings (SBA) enabling businesses that invest in new builds or renovations on or after 29 October 2018 to claim tax relief at 2% a year on eligible costs. As a result of the consultation, some features of the proposed legislation were amended, including those relating to short-term leaseholds, eligible pre-trading costs, periods of disuse, and reducing claimants' administrative burdens. The consequent legislation introducing the new tax relief, the Capital Allowances (Structures and Buildings Allowances) Regulations 2019, SI 2019/1087, came into force on 5 July 2019.
Modern slavery	Government response to independent review and a new research centre	On 9 July 2019, the government issued its response to The Independent Review of the Modern Slavery Act which was itself published in May 2019. The response sets out how the government intends to respond to the review's recommendations. Alongside the response to the Independent Review, the government has launched a consultation on transparency in supply chains confirming its commitment to s 54 (transparency in supply chains requirements) of the Modern Slavery Act. Section 54 requires businesses to publish a statement setting out what they are doing to tackle modern slavery and forced labour in their supply chains in the UK and overseas. The consultation is intended to gather views on proposed measures to increase transparency and compliance, improve reporting quality and extend the scope of the legislation. The consultation closes at midday on 17 September 2019.
Community Infrastructure Levy	Amendments to the operation of the CIL	Proposed amendments to the operation of the Community Infrastructure Levy (CIL) have been published. The draft Community Infrastructure Levy (Amendment) (England) (No 2) Regulations 2019 remove the restriction on pooling more than five developer contributions to fund a single infrastructure project, reduce penalties for failure to submit a notice before commencing building and address issues with the existing implementation of indexation. They also introduce Infrastructure Funding Statements, requiring local authorities to report on developer contributions received and allocated and increase transparency over the indexation of CIL rates.

Creating a responsible payment culture

In 2018, the government consulted on the impact of unfair payment practices and its proposals to create a more responsible payment culture. The government has now reviewed the 283 responses received and proposed a package of policy measures. Its response reviews current measures such as payment practices reporting, the statutory right to claim interest on late payments and the Prompt Payment Code.

While the government considered it inappropriate to impose maximum payment periods or clarify what amounts to a 'grossly unfair' payment term, its proposals include:

- ♦ enabling the Small Business Commissioner (Commissioner) to drive culture change and better help small businesses in resolving late payment issues;
- ♦ giving the Commissioner powers to take enforcement action (through court action or financial penalties) against large businesses either for non-compliance with information requests or unfair payment practices;
- ♦ a further government consultation on proposals to make the Commissioner responsible for the voluntary

Prompt Payment Code and further reform of the code;

- ♦ requiring the inclusion of reports on payment practices in large businesses' annual reports so that payment becomes a board level issue;
- ♦ acknowledging that technology could improve the administrative processes underpinning business operations and, through automation, save time spent chasing late payments; and
- ♦ enabling the Commissioner to run campaigns to promote technological solutions to SMEs to reduce late payment and establishing a Business Basics Fund competition of £1 million to encourage technological innovation.

The Commissioner looks set to play a future key role in establishing a positive payment culture. Some late payers may face sanctions soon – including exclusion from government contracts over £5 million per annum for those not making payment within 60 days for 95% of their invoices (from 1 September 2019).

Mark Macaulay and Tracey Summerell
Dentons UK and Middle East LLP