New and proposed legislation, August 2020 (UK construction focus)

October 16, 2020

Dentons’ construction team prepare a monthly guide to new and proposed legislation that will affect the UK construction industry for publication in Construction Law’s “state of play” table. The latest published update, State of Play edition 253 is below.

Information contained in our COVID-19 articles and publications is correct at the time of print. This is, however, a constantly evolving situation across the globe and specific advice and guidance should be sought as required.

- Economic recovery
- Labour
- Climate change
- The environment
- Tree lined streets
- Planning (England)
- Planning - Measures taken in response to COVID-19
- Housebuilding
- Infrastructure planning
- Fire safety
- Building regulations

**Economic recovery**

The Business and Planning Act 2020 was enacted in July to help stimulate economic recovery and growth in response to COVID-19 and help businesses adjust to new ways of working to manage the ongoing risks. The measures, which apply in England, also support businesses to implement safer ways of working to manage the ongoing risks from COVID-19, in particular the need for social distancing. The Act covers a range of subjects, such as the simplification of the planning appeals process, new processes for applying to vary planning conditions to enable temporarily extended hours for construction work, extending the expiry of certain planning permissions and listed building consents (to 1 May 2021), the loosening of licensing regulations to allow bars and cafes to serve outside and measures connected with holiday travel and accommodation, and outdoor entertainment.
Economic recovery
performances. A rolling three-month parliamentary review of the legislation is in place.

MHCLG published Planning guidance to accompany the Business and Planning Act 2020 ahead of the Act coming into force which provides links to further guidance on specific measures under the Act:

- Construction working hours: guidance
- Appeal a decision about construction working hours (S74B)
- Extension of certain planning permissions: guidance
- Appeal a decision about additional environmental approval (S93B & S93F)
- Pavement licences: guidance.

Labour

Immigration Bill

The second reading of The Immigration and Social Security Co-ordination (EU Withdrawal) Bill took place on 23 July 2020. The bill provides for the end of rights to free movement of persons under retained EU law. The line-by-line review of the bill (Committee stage) is scheduled to start on 7 September 2020.

Climate change

In his speech on 7 July at the, virtually held, fourth Ministerial on Climate Action (MoCA): Increasing ambition towards a climate-resilient, zero-carbon economy, Alok Sharma MP highlighted that current commitments under the Paris Agreement fall far short of what is required: global emissions must be halved in the next decade to limit warming to 1.5 degrees The government is "asking every country to submit enhanced Nationally Determined Contributions (NDC) as well as an ambitious Long-Term Strategy, committing to further cuts in carbon emissions by 2030 and to reaching net zero as soon as possible". Mr Sharma announced that the UK would come forward with our own "more ambitious NDC as soon as possible".

The need to align public and private finance with the Paris Agreement affects all sectors. The government set legally binding targets under the Climate Change Act 2008 to reach ‘net zero’ carbon emissions by 2050 and aims to achieve these targets in various ways. Recent announcements affecting construction include:

- Asking tradespeople to sign up to offer services through the government’s new Green Homes Grant scheme (see Businesses urged to sign up to offer green homes improvements).

- The provision of funding to improve the energy efficiency of low-income households: Green Homes Grant Local Authority Delivery scheme: entering a bid (applicable to Local Authorities).

- The Scottish Government’s fast tracking of its low carbon investment programme to
stimulate a green recovery: Driving Scotland’s green recovery. (The Low Carbon Infrastructure Transition Programme (LCITP) which was launched in March 2015, the LCITP is led by the Scottish Government which aims to "stimulate commercial interest, investment and maximise Scotland’s vast potential in the low carbon sector whilst contributing to the positive progress in reducing Scotland’s greenhouse gas emissions").

- A BEIS consultation which ended on 17 August 2020 into Carbon capture, usage and storage (CCUS) projects: re-use of oil and gas assets.
- A BEIS report on an investigation into start up and shut down times of gas-fired power carbon capture, usage and storage (power CCUS) facilities.
- BEIS collaboration with Element Energy, commissioned to produce an independent report identifying and assessing high-level deployment options for carbon capture, usage and storage technology at dispersed industrial sites in the UK.
- BEIS’ research and analysis into Business models for low carbon hydrogen production.

**Flood and coastal erosion risk management**

Following a consultation into flood and coastal erosion which ended on 19 August 2020, the Department for Environment Food and Rural Affairs (DEFRA) has issued a summary of responses (July 2020) and a Flood and coastal erosion risk management: policy statement. The policy statement outlines 40 actions to help increase the flood resilience of homes and businesses across the country over the long term. The policies focus on: upgrading and expanding our national flood defences and infrastructure; managing the flow of water more effectively; harnessing the power of nature to reduce flood and coastal erosion risk and achieve multiple benefits for better preparing communities and enabling more resilient places through a catchment-based approach.

**Decarbonisation**

Innovate UK have published a report on Clean Growth and Infrastructure – Annual Review 2020 which considers what is necessary for global decarbonisation and the challenges involved. The report explains Innovate UK’s approach which “is systems-focused and includes funded programmes, initiatives to catalyse innovation such as entrepreneur missions and support to centres of excellence including the Catapult Network”.

**NCC propose a green economic recovery**

In 2011, the government published a policy paper: The natural choice: securing the value of nature in which it announced its objective to be the first generation to leave England’s natural environment in a better state than it inherited. The Natural Capital Committee (NCC) was established to advise on how best to achieve this objective and in 2018, the 25 Year Environment Plan (25 YEP) was published. The NCC has now issued its interim response to the second 25 YEP Progress Report. This report provides: i) an initial assessment of overall progress to the extent possible; ii) an explanation of why the reporting framework and
indicators used by the government to provide evidence of progress need reworking; and iii) an alternative natural capital asset-based framework for assessing progress. It also "highlights the opportunity to realise the significant economic benefits from investing in natural capital assets and delivering the 25 YEP in a more cost-effective way as part of a resilient green recovery from COVID-19".

The NCC's final response to the 25 YEP Progress Report is expected in October 2020 and will demonstrate how a natural capital framework can be applied to independently scrutinise progress. This report will lay the foundation for the Office for Environmental Protection (OEP) to take over this function from 2021.

Build Back Greener

The government has explained that it will underpin key environmental commitments with Legally binding targets to help "build back greener" including for air quality, water, waste and biodiversity. There will be at least one long-term target in each of these four priority areas to drive significant and lasting environmental improvements. The Department for Environment, Food and Rural Affairs (Defra), building on progress made under existing commitments under the 25 YEP, will use a robust, evidence-led process in collaboration with independent experts and stakeholders to make sure these are strong, meaningful and environmental outcome focused and address gaps for improvement. Proposed targets are being developed for public consultation in early 2022. Once in place, the Office for Environmental Protection will report annually on progress in reaching these targets.

Tree lined streets

The Tree-lined Streets Bill was introduced into Parliament in July as a private member's bill by Chris Clarkson MP. Its second reading in the House of Commons is scheduled for 23 October 2020. The bill will "require building developers to ensure that the streets of major new developments are lined with trees".

Planning (England)

The MHCLG has started the process of reforming the planning system with its Launch of Planning for the future consultation to reform the planning system. An "overhaul of the country’s outdated planning system" is underway "that will deliver the high-quality, sustainable homes communities need will be at the heart of the most significant reforms to housing policy in decades". A white paper, Planning for the future, (applicable in England) was published on 6 August 2020 to launch an open consultation on the proposals which will close on 29 October 2020.

The white paper focuses on planning for development, beautiful and sustainable places and for infrastructure and connected places. The aim is to "reform the planning system to streamline and modernise the planning process, bring a new focus to design and sustainability, improve the system of developer contributions to infrastructure, and ensure more land is available for development where it is needed". Changes include:

- Streamlining the planning process with more democracy taking place more effectively at the plan making stage and replace the entire corpus of plan making law in England to achieve this.
- Taking a radical digital first approach to modernise the planning process. This means
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The Local Government Association (LGA) has confirmed it will respond in detail to the consultation but in the meantime has urged the government to engage with, and take advantage of, local government expertise to ensure that “their aspirations of an improved system works in practice”. (Source)

Updated report on planning obligations and CIL

The MHCLG has published an update to its report on The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy (CIL) in England in 2018-19 (the sixth version) in which it aims to:

- Update the evidence on the current value and incidence of planning obligations.
- Investigate the relationship between CIL and S106.
- Understand negotiation processes and delays to the planning process.
- Explore the monitoring and transparency of developer contributions.
- Understand the early effects and expectations for the changes to developer contributions brought in by the revisions to the NPPF.

New permitted development rights

- A permanent permitted development right (Class AA) has been introduced under Town and Country Planning (General Permitted Development) (England) (Amendment) (No 2) Order 2020 which will come into force on 31 August 2020. The new right will allow existing houses to be extended to provide more living space by constructing additional storeys in England. Two storeys may be added if the existing dwelling house is two or more storeys tall, or one additional storey where the dwelling house consists of one storey. There are certain limitations and conditions attached to this right including for example, a requirement for prior approval from the local planning authority on certain matters.

- A further new permitted development right is introduced under the Town and Country Planning (General Permitted Development) (England) (Amendment) (No 3) Order 2020. This right allows for the demolition of buildings in existence on 12 March 2020 and used for certain purposes and their replacement build as residential to create new homes within the footprint of the old building. There is an essential prior approval process.

Planning - Measures taken in response to COVID-19

Measures taken in

The government has taken various steps to safeguard people and the economy from the

• Bringing a new focus on design and sustainability.
• Improving infrastructure delivery in all parts of the country and ensure developers play their part through a form of developer contributions.
• Ensuring more land is available for the development of the homes needed by people and communities.
Economic recovery

response to COVID-19

- The MHLCG first issued guidance on its temporary measures to make it easier to operate the planning system here: Coronavirus (COVID-19): planning update (May 2020).

- The MHCLG has announced that councils will need to take into consideration the temporary impact of COVID-19 on cultural institutions when considering permission for change of use, redevelopment or demolition of a theatre, concert hall or live music performance venue. Once introduced, this policy will remain in place until 31 December 2022. (See New planning rules to protect our cultural heritage.)

- The MHCLG's July 2020 newsletter sets out changes to the planning system, some of which are being introduced by the Business and Planning Act 2020, which respond to the effects of COVID-19 by ensuring that the system can continue to operate effectively and support the recovery. Changes include a temporary fast-track process for cafes, restaurants and pubs to obtain permission for pavement licences in order to facilitate social distancing in such environments and measures to facilitate planning permission applications for extensions to 1 May 2021 to lapsed (or due to lapse between 23 March 2020 and 31 December 2020) listed building consents.

- The Business and Planning Act 2020 received Royal Assent on 22 July 2020 (see above). Part 3 enacts measures to modify conditions relating to the length of construction working hours, to extend the duration of certain planning permissions including outline planning permission and certain listed building consents. It also sets out the procedure for certain planning proceedings and the electronic inspection of spatial development strategy.

Scotland

- The Scottish Government has issued a consultation paper on the proposed Changes to Pre-Application Consultation Requirements in Planning: Consultation (13 August 2020). The paper relates to "proposed changes to the existing requirements for pre-application consultation (PAC) with local communities on applications for planning permission for national and major developments" (as introduced in 2009 under the Planning etc. (Scotland) Act 2006). "The proposed changes to PAC are the first part of a wider package of measures on improving community engagement in planning matters and building public trust.”

Welsh NDF to address COVID recovery measures

- The Welsh Minister for Housing and Local Government, Julie James, has written to local authority leaders outlining how the planning system can aid COVID-19 recovery in a way that promotes social, economic and environmental justice. The National Development Framework is due to be published in early 2021 and will address decarbonisation as well as social and economic inequalities.

Housebuilding
# Economic recovery

## UK Price Index to return

- HM Land Registry is resuming publication of the UK House Price Index following its suspension due to COVID-19 in May 2020: see UK House Price Index to return. The August 2020 index will be published in October 2020.

## New Build and help to buy

- The House of Commons Library has issued a report on New-build housing: construction defects – issues and solutions (England) (20 August 2020). The paper summarises the findings of the All-Party Parliamentary Group's 2016 inquiry and recommended actions and explains the government and industry response. It goes on to consider the building control regime and customers’ means of redress when faced with defects in newly built housing.

- To allow for delays in construction due to COVID-19, the government has extended the deadline for completion of house purchases in order to comply with the equity "help to buy" loan scheme, to 28 February 2021. The deadline for the legal completion of sales, 31 March 2021, remains the same. Homes England will work with those who had a reservation in place before 30 June 2020 to assess their situations and, potentially, extend the deadline until 31 May 2021 to legally complete. (See Help to buy extended.) Developers and house builders who want to register to participate in the 2013 - 2021 scheme can find information on how to apply here: Help to Buy Equity Loan 2013 - 2021 participation and registration pack. Registration will be open from late summer 2020.

## New development standards – new bill

- The New Homes (New Development Standards) Bill 2019-21, a private member’s bill introduced by Sir Geoffrey Clifton-Brown MP, will require residential developers to meet minimum standards of provision for insulation, broadband connectivity and electric car charging points in new homes. The bill received its first reading in June 2020 but is not scheduled for its House of Commons second reading until 12 March 2021.

## First Homes

- The Ministry of Housing, Communities & Local Government (MHCLG) has published its response to the First Homes consultation which ended in April 2020. The key features of the scheme, (whose delivery will be effected through the current planning system to bring forward delivery of new homes) included: locking the discount into the property to enable more first-time buyers to benefit from the property in the future; lowering deposit and mortgage requirements for local first-time buyers in England; and giving priority to veterans, nurses, police, prison officers and teachers. In its response, the government explained that the scheme "will be delivered through two routes within the planning system: through section 106 developer contributions and through an amendment to the policy on exception sites.

- Also published with the First Homes response was the Planning for the Future consultation with plans to fundamentally reform the planning system and consultation on proposals to improve the immediate effectiveness of the current system and support new development in the post-COVID-19 economy recovery. These reforms will make the planning system "more accessible, digital, efficient and transparent". They will "support the delivery of First Homes by bringing more land forward for development. Also proposed
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is a new Infrastructure Levy, which covers affordable housing provision that could be used for on-site delivery of First Homes". A pilot establishing First Homes as a new tenure in the housing market with a 1,500 homes delivered through the Affordable Homes Programme' will be announced shortly. The government is to work closely with developers, Local Authorities and other partners.

Quality standards

• MHCLG has issued a paper setting out its Research on quality standards of homes created through change of use permitted development rights. The paper highlights the differences in quality between homes delivered in 11 study areas through permitted development compared with planning applications.

Social Housing

• The Housing, Communities and Local Government Committee's third report of the 2019–21 sessions focuses on building more social housing. 90,000 new social homes are needed annually to meet the housing demand and to meet the overall target of 300,000 new homes. There is no doubting the need: the number of households in temporary accommodation has increased by 82% since 2010 since which time the number of rough sleepers has gone up 165%. The committee’s recommendations include:

  • reform of the Land Compensation Act 1961 so that local authorities and development corporations have the power to compulsorily purchase land at a fairer price to increase opportunities for social housing;

  • Homes England to take a central role in co-ordinating public land to be used for social housing and be tasked with identifying suitable land, taking a joined-up approach with land owned by local authorities, as well as purchasing private land suitable for social housing;

  • the government to publish annual net addition targets for the following tenures: social rent, affordable rent, intermediate rent and affordable homeownership;

  • the government to count social housing investment as infrastructure spending, rather than day-to-day spending to both protect and create jobs during a wider housing downturn caused by COVID-19 economic uncertainty;

  • the government to kick-start such a programme by allowing flexible use of grant funding to allow providers to purchase new build homes or homes close to completion from developers which may go unsold in a recession.

Healthy Housing toolkit

• NHS England have commissioned a new design toolkit to replace Building for Life 12 (B4L12) with a focus on healthier communities. (See Homes England backs a new “healthy housing" toolkit by Design for Homes .) The new guidelines were published by Design for Homes and Urban Design Doctor and encourage healthier lifestyles to be planned into new housing developments by including improved walking, cycling and public transport links, with reduced carbon emissions and better air quality. Homes England currently requires developers to commit to using B4L12 as part of the tender
Economic recovery

process for purchasing land. The new guidance would be used in a similar way. Homes England is currently reviewing the impact on design quality of schemes procured under B4L12.

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<th>Welsh building standards</th>
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<td>• The Welsh government is consulting on the proposed Mandatory quality standards for new homes to replace the current “Development Quality Requirements” (DQR) published in 2005. The proposals are in response to the recommendations of the Independent Review of Affordable Housing Supply April 2019. The aims include: simplification of the new standard to make it more user-friendly and easier to understand; a requirement for minimum space standards in conjunction with the Lifetime Homes standard; promotion of the use of Modern Methods of Construction (MMC); encouraging due consideration for the circular economy process (with regard to waste and embodied carbon) and high quality design, sustainability and wellbeing. Responses to the 17 questions raised in the consultation are requested by 1 November 2020.</td>
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<th>Infrastructure planning</th>
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<td><strong>Change in processes for NSIPs</strong></td>
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<td>• The Infrastructure Planning (Publication and Notification of Applications etc) (Coronavirus) (Amendment) Regulations 2020 (in force between 22 July 2020 and 31 December 2020) makes temporary changes to these processes and requirements associated with nationally significant infrastructure projects (NSIP). The changes are needed to adapt various processes relating to NSIP which have become more difficult or impossible due to COVID-19, such as publishing notices, notice giving and making relevant documents available for inspection.</td>
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<td>• The Public Administration Select Committee has published a report on Delivering the Government’s infrastructure commitments through major projects. Concentrating on three main areas: the framework for infrastructure investment, the delivery of projects which grow the economy and ‘level up’ and the transparency of project delivery and transparency of project delivery.</td>
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<td>• The recommendations can be found in full here and include: publishing the infrastructure strategy as soon as possible, linking government objectives for the economy with planned infrastructure investment; the Cabinet Office to take a more active lead on co-ordinating infrastructure investment in line with a national strategy; the government to prioritise understanding local needs and to reconsider what infrastructure will be needed in coming years; more accountability for decisions taken early in a project; proper public consultation in the early phases; potentially upskilling the civil service to deliver its infrastructure commitments; training ministers in project management; standardising data used between the Cabinet Office and the Treasury (the two departments responsible for major project policies and management) and prompt publication of data – particularly in the case of extra costs or delay.</td>
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### Economic recovery

- The Office for Product Safety and Standards (OPSS) and the Department for Business, Energy & Industrial (BEIS) has published Guidance, The UK’s National Quality Infrastructure (NQI) which provides guidance on the core components of the UK NQI, its four main institutions and its impact on the UK national economy. The NQI is comprised of five core components: standardisation, accreditation, measurement, conformity assessment and market surveillance and is largely delivered by four long-established institutions: BSI – The British Standards Institution is the UK’s National Standards Body, NPL – The National Physical Laboratory, UKAS – The United Kingdom Accreditation Service; and OPSS – The Office for Product Safety and Standards. The NQI Standards and Accreditation helps to facilitate international trade and ensures businesses and consumers have confidence that the products and services they purchase meet regulatory requirements.

### National quality infrastructure

- The Infrastructure Commission for Scotland (ICS) published its “Phase 2: Delivery Findings Report, A Blueprint for Scotland. The Report from the ICS includes policy recommendations to the Scottish Government on long-term construction and infrastructure planning. The Phase 1 Report, published in January 2020, focused on the “why and what” of the 30-year vision for infrastructure in Scotland and its challenges. Phase 2 focuses on how to meet those challenges. The Phase 2 report focuses on: "prioritising an inclusive net zero carbon economy and a long-term approach to infrastructure strategy; how best to optimise the impact of infrastructure in enabling sustainable places; and delivering a thriving construction sector through enhancing the interaction between the public sector and industry".

### Long term planning (Scotland)

- The Grenfell Tower Inquiry has published an update on its work. Module 1 hearings will resume on Monday 7 September 2020 and will continue to be held on a limited attendance basis. Discussions will take place from September 2020 to hear and understand the thoughts, hopes and concerns about the Tower and the future memorial and about the role of Kaizen who will carry out the associated work.

### Fire safety

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### Grenfell Tower Inquiry update

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### Report on culture change

- In July 2020, the Industry Safety Steering Group (ISSG) published its second report as part of its remit to report on construction industry progress in delivering culture change (see Building safety: Industry Safety Steering Group second report on culture change in the construction sector). While the ISSG reports on good practice and positive change in some organisations, it felt some were holding back until the legislation is put in place. The group found a need for further change and progress by the industry now, ahead of the legislation.

### Fire safety consultation

- As part of the government’s reform of building and fire safety, the Home Office has published a consultation on Fire Safety. The consultation, which relates to England only and closes on 12 October 2020, seeks "views on proposals to strengthen the Fire Safety Order, implement the Grenfell Tower Inquiry recommendations and strengthen the regulatory framework for how building control bodies consult with Fire and Rescue..."
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Authorities”.

- Views are also sought on the proposed changes to the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541), (RRO) which regulates fire safety in non-domestic premises and communal parts of residential buildings, which, for example, requires the "responsible person" to record various details (such as their identity and responsibilities), their completed fire risk assessments and provide information to residents. A package of documents in support of the consultation, including an impact assessment and a link to the Building Safety Bill, were published with the consultation.

Building regulations

Guidance on consulting fire and rescue services

- The MHCLG has written to local authorities to highlight revised Procedural Guidance on the way in which building control bodies consult with fire and rescue services on plans for building work. The guidance also covers the arrangements for the handover of fire safety information. A similar letter was written by the Welsh government to Local Authority Chief Executives.

Enhanced Manual to the Building Regulations

- One of the Hackitt Report recommendations was to reinstate an enhanced Manual to the Building Regulations (PDF, 8.94MB, 62 pages) and to publish a fully searchable PDF of all Approved Documents. A new edition of the manual providing guidance on the Building Regulations system in England has now been published: Building Regulations and Approved Documents index. It is split into two volumes: an accessible overview and a more detailed set of guidance and is designed to be clear and useful for a range of audiences.

New regulations on Changing Places Toilets

- MHCLG has published its response to the Changing Places Toilets consultation. The response sets out amendments to the Building Regulations (in England), which will take effect on 1 January 2021 (see Approved Document M: Access to and use of buildings, Volume 2 – Buildings other than dwellings). The response explains which new buildings (or those undergoing a change of use) commonly used by the public will need to provide changing places toilets. Analysis of the consultation responses is also given. A £30m fund to finance the installation of these toilets was announced in the March 2020 budget.

Several of these summaries were published by Construction Law magazine as the “State of Play 253” on 6 October 2020. You can subscribe to Construction Law's newsletter here.

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