

Legal changes in 2024

What should developers be aware of?

Generally

This section provides a high level overview of selected legal developments relevant to all developers.

Building regulation changes



Changes to the building control regime for all construction projects including the new competence requirements and building regulation duty-holder regime are now in force.

Transitional arrangements mean that not all of the changes apply to projects which were already underway on 1 October 2023. In order to continue to benefit from some of the transitional arrangements, building work on those projects must have started by 6 April 2024.

New projects started on or after 1 October 2023 are subject to the updated regime in full.

Approved inspectors should continue to be registered as registered building control approvers to enable them to continue working on projects.

Net zero



With the Government's net zero target of 2050 and following the recent COP28, sustainability in the real estate sector remains a primary focus.

Matters such as the whole-life carbon impact of newly constructed buildings and measuring energy use and carbon emissions in industrial and commercial buildings have been the subject of consultation, the results of which may yield further policy and guidance in the next 12 months particularly in light of the Environmental Audit Committee's reports.

The Government remains focused on decarbonising housing stock and improving energy efficiency of homes, which will continue to be a key priority through 2024. The recently launched **consultation** into the role that historic buildings and homes play in the net zero transition and the importance of retrofitting is indicative of this continued trajectory.

The revised **National Planning Policy Framework** (NPPF) (December 2023) includes a requirement that planning decisions give greater support to energy efficiency improvements to existing buildings.

Development agreements, construction contracts and leases are likely to evolve to include supply chain and operational requirements to ensure delivery of net zero buildings. In practice, developers, landlords and tenants will need to more closely manage energy performance.

EPCs/MEES



The Government has dropped proposals to increase the minimum energy efficiency standard for domestic premises. However, the benchmark for commercial premises is still expected to be raised to a "B" rating. Initially, this was to be required by 2030 via phased introduction, however, a consultation outcome and associated legislation remain outstanding. The Government has acknowledged that the timeline for implementation has altered.

Amendments to the certification and assessment process for EPCs are anticipated following the **Energy Act 2023**. The Act also includes powers to prevent disposals in the absence of an EPC assessment. A consultation on EPC reform is also expected this year.

The Government has also launched a **consultation** on the implementation of the Future Homes and Buildings Standards which includes energy performance requirements for new buildings.

Landlords and owners should continue to take steps to future-proof their properties to avoid rushed implementation, lump-sum capital expenditure at a later date and "stranded asset" risk.

Energy



The Autumn Statement included provisions to facilitate connectivity to the grid – a key issue in delivering new development sites (see [our summary of the Autumn Statement](#)).

Renewable energy is also expected to remain a key agenda item in light of energy security and net zero commitments:

- changes to the Electricity Generator Levy, also announced in the autumn statement 2023 will support the delivery of new renewable energy projects to increase generating capacity; and
- the solar taskforce, which first met in early summer last year, is also expected to drive forward commitments to support the installation of solar PV on commercial sites and industrial buildings and increase domestic energy generation.

The Government has also updated the [NPPF](#) (December 2023) which takes forward proposals previously consulted upon for the delivery of onshore wind. This will introduce new tests by which suitable locations can be identified which are not solely determined by an area's development plan.

Power is likely to remain a challenge in the near future, so developers should already be factoring-in connection delays into timescales for delivery. On-site energy generation is likely to become an increasing consideration, particularly for larger energy intensive commercial sites (e.g. cold storage, automated warehousing, and data centres).

Biodiversity net gain (BNG)



The requirement, under the [Environment Act 2021](#), for new development to achieve at least 10% biodiversity net gain is expected to come into force in January 2024.

It will become necessary to establish, as part of property diligence, how biodiversity net gain is being secured (whether on-site, off-site or by purchase of units) and the associated costs and risks. In anticipation of conservation covenants becoming mainstream, BNG is likely to be dealt with via s.106 planning agreements in the shorter-term.

The pricing of biodiversity units and their positioning (via regulation) as a "last resort" option is designed to encourage practical delivery in the environs of the property. However, developers may face challenges with finding appropriate land and ensuring on-going maintenance of such land to ensure delivery of BNG over the statutory 30-year period. Therefore, there may be opportunity for landowners in the development of biodiversity units for sale. As to whether or not the nascent credits market delivers returns for natural capital investors (and other stakeholders) remains to be seen.

Transparency of land ownership



Statutory requirements for greater disclosure of beneficial owners, proprietorship and trust arrangements will require landowners to provide greater information to registries in an effort to mitigate against property fraud and money laundering.

Registrations on the Register of Overseas Entities (ROE) now exceeds 30,000. Overseas entity owners should have already registered if they hold freehold or long leasehold interests in land in England, and Companies House have issued fines for non-compliance. The annual updating duty must be complied with if entities are to remain validly registered for Land Registry purposes. Registration and compliance continues to be relevant to transaction timescales both in terms of diligence and completions.

The new [Economic Crime and Corporate Transparency Act 2023](#) amends the legislation that governs the ROE and will require overseas entities (under that statute) to make additional disclosures. This includes disclosure of information about beneficial ownership where an entity owns land via a nominee arrangement and reporting of all title numbers for registered property held by overseas entities. Regulations to bring these amendments into force are expected to be made in 2024.

Chapter 11 of the [Levelling Up and Regeneration Act 2023](#) (LURA 2023) also focuses on increasing the transparency of land holding in England and Wales by both overseas and domestic owners ([see our article](#) for a summary and later in this note).

A consultation into transparency of land ownership involving trusts was published in December 2023 ([see our summary article](#)) and is expected to remain a consistent theme of regulation and legislation in 2024.

Developers should consider how their transactions will be structured and whether or not any statutory disclosure is required.

Levelling Up and regeneration



The **LURA 2023** has introduced a number of key changes including:

- requirements for disclosure of information relating to interests in land and land transactions for one of three permitted purposes - including national security. Regulations to implement and provide further details regarding the type of information that must be disclosed are anticipated in 2024 ([see our summary article](#));
- powers for local authorities to conduct compulsory high street rental auctions of empty commercial premises ([see our summary article](#)); and
- the introduction of a new infrastructure levy.

The Government has already been proactive in pursuing elements of LURA 2023. At the end of December 2023 it launched a six-week [consultation on street vote development orders](#) which seeks views on the detailed operation of this new route to obtaining planning permission. Developers should expect to see further consultations and regulations published throughout 2024.

Procurement Act



The **Procurement Act 2023**, which consolidates and updates the UK's procurement rules, finally received Royal Assent on 26 October 2023. It is due to come into force in 2024 (currently anticipated October).

Changes include measures to increase transparency including by monitoring contract performance; the ability to use framework arrangements more flexibly and to modify contracts where a "known risk" materialises; and revised grounds for exclusion including new discretionary grounds linked to concepts such as "breach of contract" which may be applied to "connected" entities.

Those tendering for public contracts or considering projects such as JV arrangements with local authorities will need to get to grips with the new rules.

Construction documents



JCT has announced that it will publish updated forms of JCT in 2024, possibly starting in the spring with a new Standard Building Contract. The update will include changes to reflect the Building Safety Act as well as other general updates.

Other publishers of standard form contracts (including the ACE and NEC) may also publish new editions, or update sheets.

Building safety levy



In early 2023 the Government [consulted on proposals for a "building safety levy"](#) which will apply to new residential buildings. This is broadly defined and may include hotels, care homes and hospitals as well as flats and houses. Discussions are underway about whether BTR, purpose-built student accommodation and the older living sector will be subject to the levy. How much the levy will be and how it will be calculated is still to be settled – as is the inter-relationship with the Residential Property Developer Tax (RPDT). Details may be forthcoming in 2024.

Building liability orders and structuring

The **Building Safety Act 2022** (BSA) introduced building liability orders in 2022. Building liability orders may make parent, sister or other related or associated companies or entities of an owner or developer liable for breaches of: (i) the Defective Premises Act 1972; and/or (ii) s. 38 Building Act 1984 (which, if it comes into force, will introduce civil liability for breach of the Building Act 1984 and associated regulations); and/or (iii) as a result of a risk to the safety of people in or about a building arising from the spread of fire or structural failure (a building safety risk) even though they had no involvement with the works/development in question.

Given the broad definition of building safety risk and breadth of work which the Building Act applies to, building liability orders may be applied for in relation to a wide spectrum of commercial, residential and industrial buildings. Organisations may also be ordered to disclose information about group structures to allow potential claimants to establish whether organisations are “associated”.

This should be considered when setting up future development structures; reviewing potential liabilities on existing developments; changing group structures; and/or seeking to acquire an organisation involved with property development.

LTA 1954 review

The Law Commission is expected to publish a consultation paper in early 2024 which will outline proposed amendments to the **Landlord and Tenant Act 1954**. Amongst other matters, this legislation governs security of tenure of business leases and includes processes for the determination of terms in renewal leases. The review intends to address cost and delay for both landlords and tenants and to ensure the legislation is fit for today’s commercial leasehold market. Possible reforms might include the ability to include “green” clauses on lease renewal and changes to the contracting out process including clarification of applicability to guarantors and the closing of other loopholes and gaps in the current statutory procedure.

Nutrient neutrality

The Government has said that it will not be re-visiting proposals to abolish nutrient neutrality requirements and has outlined measures to mitigate nutrient pollution at its source. Developers will continue to deliver nutrient mitigation schemes where required to bring their developments forward. However, it is possible that this position could be revisited following the general election anticipated later in 2024. For further information on this topic please [see our article](#).

The residential sector:

In addition to those set out above, the following will be of interest to those involved in the residential sector.

Building safety: Implied terms and service charges

Certain provisions within the framework set out by the **BSA 2022** are expected to be brought into effect in 2024. These include:

- new implied terms in leases of premises which consist of or include a dwelling in a higher-risk building. The terms comprise both landlord and tenant covenants and are designed to facilitate the practical application of building safety measures under the Act. These implied terms will include landlord covenants to comply with building safety duties under the Act and tenant covenants to allow authorised persons to access their premises for a relevant building safety purpose and not to create a significant risk of a building safety risk materialising or to interfere with relevant safety items; and
- the mechanism for recovery of building safety costs via service charge provisions within certain leases of premises including or consisting of a dwelling in a higher-risk building, granted for a term of seven or more years under which the tenant is liable to pay a variable service charge. The result of a March 2023 [consultation](#) into the practical administration and impact of this is expected in 2024.

Changes will need to be made to accounting processes and service charge demands in due course.

Renters (Reform) Bill



Developer landlords will be interested in the progress of the **Renters (Reform) Bill** which proposes to change the current system of residential assured shorthold tenancies with a revised tenure arrangement which would operate on a monthly rolling basis. Purpose-built student accommodation will be specifically exempt from such reforms; however the changes are likely to impact private student housing and other short-term residential arrangements (albeit to a lesser extent following the announcement that a further ground of possession based around the academic year is to be included in the draft Bill). The Bill will also abolish no-fault evictions however this element is expected to be subject to delay pending reforms to the court system required to enable the relevant processes.

Leasehold and Freehold Reform Bill



Amendments and extensions to the existing law on enfranchisement and leasehold extensions have been set out in the **Leasehold and Freehold Reform Bill**. These include reducing the threshold for leaseholders to make an enfranchisement claim in mixed-use premises and the ability for leaseholders to extend leases by 990 years. It has been over three years since recommendations for reforms in these areas were published by the Law Commission, it is therefore possible that the implementation date for such changes may extend beyond 2024.

The Bill also seeks to align methods of charging and recourse for estate service charges on freehold and mixed-use estates with existing obligations and rights governing leasehold service charges. Currently, freehold owners do not have equivalent routes to challenge unfair charges.

Perhaps the most debated element of the Bill is the proposal to abolish or cap ground rent in all existing leases. A consultation is currently underway and it is anticipated that institutional investors and developers will be amongst those challenging this suggestion both on the basis of extant commercial arrangements and potential detriment to pension and other funds.

Building regulation changes



Changes to the building control regime will impact all residential projects.

Those which involve the design and construction of buildings which are 18m or seven storeys or taller with two or more residential units are particularly affected. Projects involving these buildings will be subject to the new construction phase regime for higher-risk buildings (with the time and cost implications that brings) unless the transitional arrangements apply.

To continue to benefit from the transitional arrangements beyond 6 April 2024 work on a higher-risk building must be sufficiently progressed and notified to the local authority within five working days of this milestone being reached before 6 April 2024 and, if an approved inspector has been appointed, the approved inspector must have registered as a registered building control approver by this date.

Projects involving higher-risk buildings which do not benefit from the transitional provisions or cease to benefit from them will have to comply with the new regime. The transitional provisions govern which part(s) will apply.

CMA investigation



The Competition and Markets Authority (CMA) is in the process of conducting a **market study** of the housebuilding sector to ensure the market is working in the interests of consumers. Five areas are being considered in detail and the report will be published in February 2024. The areas of study include a review of the operation of estate management charges and land banking. The outcome of the study could yield new legislation, regulation or further studies. The CMA has stopped short of issuing a market investigation at this stage, but it remains a possibility in 2024.

New home warranties



The **BSA 2022** allows the Government to make the provision of new homes warranties a statutory requirement and to set minimum levels of coverage/protection and duration (possibly 15 years). Legislation setting out details may be forthcoming in 2024.

In addition, the formal establishment of the New Homes Ombudsman may also be provided for in regulations this year. Homebuyers will be able to ask the ombudsman for assistance in resolving issues encountered with housebuilders where problems with a new home are not addressed.

Remediation Orders, Remediation Contribution Orders and special measures



2023 saw the first remediation order and remediation contribution orders made under the **BSA 2022** and further case law is expected to be forthcoming in 2024, as liability for remediating defects in relevant buildings and the costs of such remediation continue to be the subject of dispute.

It is hoped that such cases will offer clarity on whether or not aspects of costs recoverability have retrospective application, what constitutes a “relevant defect” and the meaning of the “just and equitable” test (relevant to whom an order can be made against). We may also see litigation on topics such as leaseholder deeds of certificate and landlords certificates as landlords and tenants grapple with new measures within the Act relating to recovery of costs of remedying certain defects relating to buildings that contain at least two dwellings and are at least 11 metres high or have at least five storeys.

Planning



In light of changes being introduced under the **LURA 2023**, the Government has updated the NPPF. Changes include the removal of annual updating requirements and buffers for five-year land supply and increased support for community led housing and, in particular, later living housing.

Planning practice guidance in relation to the green belt has also been updated to clarify policy proposals regarding when development can take place on brownfield land within the green belt and other appropriate development such as re-use of existing buildings. The **NPPF** does not, however, include a requirement for local authorities to review or alter green belt boundaries.

Changes to the **London Plan** are also being considered with a focus on regeneration and development of brownfield sites specifically for housing delivery.

For more information, please get in touch with your usual Macfarlanes' contact.

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