

12 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

Brexit	Extension of article 50 notice period	<p>In response to a UK request, the European Council decided, in agreement with the UK, to extend the article 50 withdrawal period from 12 April 2019 to 31 October 2019 at the latest with some provisos. See the Commentary for more detail.</p> <ul style="list-style-type: none"> the extension should only last as long as is necessary. Therefore, if the UK Parliament approves the Withdrawal Agreement earlier than 31 October 2019, the UK will exit from the EU on the first day of the month following the agreement's ratification procedures or 1 November 2019 – whichever is earlier; and the UK must hold European elections during May 2019, failing which (if the UK has not ratified the Withdrawal Agreement by 22 May 2019) the article 50 extension will end on 31 May 2019.
Grenfell Tower inquiry	Update on Phase 1 progress and preparation for Phase 2	<p>The Grenfell Tower inquiry has confirmed it continues to work on Phase 1 of the report. The chairman is reviewing the evidence and drafting his report on Phase 1 of the inquiry, which seeks to establish what happened on the night of 14 June 2017.</p> <p>The Phase 1 report is expected to be completed in spring 2019. Preparations for Phase 2 hearings are ongoing.</p> <p>Phase 2 is to be 'directed to those aspects of the circumstances leading up to the fire that are likely to shed most light on the causes of the disaster'. The programme leading to the Phase 2 hearings has been published.</p>
Building regulations	Guidance following ban on combustible materials in external walls	<p>In response to questions from the industry about the government ban on using combustible materials in external walls, the Ministry of Housing, Communities & Local Government (MHCLG) published FAQs for the Building (Amendment) Regulations 2018 on 17 April 2019.</p> <p>The questions and answers include information on various technical issues including, for example:</p> <ul style="list-style-type: none"> how the regulations affect buildings undergoing remediation or undergoing a change of use; what materials are included within the meaning of 'internal finishes'; and how the ban applies to curtain walls.
House building – developers' obligations	Protecting local wildlife and the Environment Bill	<p>James Brokenshire, MP and Communities Secretary, has issued a reminder to developers to take more care to protect the habitats of wildlife during building work. Planning policies and decisions should contribute to and enhance the natural and local environment by minimising the impacts on and providing net gains for biodiversity.</p> <p>The government is going further, with plans afoot to require developers to deliver biodiversity net gain through the forthcoming Environment Bill.</p> <p>The MP specifically referred to the practice of netting trees and hedgerows ahead of building work near housing developments. He reminded developers that tree and hedge removal should be done outside nesting season.</p>
Environment	Invasive species inquiry	<p>The Environmental Audit Committee has launched an inquiry to consider the impact and threat to biosecurity from invasive species and the threats to ecosystems and public health in both the UK and UK overseas territories.</p> <p>The UK is witnessing a rise in the introduction of non-native species. The estimated cost of the damaging effects from invasive species has been put at almost £2 billion.</p>
Industrial strategy	New interactive map	<p>The government's modern Industrial Strategy is a long-term plan for boosting the productivity and earning power of people throughout the UK.</p> <p>The Department for Business, Energy & Industrial Strategy (BEIS) has published an interactive map, which showcases some of the 'innovative, cutting-edge small businesses and organisations employing thousands of people in high-quality jobs and driving innovation and growth across the country'.</p>

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Payment legislation	Update	<p>The second reading of the Construction (Retention Deposit Schemes) Bill (the Aldous Bill) was scheduled to take place on 23 April 2019.</p> <p>The second reading of the Public Sector Supply Chains (Project Bank Accounts) Bill 2017–2019 in the House of Commons was scheduled to take place on 1 March 2019.</p> <p>Revised dates for the next step for both Bills have not yet been released.</p>
Sentencing	Impact assessment of new sentencing guideline	<p>The Cabinet Office has launched a consultation on how government should take account of social value in the awarding of central government contracts. The requirements proposed in the consultation, which closes on 10 June 2019, will apply to all Central Government Departments, their executive agencies and Non-Departmental Public Bodies when undertaking procurements which are subject to Pt 2 of the Public Contracts Regulations 2015.</p>
Procurement	Effect on procurement regulations post Brexit	<p>The Sentencing Council has published an impact assessment of the health and safety offences, corporate manslaughter and food safety and hygiene offences guideline for England and Wales, which came into force in 2016.</p> <p>The guideline aimed to ensure that levels of fines imposed for these offences were proportionate to the means of the offender and reflected the seriousness of the offence committed.</p> <p>The impact assessment – published on 4 April – shows an increase in fines for large organisations sentenced for health and safety offences, as had been anticipated following the guideline's introduction. But data on corporate manslaughter offences should be treated with caution due to low volumes, the Sentencing Council says.</p>

UK exit day from the EU – extension granted but with conditions

When, or whether, the UK will leave the EU continues to remain unclear. While the House of Commons voted against a 'no deal' Brexit in all circumstances on 13 March 2019, of the available options for the UK (including a second referendum) only two seem more likely currently:

- ♦ leaving under the terms set out in the draft UK-EU Withdrawal Agreement (which include a transition period) – if that is signed in its current or a broadly similar form;
- ♦ or leaving on exit day without any UK-EU agreement or transition period – the 'no deal' scenario.

Under art 50, the original date for the UK to exit was scheduled for 29 March 2019. However, on 21 March 2019, and again on 10 April, the European Council agreed to postponements. The UK's exit date is now scheduled for 31 October 2019 or earlier should the UK Parliament approve the draft Withdrawal Agreement. The definition of 'exit day' in the European Union (Withdrawal) Act 2018 has been updated to reflect this change (see European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No 2) Regulations 2019).

When agreeing to this delay, the EU made clear that the UK's failure to take part in the EU elections, scheduled for 23–26 May 2019, would result in the UK automatically leaving on 1 June 2019 without a deal. This scenario was averted by the government's announcement in early May

that the UK would hold EU elections on 23 May 2019.

The EU also made clear that the extension should only last as long as is necessary. Therefore, if the UK Parliament approves the Withdrawal Agreement earlier than 31 October 2019, the UK will exit from the EU on the first day of the month following the agreement's ratification procedures or 1 November 2019 – whichever is earlier. Current government plans appear to favour a UK exit on 1 August 2019 if Parliament approves the agreement.

The final test for the draft Withdrawal Agreement will come in the first week of June when Prime Minister, Theresa May, is expected to put the UK/EU deal to Parliament for the fourth time. That vote – whether or not it happens – is widely expected to lead to more political disruption and, possibly, a new Conservative party leader and Prime Minister.

The prospect of leaving without a deal – and the consequent commercial disruption – remain a significant issue for which UK businesses should be preparing. There is plenty of government guidance to assist businesses with this preparation (for example, see www.gov.uk/business-uk-leaving-eu). Alternatively, businesses should seek guidance from their professional advisers.

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