



# ON THE HORIZON

Mining sector's guide to relevant upcoming legal,  
commercial and regulatory changes and developments  
January 2017





# WHAT IS "ON THE HORIZON"?

- A legal risk management tool tailored to your business.
- Selected future legal, regulatory and commercial developments affecting the UK.
- A quick guide to help you decide whether you need to know more.

For further information, please use the links or contact one of our lawyers below. If you have any questions about this horizon scanning service, please email [horizon.scanning@dlapiper.com](mailto:horizon.scanning@dlapiper.com).



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## CONTENTS

Planning conditions - consultation .....	3
Compulsory purchase consultation.....	3
Environmental justice in Scotland consultation .....	4
Aggregates levy in Scotland .....	4
Fracking in Scotland .....	4
Environmental Impact Assessment (EIA) consultation .....	5
Environmental claims.....	6
Extent of contractual obligation to obtain planning permission .....	6
Planning (Wales) Act .....	7
Infrastructure Act 2015 - Mayoral Development Orders.....	8
Shale Wealth Fund .....	8
Impact of EU legislation on the construction sector .....	9
Land registration .....	9
Local land charges.....	9
New Land Transaction Tax for Wales .....	10
National Infrastructure Commission - call for evidence.....	11
Land reform in Scotland.....	11
National Infrastructure Assessment.....	12
Modernisation of compulsory purchase in Scotland.....	13
Management of the Crown Estate in Scotland.....	13
General Permitted Development (Amendment) Order 2016.....	13
Environmental Impact Assessment - Wales .....	14

PLANNING	
<b>Change</b>	Planning conditions - consultation
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	<p>Views are being sought on measures in the Neighbourhood Planning Bill which address and prohibit certain types of planning conditions which restrict commencement of development until they are complied with, the Department for Communities and Local Government (DCLG) has announced. The consultation ended on 2 November 2016.</p> <p>On the 15 December 2016 the DCLG published a response to the consultation which confirms that the Government plans to introduce powers in the Neighbourhood Planning Bill to ensure that pre-commencement conditions can only be used with the applicants consent and to prohibit planning conditions that do not meet the tests set out in the NPPF.</p> <p>The Neighbourhood Planning Bill has now moved to the House of Lords and the second reading of the Bill will take place on 17 January 2017.</p>
<b>Jurisdiction</b>	England
<b>Timing</b>	Second reading in the House of Lords of the Neighbourhood Planning Bill will take place on 17 January 2017.

PLANNING REAL ESTATE	
<b>Change</b>	Compulsory purchase consultation
<b>Description</b> <a href="#">Link to further info</a>	<p>The Department for Communities and Local Government (DCLG) has launched a further consultation seeking views on its proposals. The proposed reforms to the compulsory purchase system have the stated aim to make it clearer, fairer and faster for all parties, while retaining adequate safeguards for those with an interest in the land affected.</p> <p>Proposed measures include a clearer way to identify market value when agreeing levels of compensation, simplifying the process by enabling transport and regeneration bodies to make combined orders; and repealing redundant legislation. The consultation closed on 15 May 2016.</p> <p>The Department for Communities and Local Government and the Treasury have now responded to the consultation. The response shows that a majority of respondents support the proposals. The document also provides details of the government's response and proposed actions, which are to be enacted in the Neighbourhood Planning Bill.</p> <p>The Bill was introduced in the House of Commons on 7 September 2016 and had its second reading on 10 October 2016. The Bill then moved onto Committee stage which concluded on 1 November 2016. The Bill had its report stage and third reading on 13 December 2016 and has now moved onto the House of Lords where the second reading will take place on 17 January 2017.</p>
<b>Jurisdiction</b>	England
<b>Timing</b>	Bill has its second reading in the House of Lords on 17 January 2017.

ENVIRONMENT LITIGATION	
<b>Change</b>	Environmental justice in Scotland consultation
<b>Description</b> <a href="#">Link to further info</a>	The Scottish Government is investigating whether, after the recent major changes to the court system in general in Scotland, there is still a call for the creation of a dedicated Environmental Court or other changes to protect wildlife and the environment and to provide better access to justice in civil environmental cases. A consultation closed on 10 June 2016.
<b>Jurisdiction</b>	Scotland
<b>Timing</b>	We will review for a government response to the consultation on 17 January 2017.

REAL ESTATE REGULATORY TAX	
<b>Change</b>	Aggregates levy in Scotland
<b>Description</b> <a href="#">Link to further info</a>	Section 18 and Schedule 1 of the Scotland Act 2016 devolves the tax on the commercial exploitation of aggregates to the Scottish Government. Although the legislation is in force, there is currently an investigation into the State Aid issues by the EC, and there are other matters still to be resolved.
<b>Jurisdiction</b>	Scotland
<b>Timing</b>	We will review for progress on 20 January 2017.

ENVIRONMENT	
<b>Change</b>	Fracking in Scotland
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	<p>The Scottish Government put in place a moratorium on underground coal gasification (UCG) in Scotland on 8 October 2015, in addition to the moratorium on onshore unconventional oil and gas from January 2015. The separate moratorium on UCG is intended to allow the necessary time for separate full and careful consideration of the potential impacts of this new technology which is subject to different licensing regimes. The Scottish Government is carrying out a programme of research including a full public health impact assessment, further work to strengthen planning guidance, further tightening of environmental regulation, transport impacts, seismic monitoring, consideration of decommissioning and aftercare, climate change impacts and economic impacts.</p> <p>On 1 June 2016, Labour, Liberal Democrat and Green MSPs combined to pass a motion demanding a total ban which SNP ministers acknowledged, but are still awaiting the results of the research report before making a decision.</p> <p>The Scottish Government appointed Professor Campbell Gemmell (University of Glasgow), to lead an independent examination of UCG, and the report was published on 6 October 2016. The report identified that the current moratorium,</p>



ENVIRONMENT	
	<p>and even a total ban for the foreseeable future is justified, with arrangements revisited when necessary. Its findings were that:</p> <ul style="list-style-type: none"> <li>■ were the industry allowed to develop, it would be wise to use a series of tests in relation to the practicality and safety of the full UGC life-cycle and to ensure bonds, insurances, monitoring, compensations and remediation practices were in place;</li> <li>■ there are there are large operational and gas budget uncertainties, and UGC is a potentially expensive and demanding method – there is no current infrastructure, research, development and demonstration of technology, industry regulation and monitoring, community support etc. would all be required;</li> <li>■ there are several critical issues and gaps in the areas covered and at this time full operation or even trialling of the technology at scale in the Scottish regulatory, planning and cultural environment, or anything of comparable standards elsewhere globally, has not been undertaken and would face serious challenges;</li> <li>■ given Scotland's world leading climate and energy commitments, the need for renewable technology development and deployment, and decarbonisation objectives, there is a persuasive case that pursuit of UGC is not the right approach; and</li> <li>■ we do not need to decide on UGC right now, as coal remains available for future use as and when better full-cycle technologies or better processes, storage methods and market conditions exist.</li> </ul> <p>The Scottish Government's response is awaited.</p> <p>On 3 November 2016 Claudia Beamish, a Labour MSP for South of Scotland, launched a consultation on a proposed Prohibition of Fracking etc.(Scotland) Bill which she indicated she intends to introduce in the Scottish Parliament "as early as possible in 2017".</p>
<b>Jurisdiction</b>	Scotland
<b>Timing</b>	We will review for the government's response to the research report and progress on Claudia Beamish's proposed Bill on 31 January 2016.

ENVIRONMENT PLANNING PROJECTS REAL ESTATE	
<b>Change</b>	Environmental Impact Assessment (EIA) consultation
<b>Description</b> <a href="#">Link to further info</a>	Defra, alongside the Welsh and Scottish Governments and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, seeks views on amendments to domestic Environmental Impact Assessment (EIA) legislation. The consultation concerns amendments to domestic legislation on EIAs for forestry, agriculture, water resources, land drainage, fin-fish farming in marine waters and marine works, and runs until 31 January 2017.



ENVIRONMENT PLANNING PROJECTS REAL ESTATE	
<b>Jurisdiction</b>	UK
<b>Timing</b>	Consultation ends on 31 January 2017

ENVIRONMENT PLANNING	
<b>Change</b>	Environmental claims
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	A consultation by the Ministry of Justice, which closed on 10 December 2015, asked for comments from people who may be involved in or affected by environmental legal challenges in England and Wales. It set out proposals for how to improve the environmental cost protection rules (made under the Aarhus convention), including provisions to widen the number of claims that can be covered by such protection, and proposals to allow the Court more discretion in the setting of capped fee levels. On 17 November 2016 the Ministry of Justice published a response to the consultation. The response said that the majority of the changes proposed will be implemented using changes to the CPR.
<b>Jurisdiction</b>	England Wales
<b>Timing</b>	We await changes to the CPR- we will review on 31 January 2017

PLANNING REAL ESTATE	
<b>Change</b>	Extent of contractual obligation to obtain planning permission
<b>Description</b> <a href="#">Link to further info</a>	The Court of Appeal has issued its judgment in the case of Sainsbury's Supermarkets Ltd v Bristol Rovers (1883) Ltd. It decided that a general obligation to use all reasonable endeavours to obtain an acceptable planning permission for a new Sainsbury's store (and to act in good faith) should not take precedence over (or add additional obligations on) a specific contractual provision that stated that Sainsbury's was only obliged to make a planning appeal in certain circumstances (which had not been met). The decision will be of interest to those who have conditional obligations in development and pre-let agreements for lease. We wait to see if the decision is appealed to the Supreme Court.

PLANNING REAL ESTATE	
<b>Jurisdiction</b>	England Wales
<b>Timing</b>	We will review the position on 31 January 2017 to determine whether the decision is likely to be appealed.

PLANNING REAL ESTATE	
<b>Change</b>	Planning (Wales) Act
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	<p>The Planning (Wales) Act 2015:</p> <ul style="list-style-type: none"> <li>■ Strengthens the plan-led approach to planning.</li> </ul> <p>The Act introduces a new legal framework for the Welsh Ministers to prepare a national land use plan, to be known as the National Development Framework for Wales. The framework will set out national land use priorities and infrastructure requirements for Wales;</p> <ul style="list-style-type: none"> <li>■ Makes provision for the production of Strategic Development Plans by Strategic Planning Panels, to tackle larger-than-local cross-boundary issues, such as housing supply and areas for economic growth and regeneration;</li> <li>■ Makes provision for pre-application consultation, and to require local planning authorities to provide pre-application services;</li> <li>■ Provides for planning applications for nationally-significant projects to be made to the Welsh Ministers. Applicants for planning permission will also be able to apply to the Welsh Ministers for planning permission where a local planning authority is deemed to be poorly performing;</li> <li>■ Reforms the development management system to streamline procedures, to ensure that applications are dealt with promptly, providing certainty for developers and communities;</li> <li>■ Improves enforcement and appeal procedures. Changes are also made in relation to the recovery of costs for parties involved in planning cases; and</li> <li>■ Makes changes in relation to applications to register town and village greens. The Act is being brought into force in stages.</li> </ul> <p>Some commencement orders have already been passed, and we await publication of further orders.</p>
<b>Jurisdiction</b>	Wales
<b>Timing</b>	Further commencement orders awaited - we will review on 31 January 2017

PLANNING PROJECTS REAL ESTATE	
<b>Change</b>	Infrastructure Act 2015 - Mayoral Development Orders
<b>Description</b> <a href="#">Link to further info</a>	The Infrastructure Act 2015 includes provisions to permit the Mayor of London to grant planning permission by Mayoral Development Order for development of sites within Greater London. A mayoral development order may be unconditional or contain limitations. The Act provides the Secretary of State with power to revise or revoke a mayoral development order.
<b>Jurisdiction</b>	England Wales
<b>Timing</b>	Regulations awaited - we will review on 31 January 2017

ENVIRONMENT PLANNING PROJECTS REAL ESTATE	
<b>Change</b>	Shale Wealth Fund
<b>Description</b> <a href="#">Link to further info</a>	HM Treasury has published a consultation document on the Shale Wealth Fund. The Fund is designed to deliver up to £1bn to shale projects so resources can be developed in 'a safe, sustainable and timely way'. Moreover, the fund is intended to ensure communities affected by projects can benefit over a 25 year period. This, the government believes, will ensure the benefits of shale developments are shared by communities and regions in which the resource is developed. Consultation ended on 26 October 2016. As part of the Autumn Statement, which was delivered on 23 November 2016, the Government confirmed that the Shale Wealth Fund will be going ahead. We await further developments,.
<b>Jurisdiction</b>	England
<b>Timing</b>	Further developments awaited - we will review on 31 January 2017

**CONSTRUCTION & ENGINEERING**  
**ENVIRONMENT**  
**HEALTH & SAFETY**  
**PROJECTS**  
**REAL ESTATE**

<b>Change</b>	Impact of EU legislation on the construction sector
<b>Description</b> <a href="#">Link to further info</a>	The European Commission has published a consultation which seeks views on the impact of EU legislation on the construction sector and, in particular, on improving the internal market, energy efficiency, the environment and health and safety. The consultation closed on 20 June 2016. We await an European Commission response to the consultation.
<b>Jurisdiction</b>	EU
<b>Timing</b>	European Commission response awaited - we will review on 31 January 2017

**REAL ESTATE**

<b>Change</b>	Land registration
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	A Law Commission consultation which closed on 30 June 2016 sought views on how the Land Registration Act 2002 is working in practice and whether there are opportunities for the system to be updated. It also sought comments on proposals that will facilitate a more flexible approach to the development of electronic conveyancing than was envisaged by the Act. We await a government response to this consultation.
<b>Jurisdiction</b>	England
<b>Timing</b>	Government response to the Law Commission consultation awaited - we will review on 31 January 2017.

**REAL ESTATE**

<b>Change</b>	Local land charges
<b>Description</b> <a href="#">Link to further info</a>	A proposed draft of the Local Land Charges Rules 2017 (LLCR 2017) has been published by the Land Registry. The rules were created to provide a framework for how the electronic LLC register service will work. The consultation on the proposed draft closed on 11 July 2016. The Land Registry has published a summary of responses but we await their formal response.
<b>Jurisdiction</b>	England
<b>Timing</b>	Formal Land Registry response awaited - we will review on 31 January 2017.

**REAL ESTATE  
TAX**

<b>Change</b>	New Land Transaction Tax for Wales
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	<p>The Welsh Government is planning to implement a Welsh Land Transaction Tax (LTT) to replace Stamp Duty Land Tax (SDLT) for properties within Wales with effect from April 2018. A public consultation took place in the first part of 2015 in which the Welsh Government proposed a tax similar to English SDLT and the Scottish Land and Buildings Transactions Tax.</p> <p>The Welsh government published a draft version of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill on 5 July 2016 and introduced the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill into the Welsh National Assembly on 12 September 2016.</p> <p>The overall scheme of the new tax is broadly consistent with SDLT, including key concepts such as substantial performance, pre-completion transactions and linked transactions, and many of the reliefs available under SDLT, such as group relief, multiple dwellings relief and charities relief. There are some differences from SDLT in the application of LTT to leases, however, and specific provisions are included for transactions partly subject to SDLT and partly to LTT. LTT will include an over-arching general anti-avoidance rule (GAAR), to prevent abuse. The rates and bands of LTT will be set by regulation.</p> <p>However, the Bill states that there will be a zero-rate, as well as at least two higher rates and provides that LTT will be charged using the "slice" system, under which that part of the entire consideration falling within a particular band is taxed at the rate applicable to that band. At the same time as publishing the draft legislation, the Welsh government launched a consultation on the application of higher rates of LTT to purchases of additional dwellings in a similar way as now applies under the SDLT rules.</p>
<b>Jurisdiction</b>	Wales
<b>Timing</b>	Next steps uncertain - we will review on 31 January 2017.

**CONSTRUCTION & ENGINEERING  
PLANNING  
PROJECTS  
REAL ESTATE**

<b>Change</b>	National Infrastructure Commission - call for evidence
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	The National Infrastructure Commission issued a call for evidence on three national challenges ahead of Budget 2016: improving connectivity between cities in the north of England; large-scale transport infrastructure improvements in London; and improving how electricity demand and supply are balanced. The consultation closed on 8 January 2016 and as part of Budget 2016 The Chancellor announced more than a £400m will be invested in supporting recommendations made by the National Infrastructure Commission. The Treasury has now published a response to the consultation on the governance structure and operation of the National Infrastructure Commission. On 12 October the Treasury announced, in a written ministerial statement, that the National Infrastructure Commission will be established on a permanent basis as an executive agency of HM Treasury. This will come into force in January 2017.
<b>Jurisdiction</b>	England
<b>Timing</b>	The NIC will be established as an executive agency in January 2017.

**ENVIRONMENT  
REAL ESTATE  
TAX**

<b>Change</b>	Land reform in Scotland
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	<p>The Land Reform (Scotland) Act 2016 will:</p> <ul style="list-style-type: none"> <li>■ set up a Scottish Land Reform Commission to underpin land reform (to be in place by April 2017);</li> <li>■ limit the legal entities which can own land;</li> <li>■ create a public register with information on who controls land in Scotland;</li> <li>■ make public sector information on land, its value and ownership readily available;</li> <li>■ create a right to buy for sustainable development to remove barriers caused by land owners;</li> <li>■ make provision about engaging communities in decisions relating to land;</li> <li>■ end the business (non-domestic) rates exemption for shooting and deerstalking and make provision about the management of deer on land (commenced in July 2016);</li> <li>■ further modernise Common Good law;</li> <li>■ make provision about access rights to land and clarify the Land Reform (Scotland) Act 2003 core paths planning process; and</li> <li>■ amend the law on agricultural holdings including modernising tenancy agreements, widening succession rights, and enhancing the right to buy.</li> </ul>

**ENVIRONMENT  
REAL ESTATE  
TAX**

	<p>The Act is coming into force by commencement order. Commencement Order No 2 brings various provisions relating to the Scottish Land Commission into effect on 1 November 2016.</p> <p>The Scottish government announced in its Land Use Strategy 2016-2021 that it will develop and consult on the draft of a first Land Rights and Responsibilities Statement (LRRS), which is provided for by this act, which will contain principles to guide the development of public policy on the rights and responsibilities in relation to the ownership, use and management of land. The Land Reform (Scotland) Act 2016 (Commencement No. 1 and Transitional Provision) Regulations 2016 brought these provisions into force on 1 October 2016.</p> <p>The Scottish Government is also set to commence work on the Community Guidance on Land Use further to Part 4 of the Act. This will seek to provide guidance to community bodies and landowners on land use issues in both rural and urban domains.</p> <p>A consultation on proposals for the disclosure and publication of information about controlling interests in land owners and tenants across Scotland closes on 5 December 2016.</p>
<b>Jurisdiction</b>	Scotland
<b>Timing</b>	We will check for a response to the controlling interests consultation on 2 February 2017.

**CONSTRUCTION & ENGINEERING  
PLANNING  
PROJECTS  
REAL ESTATE**

<b>Change</b>	National Infrastructure Assessment
<p><b>Description</b></p> <p><a href="#">Link to further info</a></p> <p><a href="#">Link to further info</a></p>	<p>A response to a consultation on the process and methodology for the first National Infrastructure Assessment (NIA) has been issued by the National Infrastructure Commission (NIC). Respondents indicated broad support for proposals on developing and delivering the NIA. The NIC has now launched a call for evidence seeking views and ideas on further shaping the development of the NIA. Evidence can be submitted until 10 February 2017.</p>
<b>Jurisdiction</b>	England
<b>Timing</b>	Consultation ends 10 February 2017



**CONSTRUCTION & ENGINEERING  
PLANNING  
PROJECTS  
REAL ESTATE**

<b>Change</b>	Modernisation of compulsory purchase in Scotland
<b>Description</b> <a href="#">Link to further info</a> <a href="#">Link to further info</a>	Compulsory purchase covers circumstances where the public interest in a particular project is more important than an individual's property rights, but as they stand the laws are very dated. A Scottish Law Commission discussion paper looked at how the law can be improved, how to ensure owners receive proper recompense for their loss, and contained a new statute to make the system clear to all involved. The SLC submitted a report summarising the written submissions received, together with the input by stakeholders at the various engagement events to the Scottish Government on 10 October 2016. The SLC now awaits the Scottish Government's response before taking this project further.
<b>Jurisdiction</b>	Scotland
<b>Timing</b>	Next steps uncertain - we will review on 11 March 2017.

**REAL ESTATE**

<b>Change</b>	Management of the Crown Estate in Scotland
<b>Description</b> <a href="#">Link to further info</a>	In January 2017 the Scottish Government Launched on a consultation on the long term framework for the devolved management of the Crown Estate in Scotland, which is likely to be devolved to the Scottish Parliament by April 2017. The consultation closes on 29 March 2017.  The Crown Estate is the owner of Scotland's seabed, much of its foreshore, a significant amount of rural land, and some urban property, principally at George Street in Edinburgh. These properties, rights and interests, are currently managed by the Crown Estate Commissioners. This includes rights over salmon fishing, shooting, minerals and naturally occurring gold and silver in Scotland. The Commissioners are also responsible for leasing the seabed for activities such as oil and gas pipelines, telecommunications cables, renewable energy developments, moorings and aquaculture sites.
<b>Jurisdiction</b>	Scotland
<b>Timing</b>	The consultation closes on 29 March 2017.

**PLANNING  
REAL ESTATE**

<b>Change</b>	General Permitted Development (Amendment) Order 2016
<b>Description</b> <a href="#">Link to further info</a>	The New GPDO Amendment Order 2016 was laid before Parliament on 11 March 2016 and comes into force on 6 April 2016. This will bring into force all the amendments announced in the 13 October 2015 statement by Brandon

**PLANNING  
REAL ESTATE**

<p><a href="#"><u>Link to further info</u></a></p>	<p>Lewis. In the regulations amendments include:</p> <ul style="list-style-type: none"> <li>■ Office to residential made permanent;</li> <li>■ light industrial to residential permitted from 30 September 2017 for three years;</li> <li>■ launderettes to dwelling houses permitted;</li> <li>■ new temporary and permanent rights to drill boreholes for monitoring and investigations to facilitate fracking; and</li> <li>■ some amendments and clarifications, new requirements for prior approval and new Ministerial review provisions for the GPDO as a whole.</li> </ul> <p>The explanatory note also deals with changes to the compensation order, relating to compensation where the new light industrial to residential PD rights are removed.</p>
<p><b>Jurisdiction</b></p>	<p>England</p>
<p><b>Timing</b></p>	<p>light industrial to residential permitted from 30 September 2017 for three years</p>

**ENVIRONMENT  
PLANNING  
PROJECTS  
REAL ESTATE**

<p><b>Change</b></p>	<p>Environmental Impact Assessment - Wales</p>
<p><b>Description</b> <a href="#"><u>Link to further info</u></a></p>	<p>Proposals to implement amended Directive 2011/92/EU on environmental impact assessments (EIA) have been set out for consultation by the Welsh government. The changes would amend the EIA (Agriculture) (Wales) Regulations 2007, SI 2007/2933 by strengthening the EIA screening process, streamlining existing procedures and enhancing the protection of farmland habitat sites. The consultation is open until 5 January 2017.</p>
<p><b>Jurisdiction</b></p>	<p>Wales</p>
<p><b>Timing</b></p>	<p>Consultation ends 5 January 2017</p>





We have produced this horizon scanning document for the client named above. We have selected legal developments which we consider to be of particular significance to these clients. Other issues may not feature. We hope this makes the document more manageable and useful but it is not comprehensive.

This publication is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of 12 January 2017, however, the law may have changed since that date. This information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken or not taken on the basis of this publication.

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