

Construction – What’s coming up in 2023



Building Safety Act 2022

The Act introduces a new “gateway” regime for higher risk buildings. Gateway 1 (before planning permission is granted) is already in force. Gateway 2 (stop/go point prior to construction) and Gateway 3 (completion / final certificate stage when construction is complete) are expected to come into force between April and October 2023 with other subordinate legislation expected throughout 2023 and 2024.



Procurement Bill

The Procurement Bill is expected to receive Royal Assent in 2023. It aims to increase transparency, reduce the number of and increase the flexibility in the procedures during procurement which should in turn assist parties negotiating construction and infrastructure contracts.



Data Protection and Digital Information Bill

The Bill as currently drafted includes changes in the definition of Personal Data and the way complaints are handled, increased fines under the PECR regime (to be consistent with fines under the UK GDPR), updated grounds on which subject access requests can be refused and increased powers for the ICO. If passed it will become relevant within the construction industry in relation to personal data collected e.g. through digital entry procedures, progress-tracking by photographic / drone surveys. The second reading may be considered in 2023.



IR35

The government recently reversed its decision to repeal the IR35 reforms in the private sector. This means that, generally speaking, businesses engaging self-employed contractors remain responsible for determining whether IR35 applies and for the tax liability in respect of those engagements.



Carbon Border Adjustment Mechanism (CBAM)

CBAM targets imports of products from carbon-intensive industries and is due to be introduced in phases from October 2023. This is a scheme designed to offset ‘carbon leakage’ where producers in non-EU countries will be subject to a tariff on materials imported into the EU if they do not align with current EU carbon standards. 2023 will target high risk goods such as iron and steel, cement and aluminium.



Greenwashing

In 2023 we expect to see greater scrutiny of environmental claims by both regulators and other stakeholders with a particular focus on the environmental credentials of materials and sustainability claims and potential for action to be taken in the event of greenwashing.



JCT 2022 Editions

The Joint Contracts Tribunal (JCT) is expected to publish 2022 editions of its suite of contracts in 2023.



Energy Performance Certificates (EPC)

The Government’s EPC action plan will require all rented commercial property to have an EPC rating of band E or above. This is part of the drive to increase building sustainability and will likely result in more stringent obligations on contractors during build and fit-out works.



Biodiversity Net Gain (BNG) Requirement

The BNG requirement brought in by the Environment Act 2021 is to protect existing habitats and ecosystems in new developments by ensuring at least a 10% improvement on pre-development biodiversity. The BNG site register and statutory credits sales platform is to go live in spring 2023. By then developers must have the biodiversity gain condition discharged before any works can begin.



UK Aggregates Levy

From 1 April 2023, the Finance Bill 2023 proposes to amend the current exemptions for unmixed aggregate levy (which include certain exemptions connected with building sites). Those operating building sites should be aware of the changes to make sure they are not caught out by additional charges which may apply.



Scottish Aggregates Tax

The Scottish Government proposes to introduce a Scottish Aggregates Levy Bill to replace the UK Aggregates Levy meaning a different regime would apply to that in England and Wales. The consultation closed on 4 December 2022 so further developments are awaited.



Corporation Tax

The rate of corporation tax will be increased from 19% to 25% from 1 April 2023 for companies with profits of £50k+. The lower rate of 19%, re-named the “small profit rate”, will continue to apply to companies with profits <£50k. Companies with profits of £50k – £250k will pay the main rate reduced by a marginal relief.



Flood and Water Management Act 2010

There are calls for Schedule 3 of the Flood and Water Management Act 2010 to be brought into force. If brought in, it will introduce standards for new sustainable drainage systems, create an “approving body” and remove the automatic right for new developments to connect to the public sewer system.



Mandatory Digital Waste Tracking

Mandatory digital waste tracking is expected to come into play in 2023. The idea is for all businesses to track what type of waste is being produced and where it ends up. This will increase requirements for contractors to correctly classify waste, export waste appropriately and make the operation of illegal waste sites harder.