

SPRING 2024

CONSULTATIONS

The following consultations are currently in progress, or have recently closed

Consultation	Detail	Closing Date	HL articles
Consultation on contractual controls on land	This new consultation seeks views on the government’s plans to provide a more transparent picture of controls on land through the creation of a freely accessible dataset. Part 11 of the Levelling Up and Regeneration Act (LURA) gives the government the power to collect and publish information about “contractual control agreements” – meaning option agreements, pre-emption agreements, conditional contracts, and promotion agreements (but excluding overage and clawback agreements) – which are “ <i>used to control land short of outright ownership</i> ”. On 24 January 2024, the DLUHC launched the consultation to consider the content of regulations to give effect to Part 11. The proposed regulations would require the grantee of a “contractual control agreement” which subsists for more than 12 months entered into from 6 April 2021 onwards to provide information digitally within 60 days of the agreement being entered into.	Consultation closes on 20 March 2024	
Consultation on transparency of land ownership involving trusts	The consultation seeks views on the government’s aim of increasing transparency of land ownership involving trusts, including widening access to trust information held on the Register of Overseas Entities. To help inform decisions on balancing the making of information available and legitimate concerns in sharing that information publicly, the consultation seeks views on what data would be most useful and why.	Consultation closes on 21 February 2024	

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Law Commission consultation on Landlord and Tenant Act 1954	The government has commissioned a Law Commission review of the Landlord and Tenant Act 1954, and security of tenure provisions for business leases.	Consultation Paper due to be published in early 2024	UK Landlord and Tenant Act 1954: what might reform look like? - Hogan Lovells Engage
ESG: Consultation on the Community Infrastructure Levy	The consultation considered how to reform the Community Infrastructure Levy, the existing system of developer contributions.	Following closure of the consultation, the legislative provision for the Infrastructure Levy is now contained in LURA but is not yet in force.	
ESG: Consultation on Environmental Outcomes Reports	The consultation contemplated how the European-based system of environmental impact assessments is to be replaced.	Following closure of the consultation, the legislative provision for Environmental Outcomes Reports is now contained in LURA but is not yet in force.	UK Environmental outcomes reports: evolution or revolution? - Hogan Lovells Engage UK: Earth Day: Investing in our Planet – real estate and planning
Consultation on the introduction of a use class for short term lets	The consultation sets out proposed changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) including the introduction of a new use class for short term lets and associated permitted development rights.	This consultation has now closed, outcome awaited.	
Consultation on reform of the Construction Industry Scheme	The consultation considers how the CIS regime could be simplified. In particular, the consultation seeks views on two areas that are of relevance: landlord/tenant contributions and group reporting requirements.	The consultation has now closed and the results have been	

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		<p>published alongside the Autumn Statement 2023. The government response states that new regulations will be laid. The government has indicated that 'most' payments between landlords and tenants will be excluded from the CIS but the detail of the new rules is yet to be finalised.</p>	
<p>New Consultation expected on PD Rights</p>	<p>As announced in the Autumn Statement 2023, the government will consult early in 2024 on extending permitted development rights to allow one house to be converted into two flats, provided the façade is unchanged, with a view to implementing this scheme in 2024. There will also be a new premium planning service across England with guaranteed accelerated decision dates for major applications and fee refunds wherever the accelerated timescales are not met by local planning authorities.</p>		
<p>EU Commission call for evidence on Commercial Real Estate Statistics</p>	<p>The call for evidence proposes a new Regulation which the Commission states would fill a significant gap in the availability of statistical information on commercial real estate, as there are currently few official sources of such statistics. The Regulation aims to provide a framework for developing, producing and publishing statistics on commercial real estate. The statistics to be covered would include as a minimum indices on prices, rents and on construction starts and completions. They could be used in particular to monitor</p>	<p>Consultation closed on 25 December 2023. Adoption planned for second quarter 2024.</p>	

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	financial stability, for fiscal, monetary and macro-prudential policymaking, and for research on real estate markets.		
Building Safety Levy	<p>The government consultation into imposing a building safety levy on new residential buildings requiring certain building control approvals to raise revenue to be spent on building safety closed on 7 February 2023, and the report on that consultation was published on 23 January 2024.</p> <p>A second consultation opened on 23 January 2024 addressing the methodology for the calculation of the Building Safety Levy, the collection process, managing disputes, and further exemptions.</p>	24 February 2024	

NEW AND PENDING LEGISLATION

This covers future legislation where: a Bill has been drafted and is passing through parliament; a change in law which has been passed but which has yet to come into effect; and recent changes that have come into effect.

Legislation	Detail	Date	HL articles
ESG: New UK Sustainability Disclosure Requirements	Following the consultation, the new SDR was published on 28 November 2023.	28 November 2023	<p>UK: Sustainability Disclosure Requirements: Key things you need to know as the FCA confirms final rules - Hogan Lovells Engage</p> <p>UK: FCA delays SDR policy statement until Q4 2023 - Hogan Lovells Engage</p> <p>The FCA released Consultation Paper CP22/20 on the UK Sustainable Disclosure</p>

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		<p>updating requirement date has arrived under the Economic Crime (Transparency and Enforcement) Act 2022, as the initial registration had to be done by 31 January 2023.</p>	<p>Economic crime and corporate transparency bill: Important changes for UK limited partnerships - Hogan Lovells Engage</p>
<p>The Building Safety Act 2022 (Commencement No. 6) Regulations 2024</p> <p>The Building Safety Act 2022 (Commencement No. 7 and Transitional Provisions) Regulations 2024</p>	<p>These No. 6 regulations bring sections 79-111 of the Building Safety Act 2022 into force. These sections deal with the duty on the principal accountable person to prepare building assessment certificates and safety case reports, mandatory reporting requirements, keeping information about higher-risk buildings, residents' engagement and provision of information.</p> <p>The Building Safety Act 2022 (Commencement No. 7 and Transitional Provisions) Regulations 2024 were made on 28 January 2024, and will come into force on 6 April 2024, bringing the Building Safety Act 2022 largely into force.</p>	<p>In force from 13 January 2024</p> <p>In force from 6 April 2024</p>	
<p>Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023</p>	<p>These regulations supplement sections 79-111 of the Building Safety Act 2022. The Regulations deal with the specifics of building assessment certificates, management of building safety risks, safety case reports, keeping and provision of information, residents' engagement strategy and complaints procedures, contravention notices compliance notices.</p>	<p>In force from 16 January 2024</p>	

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Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2024	These regulations deal with the golden thread of information to be kept by the Accountable Person, and duties to provide documents to the regulator and other responsible or accountable persons, or a “client” for whom works to the building are being carried out.	In force from 13 January 2024	
Renters Reform Bill	The Renters (Reform) Bill is currently being debated in the House of Commons.	Currently in the House of Commons	UK private rented sector: white paper published – Hogan Lovells Engage UK Renters Reform Bill – big changes afoot in the private rented sector - Hogan Lovells Engage UK-renters-reform-bill-update UK Renters Reform Bill: delayed subject to court reforms - Hogan Lovells Engage
Leasehold and Freehold Reform Bill	<p>The Leasehold and Freehold Reform Bill was introduced to Parliament on 27 November 2023, and was debated in the House of Commons at its second reading on 11 December 2023.</p> <p>It has now been passed to a Public Bill Committee, which will scrutinise the legislation line by line, and produce a report in due course.</p>	Currently in the House of Commons	The Leasehold and Freehold Reform Bill – the “effective destruction of the leasehold system”? - Hogan Lovells Engage
Levelling-Up and Regeneration Act	Please see attached links for concise detail on key aspects of the Levelling-Up and Regeneration Act. This Act introduces wide-ranging reforms in a number of areas, including planning, environmental protection, local democracy and regeneration.	Received Royal Assent on 26 October 2023, but many provisions are not yet in force	Levelling-up and Regeneration Act 2023: UK government planning and environment reforms become law - Hogan Lovells Engage UK Levelling-up and Regeneration Bill – compulsory purchase power

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		<p>and are subject to further regulations.</p> <p>The content of those regulations is subject to a government consultation, see Engage link for details of the current government proposals.</p>	<p>and the best of the rest – Hogan Lovells Engage</p> <p>UK Levelling-up and Regeneration Bill – environmental outcome reports and heritage reforms – Hogan Lovells Engage</p> <p>UK Levelling-up and Regeneration Bill – when things don't quite go to plan – Hogan Lovells Engage</p> <p>UK Levelling-up and Regeneration Bill: IL, CIL and our old friend Section 106 – Hogan Lovells Engage</p> <p>Levelling-up and regenerating the English planning system – planning policy and "material" considerations – Hogan Lovells Engage</p> <p>UK Environmental outcomes reports: evolution or revolution? - Hogan Lovells Engage</p> <p>Going, going, gone! UK High Street Rental Auctions introduced - Hogan Lovells Engage</p> <p>UK: Compulsory purchase: a compensation masterclass - Hogan Lovells Engage</p>

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ESG: Environmental Act 2021	<ul style="list-style-type: none"> Introduces a new mandatory 10% Biodiversity Net Gain requirement for new developments. New pre-commencement planning condition. The regime comes into effect in February 2024 Conservation covenants came into force on 30 September 2022. Changes to nutrient neutrality rules are anticipated but it is unclear how this will be achieved. 	<p>Received Royal Assent on 9 September 2021- provisions are coming in piecemeal as regulations and further details are published</p>	<p>UK Real Estate Horizons: how does the new Biodiversity Net Gain regime affect you? - Hogan Lovells Engage</p> <p>What does ESG mean for UK Real Estate? - Hogan Lovells Engage</p> <p>Biodiversity net gain: future of sales and investment trends – Hogan Lovells Engage</p> <p>UK: What does nutrient neutrality mean for developers? – Hogan Lovells Engage</p> <p>UK: Earth Day: Investing in our Planet – real estate and planning</p> <p>UK-esg-conservation-covenants-what-are-they-and-how-will-they-be-used</p> <p>Nutrient neutrality in a nutshell - Hogan Lovells Engage</p>
Amendments to the National Planning Policy Framework (“NPPF”)	<p>A consultation was held at the start of 2023 which considered changes to the NPPF including removing the mandatory requirements for the 300,000-new-homes-a-year target.</p> <p>Also considered proposals relating to development on Green Belts, housing need, Local Plans and beauty.</p>	<p>The NPPF was updated on 5 September 2023. However, it only included an update on onshore wind development in England.</p> <p>On 29 November 2023, the</p>	

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		<p>Government issued a response to the further proposed reforms to the NPPF. This notes that they are continuing to consider the consultation responses and a further update is expected.</p>	
<p>High street rental auctions</p>	<p>The consultation considered practical questions such as the form of lease between the Local Authority and the tenant under the controversial proposals for high street rental auctions. This has been brought a step closer through the release of Part 10 of the Levelling Up and Regeneration Act 2023 which introduces powers for local authorities to hold a rental auction for certain unoccupied high street properties. It is not yet clear when this will come into force as further Regulations are required.</p>		<p>UK government's rental auction plans will bulldoze normal letting processes - Hogan Lovells Engage</p> <p>Going, going, gone! UK High Street Rental Auctions introduced - Hogan Lovells Engage</p>
<p>New Protect Duty</p>	<p>Owners and operators of commercial properties could be required by law to consider the adequacy of security measures, systems and processes adopted at their sites and take steps to mitigate any perceived risks. The proposals have been championed by victims' groups, including the Martyn's Law campaign which was established by Figen Murray, who tragically lost her son, Martyn, in the Manchester Arena attack in 2017. By the proposed introduction of this new Duty, the government intends to set out a legal framework for "publicly accessible locations" to ensure preparedness for, and protection from, terrorist attacks.</p>	<p>TBD. The government has published its Consultation Response Document on 2 May 2023 and a draft Terrorism (Protection of Premises) Bill</p>	<p>Protect-duty-what-does-this-new-duty-mean-for-owners-and-operators</p>
<p>Long-Term Asset Fund (LTAF)</p>	<ul style="list-style-type: none"> The LTAF is a relatively recent and distinct category of authorised open-ended fund, specifically designed with the intention of investing efficiently in long-term and especially illiquid assets. Funds that have themselves 		

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	<p>been authorised by the FCA (as distinct from only their managers being authorised) can be offered to a wider range of investors, but in return they are generally subject to additional rules, for instance on pricing and redemption, that make it more difficult for these funds to invest in illiquid assets such as real estate. The LTAF is designed to attract particular types of retail investors and pension schemes who can bear the risks associated with an investment in illiquid assets, but it is still an authorised fund and subject to its own set of rules to provide a degree of protection to them. As such, the introduction of the LTAF is one part of a wider plan to encourage greater investment by defined contribution pension schemes and retail investors in illiquid assets such as real estate.</p> <ul style="list-style-type: none"> • An LTAF could be established as an investment company with variable capital, an authorised unit trust or an authorised contractual scheme but in each case its manager needs to apply to the FCA. An LTAF needs to be constituted and operated in accordance with the requirements of Chapter 15 of the COLL Sourcebook in the FCA's Handbook of Rules and Guidance. These rules (inter alia) set out prescribed content for the fund documents and impose requirements for e.g. the preparation of accounts and reports and meetings of investors. They apply limits to investment and borrowing powers, but afford more flexibility than other existing forms of authorised fund. The FCA expects the investment strategy of an LTAF to be to invest at least 50% of fund property in assets that are illiquid and need to be held over the longer term. • There have been some developments in the rules that apply to LTAFs since they were introduced: firstly, the classes of investors and pension schemes who can invest in an LTAF have been widened. More recently, the FCA had proposed that the LTAF should be excluded from the scope of the Financial Services Compensation Scheme (FSCS), which would have meant it would be treated differently from other authorised funds in the UK. After industry feedback which raised concerns over whether that would deter retail investors from investing in LTAFs, the FCA decided in October 2023 that the LTAF would not be excluded from the scope of the FSCS (at this time). 		

KEY CASES

Case	Detail	Dates	HL articles
M&S, Oxford Street	The redevelopment by M&S of its flagship store in London was refused by the Secretary of State (against the recommendation of his appointed Inspector). M&S wanted to demolish the existing building and build a new ten floor retail and office space. The decision relates to heritage harm and the importance of assessing embodied carbon when considering proposals for full demolition rather than retrofitting existing buildings.	M&S have been granted permission to challenge the decision at the High Court.	To demolish or not to demolish, that is the question - Hogan Lovells Engage Dividing opinion: UK Secretary of State refuses M&S Oxford Street scheme against Inspector's advice - Hogan Lovells Engage
Manchester Ship Canal v United Utilities	Whether Manchester Ship Canal can bring a private nuisance claim for trespass/nuisance against United Utilities for unauthorised discharges of sewage into the canal.	Hearing took place in the Supreme Court in March 2023. Awaiting judgment.	
R (Dennis) v London Borough of Southwark	Decided that stating that a planning permission is severable in the description of development is not adequate to make a planning permission severable. This has implications for when overlapping planning permissions can be implemented.	Waiting to hear whether permission to appeal to the Court of Appeal will be granted.	UK Planning – New year, same planning challenges - Hogan Lovells Engage