



I&E HORIZON SCANNER

February 2024

WELCOME

Welcome to the latest edition of our quarterly horizon scanner. The purpose of this document is to keep you abreast of key legal and regulatory developments.

If there's anything you'd like to discuss, please get in touch. If you'd like to receive this and other similar updates direct to your inbox, please [click the link here.](#)



NET ZERO & INDUSTRY NEWS

On 29 November, the House of Commons' Environmental Audit Committee published its report, '[The financial sector and the UK's net zero transition](#)', which considers the sector's impact on energy security, the risk of stranded fossil fuel assets, NZ transition plans, NZ investment, corporate disclosures and a UK green taxonomy.

The government has published research analysis: '[Climate change adaptation and transport infrastructure: rapid evidence assessment](#)', which examines how climate change impacts transport infrastructure.

The [COP28](#) conference in Dubai ended with agreement on transitioning away from the use of fossil fuels, but stopped short of plans for the phase out of such energy sources.

In the Autumn Statement, Jeremy Hunt said that the planning system takes "too long" to approve infrastructure projects. To address this, the government promised, from 2024, to launch a 'premium' planning service, allowing local authorities to recover the full costs of major business planning applications, in return for being required to meet guaranteed faster timelines. Details of the scheme remain to be seen.

Here are the [Autumn Statement](#) itself and the longer form announcements for the Connections Action Plan and the Transmission Acceleration Action plan:

<https://www.gov.uk/government/publications/electricity-networks-connections-action-plan>

<https://www.gov.uk/government/publications/electricity-networks-transmission-acceleration-action-plan>

On 18 December 2023 the government [announced](#) that the UK Emissions Trading Scheme will be extended to 2050. At the same time, two consultations have been launched on ways to improve the scheme, promote market stability, and support businesses' net zero transition. See <https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-future-markets-policy>; <https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-free-allocation-review>. The consultations run until 11 March 2024.

The Department for Energy Security & Net Zero (DESNZ) has published updated [National Policy Statements for energy infrastructure](#), which will come into force once designated in early 2024.

The UK government has published the [National Infrastructure and Construction Pipeline 2023](#), a 10 year forward-looking pipeline of planned projects and programmes in economic and social infrastructure.

The government has published [updated guidance](#) to help developers of new build downstream gas and electricity infrastructure to understand the scope of the National Security and Investment Act 2021.

The rapid charging fund will enable a comprehensive ultra-rapid charging network by funding prohibitively expensive grid connections. Views from this [consultation](#) will help design the fund.

The Scottish government has [created](#) a single department responsible for net zero and the economy, with Màiri McAllan MSP [appointed](#) as Cabinet Secretary for Wellbeing Economy, Net Zero and Energy.

The Welsh Government is [consulting](#) on embedding a set of environmental principles into Welsh law, establishment of a new environmental watchdog, and introduction of a nature recovery framework with statutory biodiversity targets. The consultation closes on 30 April 2024.

The UK's government's new [Green Industries Growth Accelerator](#) is a new funding package to support clean energy manufacturing. Technologies that are set to be supported include electric vehicles, electricity networks, carbon capture, utilisation and storage, hydrogen, nuclear, batteries and offshore wind.

The compliance deadline for Phase 3 of the Energy Savings Opportunity Scheme (ESOS) has been postponed to 5 June 2024. Undertakings that have 250 or more employees (regardless of turnover), or an annual turnover exceeding £44 million and an annual balance sheet total exceeding £38 million, are required to participate in ESOS.

The Financial Times (30 January 2024) has had pre-publication sight of a study from Boston Consulting Group which concludes that infrastructure project costs are much higher in the UK than in France, Germany and Spain. The study compared more than 1,600 projects around the world. The National Infrastructure Commission (NIC) has said public and private sector investment needs to increase from an average of about £55bn per year over the past decade to between £70bn and £80bn per year in the 2030s.

The [Climate Change Agreements \(Administration and Eligible Facilities\) \(Amendment\) Regulations 2023 \(SI 2023/1226\)](#) came into force on 31 December 2023,

accompanied by an [explanatory memorandum](#), to extend government's existing climate change agreements (CCAs) scheme to March 2027. (CCAs are voluntary agreements committing energy-intensive installations and facilities to improve their energy efficiency or reduce carbon dioxide emissions in return for receiving a reduced rate of climate change levy.) On 22 November 2023, DESNZ published a [consultation](#) on proposals for a new six-year CCA scheme to begin in 2025.

The North Sea Transition Authority's (NSTA) director of supply chain and decommissioning, [wrote to oil and gas firms](#) to flag concerns about the number of requests being sought to delay the decommissioning of wells. The letter said that the NSTA "expects all licensees to comply with their well decommissioning regulatory obligations in a timely manner and particularly within specified timescales" and "failure to meet a licence requirement in relation to well decommissioning may result in the matter being passed to the NSTA's disputes and sanctions team".

Broadcaster and environmental campaigner Chris Packham has filed a high court challenge over the UK government's decision to weaken key climate policies. His application is for a judicial review of the government's decision to ditch the timetable for phasing out petrol and diesel cars and vans, gas boilers, off-grid fossil fuel domestic heating and minimum energy ratings for homes. It alleges that the government didn't have the legal right to change the timeline of carbon budget pledges governed by the Climate Change Act 2008 and failure to consult on the changes (in particular a failure to take into account ongoing consultations about off-grid heating and minimum energy efficiency in rental properties).

Uplift and Greenpeace UK are pursuing [judicial review applications](#) in relation to the government's decision to approve the Rosebank oil field. It's alleged that the decision is unlawful because it ignores the impact of emissions from the burning of the oil extracted from the site and it would damage a protected area of the North Sea.

The Voluntary Carbon Markets Integrity Initiative has published [guidance](#) to support its Claims Code of Practice for companies using carbon offsets. The guidance covers branding, reporting and assurance, and offsetting scope 3 emissions.

The Competition and Markets Authority (CMA) is considering consultation responses to its [draft guidance](#) on energy network mergers.

Also in CMA news, the CMA has issued its [first informal advice](#) on the application of its green agreements guidance. This follows publication of its [Green Agreements Guidance](#), which applies to initiatives and collaborations with environmental objectives between competitors.



RENEWABLES AND GREEN ENERGY

On 15 November 2023, Ofgem published its [decision](#) following a review into how the energy system is planned and operated locally.

The Good Law Project has sent a [pre-action protocol letter](#) to DESNZ threatening judicial review in respect of its exclusion of onshore wind development from its [new national policy statement \(NSP\) for renewable energy](#). (NPSs are the key planning decision-making documents for nationally significant infrastructure projects (NSIPs)).

On 13 November 2023, DESNZ issued a call for evidence seeking views to support policy development on how to ensure the Offshore Transmission Owner (OFTO) regime remains fit for purpose in the long-term and to ensure the continued delivery of offshore wind to meet the UK's net zero target. DESNZ is consulting separately on a proposed exemption from the requirement to hold a transmission licence for array systems connecting an offshore windfarm to an offshore substation.

DESNZ has published [Civil Nuclear: Roadmap to 2050](#).

Campaigners have previously unsuccessfully challenged the

government's 2022 decision to grant development consent for Sizewell C by judicial review and then at the Court of Appeal. Together Against Sizewell C (TASC) is now taking the challenge to the Supreme Court, arguing that the environmental impact of a desalination plant needed to provide a permanent water supply to Sizewell C was not included in the planning application, and so not assessed nor taken into account.

The Subsidy Advice Unit has published its [report](#) on the Net Zero Hydrogen Fund scheme.

A new RenewableUK [report says](#) the UK's pipeline of battery projects has increased by 68% in a year, up from 50.3GW a year ago to 84.8GW and newer projects are much larger than their predecessors.

A digital incubation facet of BT Group, called Etc., has powered-up its first electric vehicle (EV) charging unit retrofitted from a street cabinet traditionally used to store broadband and phone cabling. It's the start of trials exploring the potential to use up to 60,000 near end-of-life cabinets to tackle the national shortfall in EV charging infrastructure.

Several [vehicle-to-everything \(V2X\) innovative EV charging projects](#) aimed at trialling smart charging systems which can receive power and send it back to the grid have received a share of the government's Flexibility Innovation Programme funding.

The House of Lords Environment and Climate Change Committee published its '[EV strategy: rapid recharge needed](#)' report on 6 February. The report welcomes the introduction of the Government's Zero Emission Vehicles mandate, but highlights that rollout of the UK's charging infrastructure is not happening fast enough and that major barriers, not least variable availability of chargepoints and expense of EVs, remain.

Portsmouth Water is to install the UK's largest water-source low carbon heating and cooling network at a new generation sustainable garden village in Hampshire. The [first of its kind pilot](#) technology will initially supply 700 new homes, commercial premises, and community buildings. As the project expands, it's planned that the network will supply all 15,000 residents in 6,000 new homes with heat, hot water, and cooling.



CARBON CAPTURE, USAGE AND STORAGE (CCUS)

The government has published its long-term [vision](#) for the CCUS sector. It includes: market creation (20 to 30 Mt CO₂ by 2030); market transition (emergence of a commercial, competitive market); and a self-sustaining market meeting net zero by 2050.

WASTE & RESOURCES

The Environment Agency (EA) is establishing a [new economic crime unit](#) intended to bolster its ability to carry out financial investigations within the waste sector and tackle money laundering.

Waste operator Suez recently complained, via a judicial review at the High Court, that the lack of an appeal process in respect of EA compliance assessment report decisions was unlawful. See Walker Morris' [briefing](#). Following its high-profile loss in those proceedings, the EA has introduced a 14 day appeal window to its permit compliance process.

The Office for Environmental Protection (OEP) has [published](#) its assessment of government's progress in accordance with the 25 Year Environment Plan and its first revision, the Environmental Improvement Plan 2023. The assessment covers the annual reporting period from 1 April 2022 to 31 March 2023. Key planks in waste sector policy remain: tackling waste crime; improving recycling rates; minimising plastic waste to landfill or EFW; and carbon reduction (largely about building CCUS infrastructure for EFW to connect to).

The Scottish government has launched a [consultation](#) on tackling insufficient water policies in light of

what it terms the 'climate emergency'.

On 14 December 2023, the Competition Appeal Tribunal published an application to commence opt-out collective proceedings against Severn Trent Water Limited and Severn Trent PLC. It's alleged that Severn Trent provided misleading information to the EA and Ofwat in relation to the number of pollution incidents on its network, enabling Severn Trent to charge higher prices for sewerage services than would otherwise have been permitted. See Walker Morris' recent briefings on [water stress](#), [pollution](#) and [group litigation](#).

The government has [published](#) the list of catchment areas where water companies must upgrade their wastewater treatment works by 2030 in order to decrease nutrient pollution into protected waterways.

A [report published](#) by the Public Accounts Committee (PAC) warns that businesses and local authorities are unable to prepare for the required changes under the Department for Environment, Food & Rural Affairs' (Defra) delayed raft of collection and packaging reforms due to a lack of clarity on what form the reforms will take and the impact on council funding.

The government consulted in 2022 on reforming the current registration system for waste carriers, brokers and dealers, by bringing it within the environmental permitting regime. In October 2023 the government [responded](#) to that consultation indicating that it intends to proceed with its proposals. Under the new system, waste carriers, brokers and dealers (who will be known as 'waste controllers' and 'waste transporters') will need to obtain a 'standard rules' environmental permit or register an exemption. The government is expected to introduce legislation later this year implementing the changes. Alongside these changes, the government has [indicated](#) that it will also proceed with the introduction of a digital waste tracking system.

In related news, Defra and the devolved administrations published a [consultation](#) on 28 December 2023 on reforming the producer responsibility system for waste electrical and electronic equipment. The consultation closes on 7 March 2024 and is seeking views on how the existing Waste Electrical and Electronic Equipment Regulations 2013 could be reformed to drive up levels of re-use and recycling.

CONSTRUCTION/DEVELOPMENT

Quoting [Glenigan's UK Construction Industry Forecast 2023 – 2025, Building Magazine](#) reports that construction industry output is expected to grow by 15% in the next two years.

Carter Jonas has published [Outlook for 2024](#) – a view of key drivers likely to affect residential, commercial and rural markets and the UK property sector in the coming year.

Building magazine's Building the Future Commission has published its report, "[The Long-Term Plan for Construction](#)". The report makes 11 key recommendations, including: structural changes within government and governmental bodies; introducing whole-life carbon regulation through changes to the building regulations; reforming public sector procurement and ensuring more certainty over the pipeline of government infrastructure projects; and reform of the planning system and its funding.

Developers seeking to build new nuclear power plants could be allowed to find their own suitable sites rather than focusing on those designated by the government, as part of a new approach set out in [Civil Nuclear: Roadmap to 5050](#), published in January 2024.

The Better Buildings Partnership has updated its [green lease toolkit, aiming](#) to set industry standards for green leasing and sustainable property management.

Heat Networks will be a growth sector relevant to developers. Heat Network Zoning will affect new buildings and existing non-domestic buildings. Under [proposals](#) subject to [consultation](#), central and local government will work with industry and local stakeholders to identify and designate areas of England where heat networks are expected

to be the lowest-cost solution to decarbonising heat. Heat network zoning will be essential to speeding up the development of new heat networks and will should increase private sector investment. See [Walker Morris' briefing](#).

Under the [Clean Heat Market Mechanism](#), boiler manufacturers are due to be required to match or substitute 4% of boiler sales with heat pumps from April, or face a fine of £3,000 for every installation by which they fall short. The penalties are intended to speed up the phase out of gas boilers and deliver 600,000 heat pump installations a year by 2028. However, it's been reported that, in anticipation, manufacturers have been hiking boiler prices. According to a new [report](#) in the Sunday Times, the government is set to scrap the penalties.

Clean heating systems will replace polluting heating systems in Scotland's homes and buildings by 2045 under [new proposals](#). Under legislation to be introduced in 2025 those buying new homes or buildings would be asked to move to a clean heating system, such as a heat pump or connection to a heat network, within a fixed period of time following that purchase. Minimum energy efficiency standards for Scotland's homes could also be introduced to make them warmer and less expensive to heat.

Also in Scotland, are [proposals](#) for a new Social Housing Net Zero Standard that would require social landlords to meet an energy efficiency standard between 2033 and 2040 and install clean heating across their stock by 2045 where it is technically feasible and cost-effective to do so.

New guidance for developers on biodiversity net gain (BNG),

including using the statutory biodiversity metric to calculate a development's impact on biodiversity and steps to be taken to meet BNG requirements, was [published](#) on 29 November 2023.

The [Biodiversity Unit Finder](#) is a service for landowners/managers with off-site biodiversity units to link with potential buyers. Registration of BNG sites will enable homebuilders to contact local landowners to discuss potential agreements. The Biodiversity Unit Finder is currently being developed and The Future Homes Hub would like to invite registrations of any land that already has biodiversity units available, land in development to create biodiversity units, or prospective land for BNG. [Click here to add your units to the Biodiversity Unit Finder Map](#).

Developers and planners are being encouraged to familiarise themselves with a new draft [biodiversity gain template](#) and guidance on how to use it. The template has been published alongside draft guidance [for developers](#) and [local planning authorities](#).

Carter Jonas has analysed the emergence of BNG policies and guidance within local planning authorities (LPAs). [The research](#), covering the 306 LPAs in England, has revealed a gradual increase in the number requesting in excess of the 10% biodiversity net gain. 1% of all LPAs currently require or encourage a percentage net gain higher than 10%, and this figure is set to increase substantially as 5.6% have such a policy emerging through their local plan review. Kingston Upon Thames and Tower Hamlets look set to have the most ambitious policies to date, both planning to require a minimum of 30% net gain. For further explanation and analysis,

see this [article](#) from the BDC News Team.

In [Saredon Aggregates Ltd v Secretary of State for Levelling Up, Housing and Communities & Anor](#) an inspector's decision to refuse planning permission for a sand and gravel quarry in the green belt has been quashed by the High Court due to a legal error over BNG. The judge held that BNG legislation was not applicable to the scheme, since relevant provisions would not be coming in force until January 2024, and would only apply to new planning applications submitted on or after that date.

The Welsh Government has [published](#) a consultation on proposals to strengthen environmental governance and address biodiversity loss in Wales. The consultation closes on 30 April 2024.

Campaign group Wild Justice has threatened legal action in respect of planning guidance within the government's [published](#) list of catchment areas where water companies must upgrade their wastewater treatment works by 2030. The list states that planning authorities considering proposals for developments should assume that these pollution control measures will be in place by the 2030 deadline, despite there being no guarantee that this will be the case.

Defra has published a [roadmap](#) on how to increase the use of timber, in particular domestic timber, in construction in an effort to reduce emissions and reach net zero.

In the House of Commons on 13 December 2023, the prime minister promised to consult on amending the National Planning Policy Framework to ensure it prioritises the roll out of electric vehicle charging points.

Planning permission that is severable can be helpful where developers intend to deliver projects in phases over land subject to multiple permissions. [R \(Aysen Dennis\) v London Borough of Southwark and Notting Hill Genesis](#) (2024) confirms that there's some limited scope to obtain retrospective changes to planning permission to specify that the permission is severable.

The Town and Country Planning (General Permitted Development etc) (England) (Amendment) (No 2) Order 2023 amends existing permitted development rights to (amongst other things) permit solar equipment in a wider range of settings, make minor changes to the permitted development right for electronic communications and introduces a new permitted development right to allow the development of solar canopies in off-street parking areas. The Order came into force on 21 December 2023.

A recent case, [Fosse Urban Projects Ltd v Whyte and others](#), serves as a warning to developers to deal with restrictive covenants *before* developing land. The applicant's 'build first, apply later' approach was viewed so dimly by the court that the application failed despite satisfying usual discharge grounds. For information and advice on dealing with restrictive covenants, click [here](#).

DLUHC's [consultation](#) on contractual control on land is now open and is set to close on 20 March 2024. (Contractual control agreements include a number of strategic land deals such as option agreements, promotion agreements, conditional contracts and pre-emption agreements.) The government is considering creation of a contractual control agreements database. This will be achieved by requiring the relevant data to be collected within 60 days of the agreement being entered into. Disclosure failures will result in up to six months imprisonment or a £5,000 fine, with up to two years imprisonment and an unlimited fine for knowingly or recklessly providing false information. As currently drafted, the disclosure requirements will apply retrospectively. See Walker Morris' [briefing](#).

JCT has announced that it will publish updated forms of JCT in 2024, possibly starting in the spring with a new Standard Building Contract.



IN-HOUSE LEGAL

Corporate/corporate reporting

EU law requires that listed companies should disclose information about risks and opportunities arising from social and environmental issues. On 31 July 2023, the Commission adopted the first [standards](#) for all sustainability topics to facilitate this reporting, scheduled for implementation by July 2024. The European Council and Parliament have now agreed to postpone implementation to 30 June 2026. In the UK, the government was expected to create the [UK Sustainability Disclosure Standards](#) by July 2024.

The Financial Reporting Council (FRC) has published the [2024 edition](#) of the UK Corporate Governance Code (Code). The 2024 Code will apply to financial years beginning on or after 1 January 2025, except changes to risk management and internal control monitoring and reporting, which will apply to financial years beginning on or after 1 January 2026. Key reforms include new reporting obligations in relation to a company's material controls (including a board declaration on their effectiveness), and the Code now specifying that malus and clawback provisions should be built into contracts and other directors' remuneration documents. The FRC has also published new consolidated and updated [Guidance](#).

Commercial/general

On 17 October 2023, the CMA [announced](#) it had opened an investigation into a distributor of heating and insulation products, following allegations that it had made misleading claims about the

use of hydrogen in boilers. The investigation concerning the so-called 'hydrogen-blend ready' boilers will ascertain whether the company, Bosch Thermotechnology Limited (which trades as Worcester Bosch) misled consumers regarding the environmental characteristics of its product. The CMA has also written to twelve other companies selling 'hydrogen-blend ready' products, warning them that they could also be breaching consumer protection laws and encouraging them to review their marketing to consumers.

The Council of the European Union and the European Parliament have reached a [provisional agreement](#) on a proposal for a regulation on environmental, social and governance (ESG) rating activities. The provisional political agreement will have to be formally approved and adopted and will start applying 18 months after it comes into force.

Public procurement rules are changing with the introduction of a new Procurement Act expected to take effect from October 2024. For information and expert advice, please click [here](#).

The Financial Times has reported (7 February 2024) that the AI boom is driving demand for server-cooling technology.

People

Walker Morris has published recent updates on [flexible working requests](#) and [getting redundancy right](#).

The ICO has published two new sets of [draft guidance](#) for employers and recruiters which explain how to comply with their data protection obligations arising from retention of employee data and staff recruitment

procedures. Both sets of guidance are open for consultation until 5 March 2024.

[Draft regulations](#) have been laid before Parliament which, if passed, will extend redundancy protection during pregnancy and after maternity, adoption or shared parental leave from 6 April 2024.

The draft [Carer's Leave Regulations 2024](#) have been laid before Parliament and will introduce a new statutory right to unpaid carer's leave for employees in England, Wales and Scotland, from 6 April 2024. The regulations provide that an employee who has a dependant with a long-term care need may take one week's unpaid leave, in either individual days or half days, up to a block of one week, to provide or arrange care in each rolling 12-month period.

What's on your to-do list?

And what are you putting off?

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CONTACTS



BEN SHEPPARD

Partner

Infrastructure and Energy

+44 (0)798 514 4741

ben.sheppard@walkermorris.co.uk



TIM JACKSON-SMITH

Partner

Infrastructure and Energy

+44 (0)788 565 1661

tim.jacksonsmith@walkermorris.co.uk



JUDITH PIKE

Consultant

Infrastructure and Energy

+44 (0)743 239 1747

judith.pike@walkermorris.co.uk



www.walkermorris.co.uk
T +44 (0)113 283 2500
F +44 (0)113 245 9412

Walker Morris LLP
33 Wellington Street
Leeds
LS1 4DL

