

HORIZON SCANNER

PREPARED FOR HOUSEBUILDERS

MARCH 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 you have any questions or require any more information, please contact us. If you would like to receive this and other similar updates direct to your inbox, please click the link here.



BUILD

Biodiversity Net Gain (BNG)

"Put plainly, BNG is one of the biggest changes to planning in over 30 years. It's likely to affect over 100,000 planning applications every year. It's an issue for all developers to grapple with." Josh Kitson, Director, Planning & Environment

BNG is here. In Walker Morris' recent briefing, Josh Kitson explains why it's important, and what developers need to know.

On Wednesday 22 May 2024, Walker Morris will be hosting an interactive panel discussion at UKREiiF, focusing on BNG and its impact on developers. The session will offer practical insights and strategies to help address BNG requirements without compromising on the scale or quality of developments. It will explore cost-effective approaches, proactive planning strategies, and how to incorporate sustainability goals, environmental requirements, and sustainable value engineering into construction and supply chain contracts. There'll also be discussion around how BNG is impacting land values. We hope you can join us! Find out more here.

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.

Shortly prior to commencement of biodiversity net gain as a legal requirement on 12 February, the government published an amended version of the draft statutory instrument which outlines how the biodiversity gain hierarchy applies to different types of habitats. The new version includes an additional clause which expands the cases where the net gain hierarchy should apply.

Draft BNG guidance published on 29 December stated "plan-makers may seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development… [such policies] will need to be evidenced including as to local need for a higher percentage, local opportunities for a higher percentage and any impacts on viability for development… [and consideration] will also need to be given to how the policy will be implemented". However, in a significant last minute change of emphasis, the finalised PPG was changed to state: "Plan-makers should not seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development unless justified."

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.



Industry news

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.

Colliers has published a February 2024 Residential Snapshot, offering an overview of the latest updates in the residential real estate market.

Building Magazine has published its long term plan for construction, Building The Future Commission Report.

The number of new first-time buyers fell last year to the lowest level in a decade, according to research from Yorkshire Building Society.

The CMA has concluded its housebuilding market study and opened an investigation into suspected exchanges of commercially sensitive information amongst eight housebuilders.

A new £3.2 billion framework for social housing projects in Northern England will run from 2024 to 2028, focusing on SME engagement and ESG delivery. The framework aims to foster social, economic, and environmental growth in Yorkshire, the Humber, the East Midlands, and the north-west. Building Magazine has published the full list of contractors to win a place on the framework.

The Department for Levelling Up, Housing and Communities (DLUHC) published the updated National Planning Policy Framework on 20 December 2023. The framework includes a scaling back of housing delivery targets to 'advisory' status.

Planning Practice Guidance (PPG) was updated on 5 February 2024 to reflect the new National Planning Policy Framework on 'Housing Supply and Delivery'. This section of the PPG can be found here and the Chief Planner's Letter regarding the changes is here.

The government is consulting on its proposed approach to updating national planning policies related to brownfield land in the National Planning Policy Framework, and reviewing the threshold for referral of applications to the Mayor of London. The consultation closes on 26 March.

The Financial Times (3 January 2024) has reported that despite the housing shortage, more than two-thirds of the Housing Infrastructure Fund (aimed at unlocking hundreds of thousands of new homes in England) remains unspent more than six years after its launch; that work has begun on fewer than 1 in 10 of the promised homes; and the fund's delivery target has been downgraded from 340,000 to 270,000 homes.

Michael Gove has made a number of announcements aimed at unlocking the housing market, including a £3bn increase in a government-backed loan fund aimed at helping registered providers to build thousands of new affordable homes and measures aimed at ensuring councils accelerate brownfield development.

The government is consulting on street vote development orders — a new tool that will give residents the ability to propose development on their street and vote on whether the development should be given planning permission. The consultation closed on 2 February 2024. For more information, click here.

DLUHC is considering consultation responses on the Future Homes and Buildings Standards. The consultation closed on 6 March 2024 and can be accessed here.

The government has consulted on improving transparency of land ownership involving trusts, including options to widen access to trust information held on the Register of Overseas Entities. The idea is to address who really owns property, rather than identifying the ownership of corporate entities. The aim is to enhance the housing sector overall and to fight illicit finance and corruption in the UK real estate market.

Housing organisations require personal data to provide services and support to their residents — this could be anything from contact details to medical records. The ICO has received complaints from residents who have been failed by poor data protection practices from their housing association, company, or landlord. It has therefore published a reminder for housing organisations of their obligations under data protection law.

A new report commissioned by Homes for Scotland has revealed that there are approximately 693,000 existing households in Scotland in some form of housing need. The work is intended to assist planning authorities in the preparation of housing need and demand assessments, local development plans and regional spatial strategies. It stresses that building new homes will have to be a significant part of meeting net current housing need.

DLUHC's consultation on contractual control on land is running until 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 2 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. One to watch.

Walker Morris has published a briefing on the key takeaways form the Leasehold and Freehold Reform Bill.

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.

The government has announced a change in planning rules, taking effect from 21 December 2023, that will enable rooftop solar panels to be installed on homes and businesses through permitted development rights. This means that homeowners and businesses won't need to go through the full planning process. The changes also make it easier for panels to be installed in canopies above car parks if they are more than 10 metres away from people's homes.

On 13 February, DLUHC launched a consultation looking at changes to a number of permitted development rights including regulations around electric vehicle charge points. The consultation will close on 9 April.

In **Rights Community Act v Secretary of State for Levelling Up, Housing & Communities** the High Court decided that planning inspectors were wrong to hold that national planning policy prevented local authorities from setting climate-compatible energy efficiency requirements for new buildings.

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** confirms that there's some limited scope to obtain retrospective changes to planning permission to specify that the permission is severable.

Developer landlords will be interested in the progress of the Renters (Reform) Bill which proposes to change the current system of residential assured shorthold tenancies with a revised tenure arrangement which would operate on a monthly rolling basis. Purpose-built student accommodation will be specifically exempt from such reforms, however the changes are likely to impact private student housing and other short-term residential arrangements.

The Housing Ombudsman's latest Spotlight report focuses on attitudes, respect and rights. There are many recommendations including: a call for a Royal Commission to create a long-term plan for social housing; legislation to provide a consistent legal framework for vulnerabilities and a mutual duty on agencies, such as social services, to cooperate with social housing providers; implementation of a vulnerability strategy. The report suggests landlords should transform their vulnerable persons policy from a passive document to an embedded practice; and that landlords produce their own "Resident of the Future" analysis for the next 10 years.



Homes England

Homes England is publishing a collection of research reports and guidance to inform the measurement of social value.

Homes England and South Yorkshire Combined Mayoral Authority have entered a Strategic Place Partnership with the aim of boosting affordable housing and regeneration.

Climate impact/Environmental

Walker Morris has published briefings: ESG and UK real estate: Key considerations and A practical approach to addressing ESG challenges.

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

The government is set to pilot a 'water credits system' to allow major house building in water-stressed Cambridge.

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.

Oxford City Council's draft local plan is proposing requiring all new homes and businesses to be zero carbon by 2025, which would mean banning the use of fossil fuels for heating or cooking.

The Department for Environment, Food & Rural Affairs (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.

Heat Networks will be a growth sector relevant to developers. Heat Network Zoning will affect new buildings and existing non-domestic buildings. The Department for Energy, Security and Net Zero (DESNZ) has consulted on proposals for heat network zoning in England. 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.

The BBC has reported that a pilot project to replace gas with hydrogen in home heating in Redcar will not go ahead as there isn't enough adequate low carbon hydrogen available.

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.

Another housebuilder has been prosecuted and fined for water pollution. See Walker Morris' recent briefing on water pollution and construction.

According to statistics published by DEFRA, annual emissions of particulate matter decreased by 2% between 2021 and 2022. However, the reduction was largely offset by an increase in emissions, in the same period, from domestic burning. The figures could prompt an increase in regulation and/or enforcement in relation to domestic burning.

Building Safety

The Building Safety Act creates a more stringent regulatory framework for the built environment led by the Building Safety Regulator (BSR). It introduces the Gateway Regime, which refers to specific processes and regulations that apply to Higher Risk Buildings. Gateway 2 came into force in October 2023 and there are elements of which all members of a design and construction team should be aware. See Walker Morris' recent briefing.

DLUHC is pressing councils to act further and faster in respect of building safety. This follows successful legal action taken by the government (for whom Walker Morris' building safety experts acted) against building owners to make sure vital safety work is carried out. Walker Morris has published

briefings on various recent BSA cases and has hosted a January 2024 update webinar on the new building gateways regime.

The Conveyancing Association has updated its guidance relating to the Building Safety Act and Building Safety (Leaseholder Protections).

Certain provisions within the framework set out by the BSA 2022 are expected to be brought into effect in 2024. These include:

- new implied terms in leases of premises which consist of or include a dwelling in a higher-risk building. The terms comprise both landlord and tenant covenants and are designed to facilitate the practical application of building safety measures; and
- the mechanism for recovery of building safety costs via service charge provisions within certain leases of premises including or consisting of a dwelling in a higher-risk building, granted for a term of seven or more years under which the tenant is liable to pay a variable service charge. The result of a March 2023 consultation into the practical administration and impact of this is expected in 2024.

Changes will need to be made to accounting processes and service charge demands in due course.

The Health and Safety Executive (HSE) has published guidance covering: submitting a mandatory occurrence notice and report; information on reporting incidents or risks of structural failure, or the spread of fire; and requirements to have and maintain a system for reporting building safety incidents and risks. The HSE has also published information on the BSR's register of high-rise residential buildings in England, which is now live.

The Law Society has published "Building Safety Act – a guide for conveyancers".

6 April 2024 is the deadline for building control professionals to register with the BSR. If they don't, they will no longer be able to practice legally. Lorna Stimpson chief executive at LABC has warned 'significant' number of councils will halt building control services from April unless certification deadline extended. The government says it is working on 'managed transition' to the new building control regime.



GENERAL/IN-HOUSE LEGAL

Corporate/corporate reporting

The Financial Reporting Council (FRC) has published the 2024 edition of the UK Corporate Governance 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 and a summary of key changes.

The draft Reporting on Payment Practices and Performance (Amendment) Regulations 2024 were laid before Parliament. The current regulations, which require large companies to publicly report twice a year about their payment practices, policies, and performance in relation to paying suppliers, will be extended by 7 years and will now expire on 6 April 2031. In-scope companies will be required to disclose new information, including the total value of invoices paid, in addition to the existing reporting requirement as to the volume of invoices. Businesses will also be required to report on the proportion of invoices that are disputed and disclose the percentage of payments that were not paid within agreed terms. The regulations are expected to come into force on 5 April 2024.

Commercial/general

The House of Lords Industry and Regulators Committee published a report on improving the performance, independence and accountability of UK regulators.

The government is consulting until 9 June 2024 on improving the effectiveness of the Money Laundering Regulations. New money laundering rules will prompt significant regulatory and operational changes for businesses, and increased compliance costs.

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.

Brexit and the Retained EU Law (Revocation and Reform) Act 2023. In a report published in January 2024, the Department for Business and Trade summarised the changes the government made, and EU laws revoked/reformed in 2023, and has outlined the government's further plans. The report lists, from p.23, additional laws to be revoked. These include laws relating to DEFRA, the medical and logistics industries, corporate reporting and health and safety/product safety and labelling. From p.40, the report lists rights and principles from EU convention and case law which are to be restated, or not. Equality rights relating to equal pay; disability; indirect discrimination; access to employment; pregnancy, maternity, and breastfeeding; and more are largely to be reproduced.

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 Chartered Governance Institute has published a guidance note on terms of reference for sustainability or ESG committees, which includes a model set of terms of reference. Also on ESG, Walker Morris has published: ESG and UK real estate: Key considerations and A practical approach to addressing ESG challenges.

In recent enforcement action, the Information Commissioner's Office (ICO) fined a financial services company £50,000 for sending tens of thousands of spam text messages.

The ICO has published the second edition of its Tech Horizons Report, setting out technologies that it believes may have a particularly significant impact on our societies,

economies and information rights in the next few years.

The government finally published its response to last year's white paper on AI regulation, confirming a context-specific approach led by existing regulators. See our briefing for details. Also on AI, the EU's landmark AI Act is expected to be approved in April and will be phased in over a 3-year period. The Act focuses regulation on 4 categories of identifiable risk and will apply to providers, deployers, importers, distributors and manufacturers of AI systems placed on the EU market or whose use affects people located there. This is the latest version of the text. Walker Morris has published a guide on demystifying AI and an article on AI policies and governance in the In-House Lawyer.

Walker Morris recently released its first illuminate publication, aimed at GCs.

See our recent briefing on commercial contracts, informality and the risk of inadvertent contracting.

People

The FTSE Women Leaders published their latest report on gender balance in FTSE leadership. Just over half of FTSE 350 companies (56%) have achieved or are well on their way to achieving gender balance. See the press release.

The Parker Review published an update report on improving the ethnic diversity of UK business. 96 FTSE 100 companies met the target of having at least one minority ethnic director on their boards, consistent with last year. A "one by 2024" target has been set for all FTSE 250 boards.

The Solicitors Regulation Authority is seeking views on a raft of new resources to support in-house solicitors.

The Paternity Leave (Amendment) Regulations 2024 came into force on 8 March 2024. They:

- Allow fathers and partners to take their leave and pay in non-consecutive blocks.
- Allow fathers and partners to take their leave and pay at any point in the first year after the birth or adoption of their child.
- Shorten, in most cases, the notice period required for each period of leave and pay.

The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 extend the existing statutory protection from redundancy that currently applies to employees on maternity leave, adoption leave or shared parental leave to pregnant women and new parents who have recently returned from any period of maternity or adoption leave, or from a period of 6 or more weeks of shared parental leave. They come into force on 6 April 2024.

Acas published a revised code of practice for dealing with flexible working requests. The intention is to bring the code into force alongside changes to the legal framework around the right to request flexible working in April 2024. See our recent briefing on managing flexible working requests.

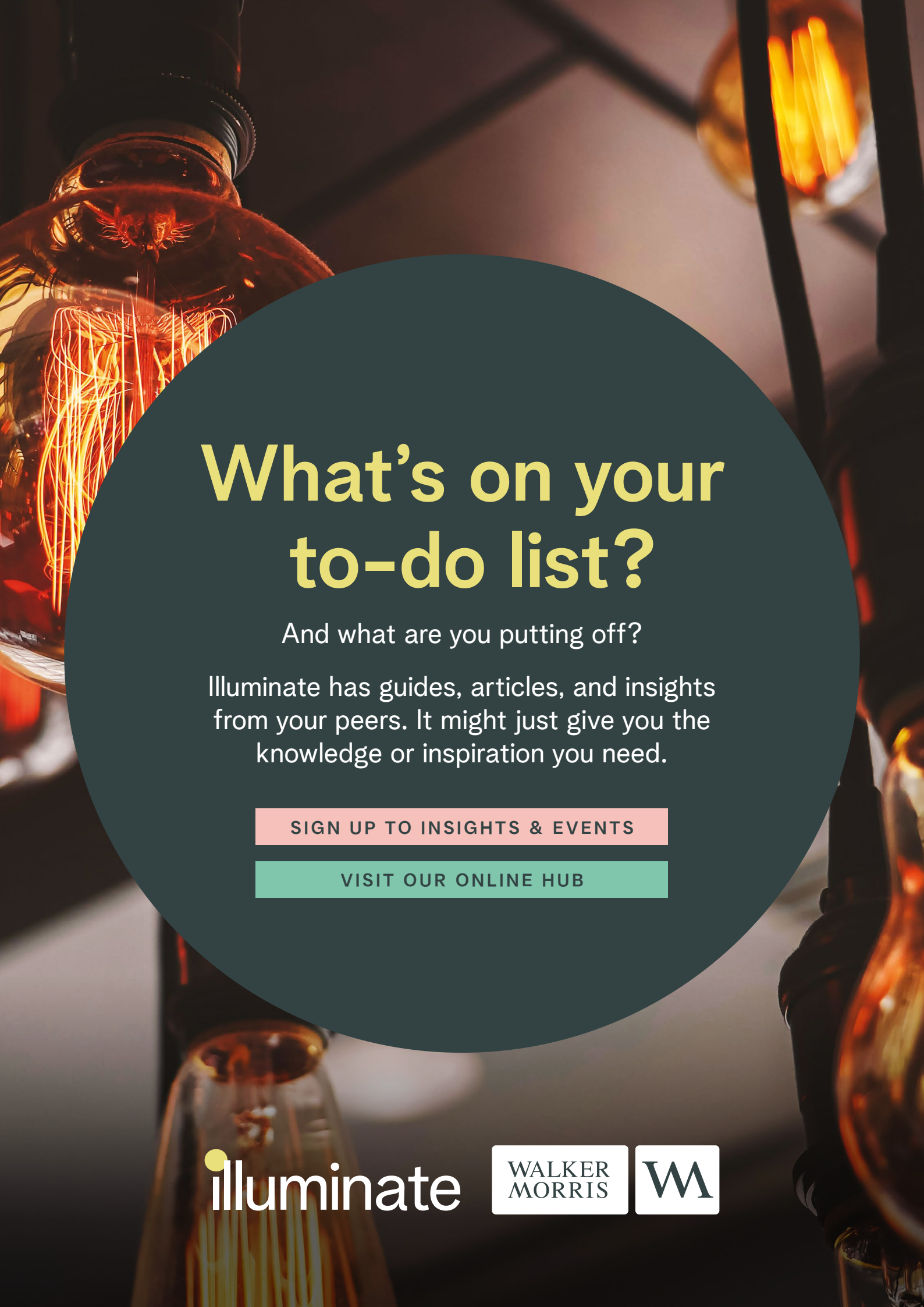
A report on the 4-day week pilot found, among other things, that of the organisations that took part in the pilot, 89% are still operating the policy a year later and 51% have made the 4-day week permanent.

The government has published an employer's guide to right to work checks.

Walker Morris has published a recent update on getting redundancy right.

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?

Illuminate has guides, articles, and insights from your peers. It might just give you the knowledge or inspiration you need.

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