

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Legislation of 2022 and Anticipated Developments of 2023: Real Estate, Environment and Planning

Wednesday, 08 February 2023 | 8.30 am to 9.30 am



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Legislation of 2022 and Anticipated Developments of 2023: Real Estate, Environment and Planning

8 February 2023

Martina Firbank and Sinead Martyn



Energy: Overview of 2022

February: Russian invasion of Ukraine

- Gas and power prices rise
- Security of energy supply
- Transition from gas/fossil fuels

March: REPower EU Programme

October: Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices

Paying for Gas and Power

Acts

- Electricity Costs (Domestic Electricity Accounts) Emergency Measures Act 2022
- Electricity Costs (Domestic Electricity Accounts) Emergency Measures and Miscellaneous Provisions Act 2022
- Energy Windfall Gain in Energy Sector Bill 2023

SIs

- Electricity Costs Emergency Benefit Scheme Regulations 2022
- Electricity Costs Emergency Benefit Scheme II Regulations 2022
- Various commencement orders

Building More Generation Capacity / Infrastructure

December/ January

- *Offshore wind*: Maritime Area Planning Act 2021

July

- *Thermal generation*: EirGrid, Electricity and Turf (Amendment) Act 2022

October

- *Thermal generation*: Development (Emergency Electricity Generation) Act 2022 and Development (Emergency Electricity Generation) Regulations 2022
- *Rooftop solar*: Planning and Development Act 2000 (Exempted Development) (No 3) Regulations 2022 and Planning and Development (Solar Safeguarding Zone) Regulations 2022
- *EV charging*: Building Regulations (Part L Amendment) Regulations 2022

Energy: Anticipated Developments

EU

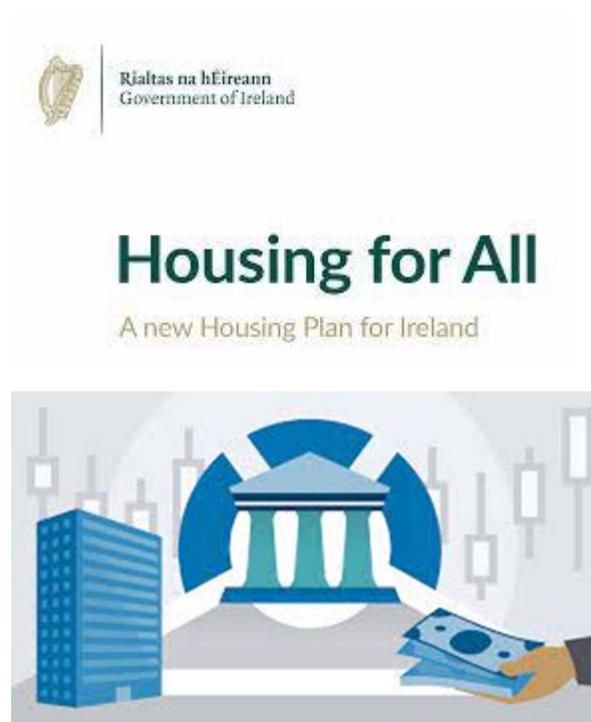
- Hydrogen Strategy: Renewable / natural gases
- Storage (electricity and gas) as a security of supply measure
- EU solidarity measures
 - Joint purchasing of gas
 - Fair prices for consumers
 - Demand-side measures to reduce consumption

Domestic

- Gas (Amendment) Bill: dissolution of Ervia
- DECC policies on offshore / other renewables (planning changes?)

Real Estate: Overview

- Housing and Construction
- Corporate & General



Real Estate: Housing and Construction

Housing

- Planning reform
- Residential Tenancies
- Short-term lettings
- Taxation

Construction

- Building Defects
- Industry Regulation: CIRI
- Building Regulations



Real Estate: Housing (1)



Residential Tenancies

- **Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022**
 - Part 11 – Amendments to termination provisions - effective 6 July 2022
- **Residential Tenancies (Amendment) Act 2019 (Commencement) Order 2022**
 - Annual registration requirement – effective 4 April 2022
- **Residential Tenancies Act 2004 (Prescribed Form) (No. 2) Regulations 2022**
 - New prescribed forms re registration – effective 7 July 2022
- **Residential Tenancies (Deferment of Termination Dates of Certain Tenancies) Act 2022: 30 Oct 2022 to 31 Mar 2023**



Real Estate: Housing (2)



- **Short-term lettings**
- **Planning and Development, Maritime and Valuation (Amendment) Act 2022 (S3)**
 - offence to advertise residential property (except a PPR) for letting in RPZs for 14 days or less without planning permission unless exempt – 24 July 2022
 - deemed “not commenced” by SI513 of 2022 - 13 October 2022
- **Registration of Short-Term Tourist Letting Bill 2022**
 - suppliers of accommodation for up to and including 21 nights to be registered with Fáilte Ireland
 - accommodation advertised for short-term letting, including through online platforms, must have valid registration number
- **Proposal for EU Regulation amending Regulation (EU) 2018/1724**

Real Estate: Housing (3)

Taxation



Finance Act 2022

- **Stamp Duty (s66 – 68)**
 - Rebate on 7.5% rate for residential development extended
 - Provisions governing rebates on resi rates when subsequently sold or leased for social and affordable purposes amended (s68 – subject to commencement)
 - Clarification of application of 10% rate under s31E SDCA 1999 to partial interests (except home reversion firms)
- **Zoned Land Tax (s98)**
 - Deferral pending determination of application, appeal or JR re permission to retain unauthorised non-residential use
 - New exemption where contract entered into pre 1 January 2022 precludes development
 - €3,000 penalty for failure to register



Real Estate: Housing (4)



- **Vacant Homes Tax (s96)**
 - applies if occupied as a dwelling for *less* than 30 days between 1 Nov and 31 Oct
 - $LPT \times 3 = VHT$
 - FDD to file is 7 November 2023
 - FDD to pay is 1 January 2024
- **Defective Concrete Products Levy (s99)**
 - applies on first supply of concrete products on or after 1 September 2023
 - 5%



Real Estate: Construction (1)

Building Defects

- **Remediation of Dwellings Damaged by the use of Defective Concrete Blocks Act 2022**
 - Enacted 23 July 2022 but not yet commenced
 - Local authorities refer applicants to Housing Agency for eligibility assessment
 - Housing Agency approves remediation option(s) and grant assistance (up to 100% subject to maximum of €420,000)
- **Dwellings Damaged by the Use of Defective Concrete Blocks in Construction (Remediation) (Financial Assistance) (Amendment) Regulations 2022 x2**
- **18 January 2023 Government announced approval to draft legislation to support remediation of defects in apartments and duplexes**
 - constructed between 1991 and 2013 :
 - fire safety, structural safety and water ingress defects in contravention of Building Regs
 - defective design, workmanship or materials



Real Estate: Construction (2)

Industry Regulation to address “*the legacy of poor workmanship and regulatory failure while ensuring it never happens again*”

- **Providers of Building Works and Misc. Provisions Act 2022**
 - Establishment of Ciri on a statutory basis
 - Unless registered with Ciri, a person cannot provide or represent themselves or make themselves available to provide building works
 - Enacted 5 July 2022 but only preliminary provisions re Ciri commenced
 - Construction Industry Federation appointed as registration body – 19 January 2023 – to determine standards and competence and hear complaints
- **Construction Safety Licensing Bill 2022**
 - Proposal to establish a new training and licensing model for construction sector workers
 - General Scheme published on 6 October 2022 – Priority for Spring 2023 Legislation Programme



Real Estate: Construction (3)

Building Regulations

- **Building Regulations (Part L Amendment) Regulations 2022**
 - require installation of EV recharging infrastructure in new housing developments to enable future installation of EV recharging points (+ major renovations to car park) from 25 October 2022
- **Building Regulations (Part M Amendment) Regulations 2022**
 - require provision of a “changing places toilet” in buildings, having regard to the use and size of the building
- **European Union (District Heating) Regulations 2022**
 - facilitate roll-out of district heating and cooling in residential buildings in implementation of Directive (EU) 2018/2001
- **European Union (Energy Performance of Buildings) Regulations 2022**
 - oblige SEAI to provide advice on replacement of heat generators and of air-conditioning / ventilation systems



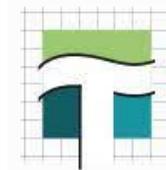
Real Estate: Construction (4)



- **Proposal by EU Commission for a Directive on the energy performance of buildings (recast)** (not yet approved by EP or Council) includes:
 - a new definition of ‘zero emissions building’;
 - more ambitious provisions for major renovations of existing buildings, to accelerate rate of renovation;
 - new provisions re energy performance certificates (EPCs), to make EPCs more stringent and comparable across the EU;
 - obligations on all public buildings to be issued with an EPC (regardless of their use), and making the issue of EPCs a necessary part of renewing existing rental contracts;
 - requirements for future buildings to meet EU-wide minimum energy performance standards

Real Estate: Corporate & General (1)

- **Tailte Éireann Act 2022** enacted 21 December 2022, not commenced
 - Merger of the **Property Registration Authority, Valuation Office, and OSI**, incorporating functions of the **Commissioner for Valuation and the Boundary Surveyor**
- **Electronic Commerce Act 2000 (Application of sections 12 to 23 to Registered Land) Regulations 2022**
 - apply specified provisions of eCommerce Act to the “*law governing how an interest in registered land may be created, acquired, disposed of or registered*”
 - Effective 9 Feb 2022 but no change in practice until Property Registration Authority / Tailte Éireann puts in place a system to accept esignatures
- **Assisted Decision-Making (Capacity) (Amendment) Act 2022**
 - enacted on 17 December 2022, not commenced
- **Courts and Civil Law (Miscellaneous Provisions) Bill 2022**
 - Includes proposed occupier’s liability and probate changes



Tailte Éireann
Clárúchán | Luacháil | Suirbhéireacht
Registration | Valuation | Surveying

Real Estate: Corporate & General (3)

- **European Union (Preventive Restructuring) Regulations 2022**
 - effective 27 July 2022
 - statutory obligations on directors of a company that is, or is likely to be, unable to pay its debts to have regard to the interests of creditors
 - prohibition in new s520A CA 2014 against any action that would alter the status quo in respect of any contract during examinership would capture real estate contracts also
- **Screening of Third Country Transactions Bill 2022**
 - process for transactions involving third country investment in State to be reviewed by Gov for risks to security or public order
- **UK: Economic Crime (Transparency and Enforcement) Act 2022**
 - This UK Act sets up a register of overseas entities that own property in the UK
 - Affects Irish corporate bodies, partnerships or trust that currently have or intend to make property investments in the UK

Real Estate: ESG and the Built Environment

Domestic

- **Circular Economy and Miscellaneous Provisions Act 2022**
- **Just Transition Commission Bill**

European

- **EU Taxonomy Regulation** (implementation)
- **Sustainable Finance Disclosure Regulation** (implementation)
- **Corporate Sustainability Reporting Directive** (adoption)

Anticipated

- **Corporate Sustainability Due Diligence Directive**
- **Regulation on ESG ratings**



Environment and Planning: An Bord Pleanála

Planning and Development and Foreshore (Amendment) Act 2022

- *“An Act to amend the Planning and Development Act 2000 in relation to the appointment of, and the efficient discharge of business of, An Bord Pleanála...”*
 - Increases number of ordinary members of ABP from nine to a chairperson up to a maximum of 14 (There were five board members left in November 2022).
 - Existing statutory nomination system to be replaced.
 - Amends Foreshore Act re subsoil, water above seabed.
 - *Enacted 20 December 2022, mostly commenced.*



Updates to Planning System 2022

Planning and Development, Maritime and Valuation (Amendment) Act 2022

- Substitute consent regime;
- Design flexibility/ design envelope – on and offshore; and
- Judicial Review.
 - *Enacted 24 July 2022, not fully commenced*

Overhaul of the Planning System 2023

Planning and Development Bill

- Development Plans – timeframe extended to 10 years;
- Strengthened Ministerial guidelines;
- Mandatory timeframes for all consent processes;
- Restructuring and renaming of ABP; and
- Judicial Review.
 - *Bill published January 2023*

Water Environment (Abstractions and Associated Impoundments) Act 2022

- Ireland in breach of the Water Framework Directive (WFD) for failing to control abstraction of water.
- Act provides for modern registration, licensing and control regime for water abstractions.
- Abstractions of over a certain size (2,000 cubic metres or more in any 24 hour period) will require an EPA licence.
- EPA required to keep register of abstractions over 25 cubic metres or more in any 24 hour period.
 - *Enacted 20 December 2022, but not yet commenced.*

Land Value Sharing and Urban Development Zones Bill

- Originally signalled in December 2021;
- Objective is to allow for the State to share in the uplift in land values arising from planning decisions to zone land or invest in infrastructure, where the uplift currently goes to landowners or developers; and
- Full details still be to published around mechanism and calculation

Housing

- **European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022**
 - Temporary development/ change of use to provide emergency accommodation and support to displaced persons from the conflict in Ukraine.
- **Planning and Development Act (Exempted Development) Regulations 2022**
 - Temporary changes of use, and any related works, to permit change from an existing specified use class to residential use.
- **Changes to Apartment Guidelines - BTR development**

Energy Crisis

- **Development (Emergency Electricity Generation) Act 2022**
 - Provides for temporary emergency electricity generation plant intended to be located at Shannonbridge and Tarbert.
- **Planning and Development Act 2000 (Section 181(2)(a)) Order 2022**
 - Emergency planning exemption at North Wall Power Generating Station.

Questions?



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