



UK REIT Horizon Scanner Q1 2020

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31 December 2019

Key Issues

Key issues coming up for UK Main Market REITs in corporate, financial regulatory, planning, real estate, securities law and regulation and tax¹ in England (including EU law).

Issue/status/timing: New developments since our September 2019 edition are shown in **blue text**.

Impact: urgency/impact rating for REITs admitted to London Stock Exchange Main Market (including the Specialist Fund Segment²)

Red – likely to have material impact

Amber – limited impact or await developments

Green – minor or no direct impact

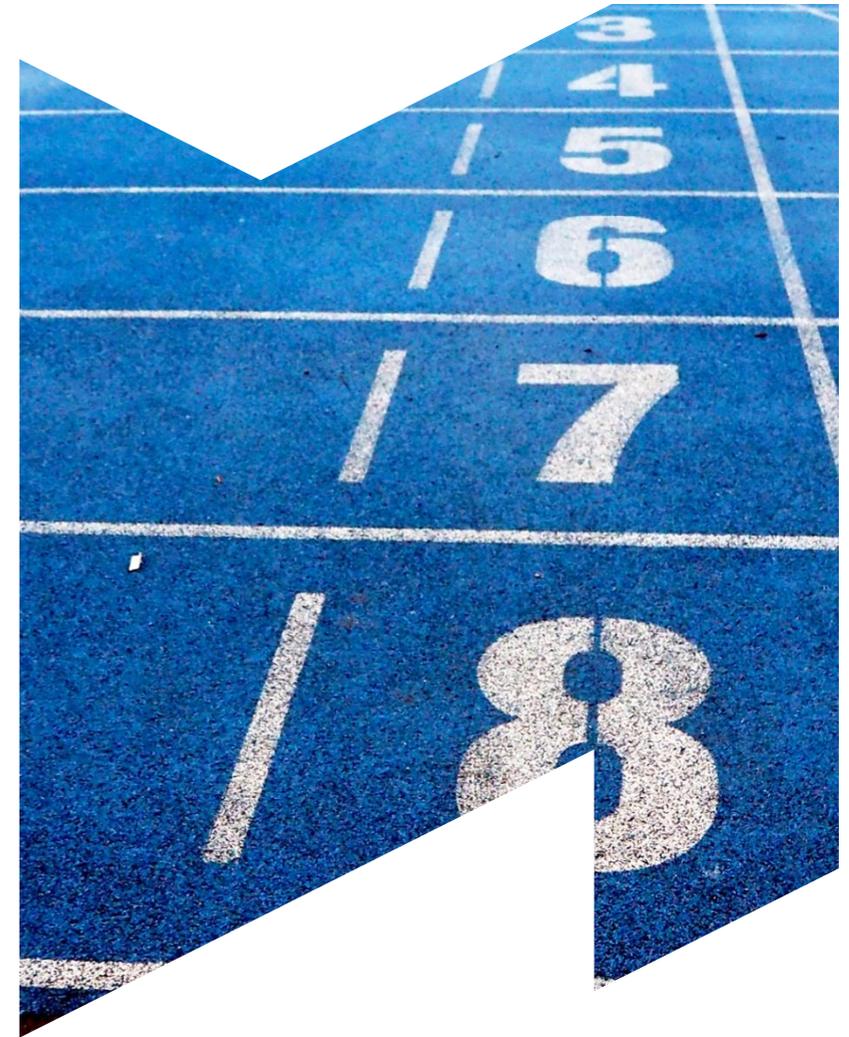
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¹ We have set out below the proposed tax changes that are likely to directly and materially impact REITs. We have not sought to cover changes of more general application, which may also impact REITs.

² Although the Listing Rules do not apply to the SFS, it is common for SFS companies voluntarily to comply with certain key Listing Rules and to state an intention to comply with the UK Corporate Governance Code.

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Financial regulatory

Financial regulatory

Key developments in Q4 2019

- ▶ FCA published Brexit web page on what an implementation period means and updated deadline for notifications under its Brexit transitional notification regime
- ▶ New Directive and Regulation overhauls the prudential regime for investment firms
- ▶ ESMA published its final report containing guidelines on liquidity stress testing for leveraged close-ended AIFs
- ▶ Joint Committee of ESAs consulted on amendments to PRIIPs Delegated Regulation

Issues	Status	Key Timing	Impact
New FCA Brexit page on implementation period Affects: All REITs, REIT managers and investment advisers operating on a cross-border basis	<p>The FCA published a new web page on 20 December 2019 on the implications of a Brexit implementation period, which will commence when the UK leaves the EU at the end of January 2020 (assuming the withdrawal agreement agreed between the UK and EU in October 2019 is duly ratified as expected).</p> <p>During the implementation period, EU law will continue to apply until 31 December 2020.</p> <p>Passporting rights would continue, although firms would need to consider how the end of the implementation period would affect them and what action they would need to take to prepare for 1 January 2021.</p> <p>The FCA will continue to engage with the UK government and regulators, European Supervisory Authorities and European policy makers on shared issues and priorities to prepare for the end of the implementation period.</p>	31 January 2020	Red

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>BREXIT – FCA's Temporary Permissions Regime</p> <p>Affects: All REITs and REIT managers authorised in the EEA that undertake business in the UK</p>	<p>As part of the UK government's overall Brexit approach, the Financial Conduct Authority (empowered by statutory instrument) is rolling out a Temporary Permissions Regime (TPR) for financial services firms from the EEA that currently 'passport' into the UK. Firms that apply for temporary permission will be able to continue their business in the UK as normal for a period of up to three years following 'exit day', by which time they will be required to apply for full UK authorisation.</p> <p>The FCA began accepting 'notifications' (via the Connect system) for the TPR on 7 January 2019. The notification window was originally open until the end of 30 May 2019. In light of the delay to the process of the UK's withdrawal from the EU, the notification window for firms that will be solo-regulated by the FCA (and whose passports do not include PRA regulated activities) will now close at the end of 30 January 2020. Firms are advised to check the FCA's web page (link below) for any further changes. EEA firms and fund managers that do not submit a notification by the closing date will not be able to participate in the TPR, and in the event of a 'no deal' Brexit, will lose the ability to market and operate in the UK.</p> <p>After 'exit day', firms that submit notifications will then receive a 'landing slot' whereupon they will be asked to apply for full UK authorisation.</p> <p>For UK REITS/firms that previously marketed or sold into Europe, currently in the event of a 'no deal' Brexit, they may need to become authorised in an EU member state to continue operating/marketing in the EU. To date, there has been no reciprocal TPR offering from the EU in respect of UK authorised firms, funds or fund managers. However, certain Member States have introduced or are proposing similar regimes; the FCA has a list on its website of transitional regimes it is aware of.</p> <p>For more information please visit the FCA's web page on Temporary Permissions. The FCA has also produced dedicated TPR pages for fund managers.</p> <p>The FCA will update its web pages after 31 January 2020 to reflect the UK's new status.</p>	<p>30 January 2020</p>	<p>Red</p>

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>EU Commission review of AIFMD</p> <p>Affects: AIFs and AIFMs</p>	<p>During 2020, the European Commission will continue its review of the functioning of AIFMD. The AIFMD required the Commission to begin a review of the application and scope of the Directive by July 2017. A key step in this process was the publication at the start of January 2019 of a report on the key findings of a survey of stakeholders conducted by KPMG. The Commission will report to the EU Parliament and EU Council and may propose amendments to AIFMD as a result of its review.</p>	During 2020	Amber
<p>New EU prudential framework for investment firms</p> <p>Affects: MiFID investment firms and AIFMs</p>	<p>On 5 December 2019, Directive (EU) 2019/2034 and Regulation (EU) 2019/2033 were published in the Official Journal of the EU. The Directive and Regulation create a new regime for the prudential supervision and prudential requirements of investment firms and are referred to as the IFD and IFR respectively.</p> <p>Most provisions of the new regime will apply from 26 June 2021 and the Directive will need to be transposed in Member States' legislation by this date.</p> <p>This is an example of 'in flight' legislation i.e. legislation requiring implementation after the UK's departure from the EU and the expiry of any transitional period. The UK has indicated that it will implement the IFD and IFR; a consultation paper from the FCA is expected soon (it was due to be published in Q4 2019).</p> <p>The new regime will make indirect amendments to AIFMD mandating that an AIFM's own funds requirement can never be less than one quarter of the firm's fixed overheads for the previous year. It is also possible that there may be wider changes as a result of the EU Commission's review of AIFMD (see above), which may determine that the prudential regime for AIFMs should be brought into line with that applying to investment firms.</p>	From June 2021	Amber
<p>ESMA final report on liquidity stress testing in AIFs</p> <p>Affects: REITs, REIT managers and depositaries</p>	<p>In September 2019, ESMA published a final report on guidelines on liquidity stress testing in UCITS and AIFs. The guidelines will require fund managers to:</p> <ul style="list-style-type: none"> ▶ build liquidity stress testing models that are fully integrated and embedded into a fund's risk management framework and subject to appropriate governance and oversight arrangements, and ▶ have a strong understanding of liquidity risks and the overall liquidity profile of the fund. <p>Depositaries will need to be able to verify that fund managers have the appropriate procedures in place.</p> <p>The guidelines will apply from 30 September 2020.</p>	30 September 2020	Amber

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>Amendments to Packaged Retail and Insurance-based Investment Products (PRIIPs) Delegated Regulation</p> <p>Affects: Product manufacturers and distributors</p>	<p>On 16 October 2019, the Joint Committee of the European Supervisory Authorities (ESAs) published a consultation paper on proposed amendments to Commission Delegated Regulation 2017/653 on key information documents (KIDs) for PRIIPs.</p> <p>The consultation sought to address the principal regulatory issues identified by stakeholders and supervisors since the KID requirement was introduced in 2018 and included proposed amendments on:</p> <ul style="list-style-type: none"> ▶ changes to the methodology for future performance scenarios ▶ use of illustrative scenarios as an alternative approach to performance scenarios ▶ different options to change the methodologies to calculate costs and how these are presented in the KID ▶ specific issues for PRIIPs offering 'multi-option products'. <p>The closing date for commenting on the consultation paper was 13 January 2020. As part of its work, the Committee is considering whether certain changes may be required to the PRIIPs regulation itself.</p> <p>The Committee's review is expected to be concluded around the end of Q1 2020 and will then in due course make its final proposals to the Commission.</p>	Q1 2020	Amber
<p>MiFID II – ESMA Q&A</p> <p>Asset managers, fund managers, investment banks, brokers</p>	<p>On 4 December, ESMA published an updated version of its Q&As on MiFID II investor protection and intermediaries topics.</p> <p>There are two new questions on:</p> <ul style="list-style-type: none"> ▶ information on costs and charges, including personalised ex-post disclosure of costs ▶ product intervention, in relation to applying national product intervention measures when providing investment services on a cross-border basis. <p>The content of ESMA Q&As is non-exhaustive and does not constitute new policy.</p>	4 December 2019	Amber

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>AIFMD – amended requirements for delegation of safe-keeping functions to a third party</p> <p>Affects: Depositories of AIFs, AIFs, AIFMs (CUSTODY)</p>	<p>Delegated Regulation (EU) 2018/1618 amending Delegated Regulation EU 231/2013 (which sets out detailed requirements where a depository of an AIF delegates safe-keeping functions to a third party) will apply from 1 April 2020. The Regulation aims to ensure a consistent approach across the EU and address concerns arising because securities and insolvency laws are not harmonised throughout the EU.</p> <p>See: Regulation amending Delegated Regulation EU 231/2013</p>	1 April 2020	Amber
<p>Directive on cross-border distribution of AIFs</p> <p>Affects: AIFs and AIFMs</p>	<p>On 12 July 2019, Directive (EU) 2019/1160 was published in the Official Journal of the European Union. The Directive amends certain funds-related legislation including the AIFMD with regard to the cross-border distribution of collective investment undertakings.</p> <p>The Directive entered into force on 1 August 2019. Member States have until 2 August 2021 to fully transpose the Directive into their national laws.</p> <p>The Directive introduces a new pre-marketing regime for EEA AIFMs of EEA AIFs. It is not yet clear how Member States will apply the new rules to non-EEA managers, which post-Brexit, will include UK managers.</p>	From August 2021	Amber

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>FCA Directory Update</p> <p>Affects: individuals holding a certification function under Senior Managers and Certification Regime (SMCR), directors not performing senior manager functions and other individuals who are sole traders or appointed representatives</p>	<p>On 6 September 2019, the FCA published a new webpage on its public directory for checking the details of key people working in financial services.</p> <p>The directory aims to:</p> <ul style="list-style-type: none"> ▶ Enable customers to verify the identity of those selling or providing advice on financial products to help protect them from scams ▶ Help firms to easily cross-check references, make their staff known to customers and make it more difficult for unsuitable individuals to operate in the UK market ▶ Support the FCA and other professional bodies to monitor the market, build intelligence and target interventions. <p>The Directory will cover a broader range of individuals and will require greater detail to be disclosed in relation to these individuals (as compared with the existing financial services register). This information includes employer details; any restrictions applying to a firm's regulated activities; individual's name and unique individual reference number; relevant roles held by the individual (eg applicable certified function under SMCR); start and end dates of each role; customer engagement methods; membership of relevant accredited; and regulatory sanctions and prohibitions.</p> <p>Firms which are solo-regulated by the FCA can start submitting data as of 9 December 2019 (following commencement of the SMCR) and the deadline for uploading data will be 9 December 2020. Firms will be given seven business days to notify the FCA of changes to the Directory data. Between these dates, individuals working for solo-regulated firms (eg financial advisors) will be unavailable on the existing register and not yet listed on the new Directory.</p>	<p>From 9 December 2019 to 9 December 2020</p>	<p>Amber</p>

Financial regulatory (continued)

Looking back

Issues	Status	Key Timing	Impact
<p>Extension of Senior Managers and Certification Regime (SM&CR) to solo-regulated firms</p> <p>Affects: all FCA regulated firms</p>	<p>On 4 July 2018 the FCA published PS18/14 which contained near final rules on the extension of the Senior Managers and Certification Regime to all FSMA authorised firms.</p> <p>In PS18/14, the FCA confirmed that the extension of the SM&CR regime would apply to solo-regulated firms on 9 December 2019. Affected firms are required to be compliant by this date.</p> <p>See: FCA PS18/14 and also see the FCA's SMCR webpage.</p>	9 December 2019	Amber
<p>FCA Alternative Investment Fund Managers Directive (AIFMD) Update</p> <p>Affects: AIFMs</p>	<p>UK and non-EEA AIFMs intending to market non-EEA funds in the UK under the UK's National Private Placement Regime (NPPR) must submit their NPPR marketing and material change notifications via the FCA Connect platform rather than using the existing forms.</p> <p>Until now, marketing and material change notifications have had to be made via spreadsheets, sent to a centralised email address. It is hoped that using Connect will be a more efficient process for both firms and the FCA and it will allow the FCA to cope better with the higher number of notifications it is expecting following Brexit.</p> <p>These changes do not apply to EEA AIFMs which market either (1) non-EEA AIFs; or (2) feeder AIFs that are UK AIFs or EEA AIFs where the master fund is managed by a non-EEA AIFM or is a non-EEA AIF.</p> <p>For more information please visit the FCA's web page on the NPPR.</p>	From 9 September 2019	Amber



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Real estate, planning and construction



Real estate, planning and construction

Key developments in Q4 2019

- ▶ Building and fire safety key priorities in Queen's speech with a new Building Safety Bill and Fire Safety Bill to be introduced

Issues	Status	Key Timing	Impact
<p>Building Safety Bill</p> <p>and</p> <p>Fire Safety Bill</p> <p>Affects: Investors in, owners and developers of high rise residential buildings (HRRB) and potentially extended to others</p>	<p>The Queen's speech on 19 December 2019 outlined proposals for a new Building Safety Bill and Fire Safety Bill during this Parliament. There is no draft Bill available</p> <p>The Building Safety Bill aims to introduce the new and improved regulatory regime for building safety and construction products, and to ensure that residents have a stronger voice in the system, taking forward the recommendations of Dame Judith Hackitt's review of building safety. The Bill's provisions will apply in England only.</p> <p>This Fire Safety Bill will seek to implement effective change and implement the relevant recommendations of Phase 1 of the Grenfell Tower Public Inquiry Report and make sure that building owners and managers of multi-occupied residential premises of any height are responsible for assessing the risks of external walls and fire doors. This Bill's provisions will apply to England only.</p> <p>These Bills will draw on the now closed consultations, Building a Safer Future: Proposals for reform of the building safety regulatory system and The Regulatory Reform (Fire Safety) Order 2005: call for evidence</p> <p>See: Queen's Speech</p> <p>See: Fire safety: what next?</p>	<p>Details awaited</p>	<p>Red</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
Sprinklers in new high-rise residential buildings: Consultation	The Consultation on proposals to reduce the trigger height for sprinkler provision in new high-rise residential buildings has closed. Current requirements are that new blocks of flats more than 30 metres above the ground should be fitted with a sprinkler system. The government's preference is to reduce the trigger height to 18 metres which would be consistent with the ban on combustible materials introduced in December 2018. Retrofitting of sprinklers in existing buildings would require further consideration.	Response awaited	Amber
Combustible cladding ban in Wales from 13 January 2020	The ban will apply to combustible cladding on all new residential buildings (flats, student accommodation and care homes) and hospitals over 18m in height. The ban will also apply to existing buildings where relevant building work is being carried out which falls within the scope of the Building Regulations, unless the building works have started on-site or an initial notice, building notice or full plans have been deposited and work has started on site within a period of 8 weeks. See: Building (Amendment) (Wales) Regulations 2019	13 January 2020	Amber
Construction: Value Added Tax – reverse charge to combat VAT fraud in the construction industry Affects: Suppliers and customers of construction services	The domestic reverse charge for building and construction services has been postponed for 12 months and will now be introduced on 1 October 2020. The government guidance on the reverse charge has been updated to reflect the new start date. See: Draft statutory instrument	1 October 2020	Green
New RICS Code for leasing business premises published as a professional statement Affects: Property owners, managers and investors	Following a consultation early last year, The Royal Institution of Chartered Surveyors (RICS) has published the Code for Leasing Business Premises in England and Wales (2019) which, as a professional statement, might impact on how commercial leases are drafted to represent both landlords and tenants.	Published 7 November 2019	Amber

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Review of the implementation of the Housing Grants, Construction and Regeneration Act 1996 (Construction Act)</p> <p>Affects: all parties to construction contracts and their funders</p>	<p>The Department for Business, Energy and Industrial Strategy is still considering responses to its consultation on a review of the implementation of the Construction Act, specifically the use of adjudication for construction disputes and the payment provisions.</p> <p>See: 2011 Changes to Part 2 of the Housing Grants, Construction and Regeneration Act 1996</p>	<p>Consultation closed; government response still awaited</p>	<p>Amber</p>
<p>Retentions in the construction industry</p> <p>Affects: all parties to construction contracts and their funders</p>	<p>The Department for Business, Energy and Industrial Strategy is still considering responses to a consultation to review the use of retentions in the construction industry. In the meantime, Build UK has published its proposals setting out a road map for abolition of retentions so as to deliver zero retentions by 2023.</p> <p>See: Retention payments in the construction industry See: Build UK Proposals</p>	<p>Consultation closed; government response still awaited</p>	<p>Amber</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Minimum energy efficiency level for rented property in England and Wales</p> <p>Affects: landlords of privately rented commercial or domestic property in England or Wales</p>	<p>Since April 2018, landlords of privately rented commercial or domestic property in England or Wales have not been able to grant a new tenancy unless their properties reach at least an Energy Performance Certificate (EPC) rating of E.</p> <p>The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, introduced a phased approach to compliance, but by 1 April 2023 every commercial property will need to meet the minimal level in order to continue to be let.</p> <p>See: The Private Rented Property minimum standard – landlord guidance documents</p> <p>There is an exemptions framework to cover certain circumstances, which requires the landlord to note the property on a National PRS Exemptions Register.</p> <p>From 1 April 2019, the 'no cost to landlord' principle does not apply to energy efficiency works at domestic properties. Landlords are now required to fund works required under the regulations up to a cost of £3,500.</p> <p>From 1 April 2020, domestic landlords with private tenants will be affected by an extension of the prohibition on new (or renewal) lettings to properties an Energy Performance Certificate (EPC) rating of F or G. The Energy Efficiency (Private Rented Property for England and Wales) Regulations 2015 ensure that from 1 April 2018, all privately rented properties will be captured, regardless of whether a new lease (or a lease renewal) is being completed.</p>	<p>Phased introduction from 1 April 2018</p> <p>Note the next key date is 1 April 2020</p>	<p>Red</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>EPC Consultation</p> <p>Affects: Property owners, managers and investors</p>	<p>BEIS has consulted on the use of Energy Performance Certificates. The consultation aims to gain evidence on the effectiveness of EPCs, assess the suitability of the current system for the use of EPCs, and obtain suggestions for improvement.</p> <p>See: Energy Performance Certificates in buildings: call for evidence</p>	<p>Consultation closed on 19 October 2018</p> <p>BEIS response awaited</p>	Green
<p>A new deal for social housing – government green paper</p> <p>Affects: Property investors, local authorities, occupiers of social housing</p>	<p>The government has published a green paper which proposes reforms to the regulatory framework governing the social housing sector. It suggests that these reforms cover the governance and financial viability of housing associations, and also the way in which residents are treated and the level of service that they should expect. The green paper is accompanied by a call for evidence on the operation of the current regulatory framework, and a consultation on options to change the rules governing the money raised from Right to Buy sales.</p> <p>The government also announced on 4 October 2018 that the cap on local authority borrowing against housing stock is to be removed, with the intention that this will stimulate the construction of new housing developments.</p> <p>See: A new deal for social housing</p>	<p>Green paper published on 14 August 2018</p> <p>Consultation closed on 6 November 2018</p> <p>MHCLG response awaited</p>	Amber
<p>Electric Vehicle Charging Consultation</p> <p>Affects: property owners, managers and investors</p>	<p>In July 2019, the government opened a consultation relating to the promotion of electric vehicles.</p> <p>The Electric Vehicle Charging Consultation's key proposals are that new residential buildings with an associated car parking space have a charge-point and that residential buildings undergoing major renovations with more than 10 car-parking spaces have cable routes for electric vehicle charge-points in every space.</p> <p>Supermarkets, retail parks, workplaces with carparks and public buildings such as schools, churches and community centres will also be caught by the proposals that existing non-residential buildings with more than 20 car-parking spaces have one charge point from January 2025. A related consultation seeks views on making it mandatory for new EV charge-points to be smart-enabled to allow charging at off peak-times.</p> <p>See: Electric Vehicle Charging in Residential and Non-Residential Buildings</p> <p>See: Electric Vehicle Smart Charging</p>	<p>Consultations closed on 7 October 2019</p> <p>Government response is still awaited</p>	Amber

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Unfair Practices in the Leasehold Market – MHCLG Review</p> <p>Affects: Residential and mixed-use property owners, managers and investors</p>	<p>On 20 March 2019, the Housing, Communities and Local Government Select Committee issued its report on leasehold reform. It has made a number of recommendations to the government, including that commonhold (see section below) should become the primary model of ownership of flats in England and Wales. It also asked the Competition and Markets Authority (the CMA) to investigate leasehold mis-selling. The CMA formally launched its investigation on 11 June 2019 and it will look at potential mis-selling, and potential unfair terms. On 3 July 2019, the government issued its response to the Select Committee report, and confirmed that it is bringing forward reforms including: banning the grant of new leases of houses; restricting ground rents on new leases to a peppercorn; and working with the Law Commission to reinvigorate Commonhold.</p> <p>See: Report on Leasehold Reform and Government response to Select Committee report</p> <p>On 28 March 2019, the government announced a new 'Public pledge for leaseholders' in which certain property developers and freeholders have publicly committed to certain principles, including:</p> <ul style="list-style-type: none"> ▶ amending ground rent clauses where the rent doubles more frequently than every 20 years, offering to amend it to one linked to RPI (which we note is not an official statistic and tends to run higher than CPIH, the official consumer prices index including owner-occupiers' housing costs) ▶ not inserting into any future lease a clause whereby ground rent doubles more frequently than every 20 years. <p>See: Public Pledge for Leaseholders</p> <p>On 15 April 2019, the government announced its consultation into ending no-fault evictions for private residential tenancies (the abolition of section 21 Notices). Under the current rules, a landlord does not need to provide a reason for taking back a property at the end of the contractual term of the tenancy, provided that it complies with basic regulations and serves two months' notice on the tenant (a section 21 Notice). The consultation proposes that landlords must provide a concrete, evidenced reason already specified in law for bringing tenancies to an end, and so paves the way for open ended residential tenancies, of the sort more commonly found across the Continent. Details of how landlords could regain possession from tenants under the new rules are yet to be fleshed out, but it is proposed that the section 8 eviction process is also amended so that landlords are able to regain their property if they wish to sell it or move into it.</p> <p>On 21 July 2019, the government launched a consultation which seeks views on the implementation of the decision to abolish section 21 Notices.</p> <p>See: Government announces end to unfair evictions and A new deal for renting: Consultation description</p>	<p>Consultation closed on 12 October 2019. Response awaited</p>	<p>Amber</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Future Homes Standard</p> <p>Affects developers, owners and occupiers and the construction supply chain</p>	<p>The government is committed to introducing the Future Homes Standard in 2025 to ensure that new homes are future-proofed with low carbon heating and world-leading levels of energy efficiency. As a stepping stone, the government proposes to introduce an achievable uplift to energy efficiency standards from 2020 and has opened a consultation seeking views on the uplift of the standards in Part L of the Building Regulations (Conservation of fuel and power) and changes to Part F (Ventilation) in England for new domestic buildings from 2020.</p> <p>Further consultation will follow addressing overheating in new dwellings and on standards for existing domestic buildings and new and existing non-domestic buildings.</p> <p>The Future Homes Standard is likely to require high fabric standards, such as triple glazing, and standards for walls, floors and roofs that limit heat loss and low carbon heating systems, such as heat pumps and heat networks.</p> <p>See: Consultation</p>	<p>Consultation closes no earlier than 10 January 2020</p> <p>Regulations in force mid/late 2020</p>	<p>Amber</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Law Commission Residential Leasehold and Commonhold Project</p> <p>Affects: Residential and mixed-use property owners, managers and investors</p>	<p>The Law Commission's Residential Leasehold and Commonhold Project considers how to deal with existing leasehold houses subject to ground rents, as well as potential future models. The terms of reference that have been agreed with the government require the Law Commission:</p> <ul style="list-style-type: none"> ▶ to provide a better deal for leaseholders as consumers ▶ to simplify the enfranchisement regime ▶ to promote transparency and fairness ▶ to set out the options for reducing premiums payable for enfranchisement, while ensuring sufficient compensation is paid to landlords to reflect their legitimate property interests. <p>On 20 September 2018, the Law Commission issued its consultation paper on leasehold home ownership.</p> <p>See: Leasehold Home Ownership: Buying your freehold or extending your lease</p> <p>On 11 December 2018, the Law Commission also published its consultation paper on reinvigorating the commonhold model of property ownership, as an alternative to leasehold ownership.</p> <p>See: Reinvigorating commonhold: the alternative to leasehold ownership</p> <p>In January 2019, the Law Commission published its consultation paper on reform of the Right to Manage leasehold property.</p> <p>See: Leasehold home ownership: exercising the right to manage</p>	<p>Leasehold consultation period closed on 7 January 2019. Response awaited</p> <p>Commonhold consultation period closed on 10 March 2019. Response awaited</p> <p>Right to Manage consultation period closed on 30 April 2019. Response awaited</p>	<p>Amber</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Draft registration of overseas entities bill</p> <p>Affects: Overseas owners of UK property</p>	<p>In 2016, the government confirmed that it will go ahead with plans for a new register of overseas legal entities owning UK real estate, disclosing their beneficial owners.</p> <p>On 20 May 2019, the House of Commons and House of Lords Joint Committee on the draft Registration of Overseas Entities Bill published a report, making recommendations aimed at improving the draft legislation.</p> <p>Some of the more important recommendations include lowering the currently-proposed 25% ownership and voting thresholds for the definition of a registrable beneficial owner – and a suggestion that this should be extended to the PSC regime. The report also recommends a specific requirement to update the register of overseas beneficial ownership before making any disposition of UK land, and the introduction of civil penalties for overseas entities that breach their obligations under the draft Bill, which could be backed up by criminal sanctions for non-payment.</p> <p>Taylor Wessing has been liaising with BEIS in relation to the practical steps needed to implement the Register of Overseas Beneficial Ownership.</p> <p>See: Joint Committee on the Draft Registration of Overseas Entities Bill</p>	<p>Draft legislation published in July 2018. It is anticipated that the register will go live by early 2021</p>	<p>Amber</p>
<p>Retail Prices Index Consultation</p> <p>Affects: Property owners, landlords, managers and investors</p>	<p>The UK Statistics Authority (UKSA) has made a proposal to cease publication of the Retail Prices Index (RPI) and in the meantime to align RPI and the Consumer Prices Index including Housing (CPIH). Because RPI is used as the reference index in some government debt, the consent of the Chancellor of the Exchequer is needed for this change if it is made before 2030. Sajid Javid has been asked for that consent but has not given it. Instead, he has said that the government will consult publicly on whether the change should be made at a date other than 2030 and if so, when between 2025 and 2030 it should be made. As part of that consultation, UKSA has been told to consult on technical matters concerning how to implement the proposed alignment of RPI with CPIH.</p> <p>Landlords should look at RPI rent review provisions in their leases. Depending on the wording of the relevant clause, they may be exposed to having lower rent increases if it is decided to align RPI with CPIH in a way which does not involve a change to the reference base.</p> <p>See: Letter from the Chancellor of the Exchequer to the UK Statistics Authority</p>	<p>Consultation will begin in January 2020</p> <p>The government and UKSA will publish a joint response to the consultation before the Spring Statement and the end of the financial year</p>	<p>Amber</p>



Real estate, planning and construction (continued)

Looking back

Issues	Status	Key Timing	Impact
<p>Party Wall Legislation and Procedure, 7th edition</p> <p>Affects: Property developers and investors</p>	<p>RICS has introduced updated guidance on Party Wall Legislation and Procedure. It describes the circumstances in which the Party Wall etc. Act 1996 will apply, as well as the procedures to be followed where it does. It now includes an in-depth section on professional conduct and advises RICS members that compliance with the wording of the Act may not be sufficient to achieve compliance with the standards expected of a RICS member.</p> <p>See: Party Wall Legislation and Procedure, 7th edition</p>	<p>Effective from 20 August 2019</p>	<p>Amber</p>
<p>CRC Energy Efficiency Scheme</p> <p>Affects: Property owners, managers and investors</p>	<p>The CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018, made on 11 July 2018, closes the CRC Energy Efficiency Scheme at the end of the 2018-19 compliance year.</p> <p>Rather than replace the Scheme:</p> <ul style="list-style-type: none"> ▶ The climate change levy has been increased from 1 April 2019. ▶ A new streamlined energy and carbon reporting regime will be introduced. (For more on reporting see General Corporate below.) 	<p>The Order came into force on 1 October 2018</p>	<p>Amber</p>
<p>RICS professional statement countering bribery and corruption, money laundering and terrorist financing</p> <p>Affects: Property owners, managers and investors</p>	<p>RICS has published a professional statement which is intended to help those working in the property sphere to minimize their exposure to the risks presented by bribery and corruption, money laundering and terrorist financing. As a professional statement this is mandatory for members. It applies globally to all RICS members and RICS-regulated firms involved in work where the potential for such activity exists.</p> <p>See: RICS professional statement Countering bribery and corruption, money laundering and terrorist financing</p>	<p>Effective from 1 September 2019</p>	<p>Green</p>



3

Tax



Tax

Key developments in Q4 2019

- ▶ Technical guidance on the new Structures and Buildings Allowance was published in HMRC's Capital Allowances Manual
- ▶ The Autumn Budget 2019, which had been scheduled for 6 November 2019, was cancelled due to the General Election; the Budget will now take place on 11 March 2020

Issues	Status	Key Timing	Impact
<p>Extension of UK corporation tax to non-UK resident companies with UK property income</p> <p>Affects: (among others) non-resident companies receiving PIDs</p>	<p>In March 2017, the UK government consulted on bringing Offshore Propcos within the charge to UK corporation tax (rather than income tax) on their UK property income, with the policy objective of equal tax treatment between UK and non-UK companies holding UK property. Following the consultation, draft legislation was published on 6 July 2018. An amended version of the legislation was incorporated into the Finance Bill that was published on 7 November 2018. The legislation has now been enacted in clause 17 of, and schedule 5 to, the Finance Act 2019. The changes take effect from 6 April 2020.</p> <p>See: Taylor Wessing briefing</p>	April 2020	Red
<p>Introduction of a new capital allowance for non-residential structures and buildings</p> <p>Affects: investors in REITs developing and constructing new commercial structures and buildings</p>	<p>At Budget 2018, the government announced that it would introduce a Structures and Buildings Allowance for new commercial structures and buildings. Once in force, relief will be given for eligible construction costs incurred on or after 29 October 2018, at an annual rate of 2% over a 50 year period.</p> <p>Draft legislation was published for consultation on 13 March 2019 as part of the Spring Statement, with a response document and final draft legislation published on 17 June 2019. The Capital Allowances (Structures and Buildings Allowances) Regulations 2019 (SI 2019/1087) were made on 4 July 2019, and came into force on 5 July 2019. The regulations insert a new Part 2A into the Capital Allowances Act 2001. Taxpayer-facing guidance was published in August 2019, with further technical guidance published in HMRC's Capital Allowances Manual (at chapter CA90000) in October 2019.</p> <p>Although income from a REIT's property rental business is not within the charge to UK tax, notional allowances will be taken into account in calculating its distributable profits, reducing the amount that the REITs are required to distribute to investors.</p>	Final regulations came into force on 5 July 2019	Red

Tax (continued)

Looking back

Issues	Status	Key Timing	Impact
<p>Introduction of capital gains tax for non-residents investing in commercial property</p> <p>Affects: (among others) non-UK residents investing in REITs and non-UK resident entities forming part of a UK REIT group</p>	<p>From 6 April 2019, the scope of the UK's taxation of gains accruing to non-UK residents is extended to include gains on direct and indirect disposals of UK commercial property. The charge on gains on disposals of UK residential property is also extended to widely-held vehicles. These changes will affect non-residents investing in REITs and non-resident entities forming part of a UK REIT group.</p> <p>REITs are already exempt from UK tax on property gains. However, the REITs legislation has also been amended to exempt from tax disposals of property rich entities by REITs. The 25% substantial interest test will not, however, apply to REIT investors, making it more likely that minority investors in REITs will be caught by the new rules.</p> <p>The legislation is contained in clause 13 of, and schedule 1 to, the Finance Act 2019.</p> <p>Draft amending regulations (The UK Property Rich Collective Investment Vehicles (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2019) were published for consultation on 17 September 2019. These regulations amend elements of the new rules to ensure that they operate as intended, and will broadly take effect from 6 April 2019.</p>	6 April 2019	Red



4

General corporate



General corporate

Key developments in Q4 2019

- ▶ The Law Society and City of London Law Society published new Q&As on the people with significant control (PSC) register requirements under the Companies Act 2006, to highlight complexities not specifically addressed by the PSC legislation or associated government guidance
- ▶ The FRC's Financial Reporting Lab published a report to assist companies with their climate change-related reporting obligations, and the Climate Disclosure Standards Board (CDSB) launched a consultation on nature-related disclosures in annual reports
- ▶ The government published a series of recommendations covering (among other things) corporate governance, executive pay and bonuses, following its inquiry into the collapse of Thomas Cook plc
- ▶ The FRC continued its project on the future of corporate reporting, publishing a new survey on the future of corporate reporting and a report on understanding citizens' views on the regulation of corporate reporting, corporate governance and audit
- ▶ BEIS published the final report of the Brydon review into the quality and effectiveness of audit, which made a number of recommendations aimed at significantly reforming the audit process

Issues	Status	Key Timing	Impact
Brexit related legislation Affects: general	<p>The UK is set to leave the European Union by 31 January 2020. On the assumption that the withdrawal agreement agreed between the EU and the UK is ratified by the European Parliament and the UK Parliament in January 2020, there will be a transition/ implementation period until at least 31 December 2020, during which the UK would remain in substantially the same position as regards EU law as if it were a member state but without participation as a member state in EU institutions. The UK government has said it will not extend that deadline, so that an agreement on a future relationship would need to be in place by then to avoid a 'no deal' type scenario.</p> <p>The European Union (Withdrawal) Act was passed in June 2018 and a large amount of related legislation has been passed or is making its way through the UK Parliament. The Act will repeal the European Communities Act 1972, incorporate all relevant EU law into UK statute books, and gives ministers power to adapt and remove laws that are no longer relevant. Under legislation currently making its way through the UK Parliament, this would generally take effect at the end of the transition/ implementation period.</p> <p>At this stage, in the absence of precise information, the potential implications of Brexit at the end of the transition/ implementation period are beyond the scope of this horizon scanner, except for the temporary permissions regime for financial services firms (and potential lack of reciprocity from the EU on a 'no deal' Brexit) referred to in 'Financial regulatory' above, and reference to conforming rule changes and the potential cessation of prospectus passporting referred to in 'Capital markets' below.</p>	<p>Assume little legal impact on 31 January 2020</p> <p>Key impact 31 December 2020 or later</p>	Amber

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>5th Money Laundering Directive</p> <p>Affects: trustees, trust beneficiaries, e-money product providers (e.g. prepaid cards), 'passive non-financial entities'</p>	<p>The EU Fifth Anti-Money Laundering Directive must be implemented in the UK by 10 January 2020 and includes these corporate aspects:</p> <ul style="list-style-type: none"> ▶ compulsory disclosure of certain information on beneficial owners of companies and business-related trusts, ▶ improved access to beneficial ownership information (including public access, subject to legitimate interest, in relation to trusts), ▶ European Commission (EC) power to (if appropriate) assess any need to lower the percentage for identification of beneficial ownership of legal entities (currently 25%) ▶ direct interconnection of national beneficial ownership registries. 	January 2020	Amber
<p>Modern slavery – human trafficking statement</p> <p>Affects: large companies</p>	<p>On 9 July 2019, the government announced (in response to an independent review of the Modern Slavery Act) its intention to start auditing compliance with modern slavery statement requirements under section 54 of the Act and to establish a central registry of statements, to be available to organisations free of charge. This will presumably only increase public scrutiny of statements in the future.</p> <p>From 9 July to 17 September 2019, the Home Office consulted on how to make transparency requirements and reporting processes as clear and straightforward as possible. The response to that consultation is awaited.</p>	Ongoing	Amber
<p>Corporate governance – share buybacks</p> <p>Affects: listed companies</p>	<p>On 19 July 2019, BEIS published a research paper by PwC, following its announcement on 28 January 2018 that it asked PwC and London Business School to investigate whether some companies repurchase their own shares to inflate executive pay artificially, how companies use share buybacks and whether action is needed to prevent buybacks from being misused. Broadly, the results showed no significant relationship between share repurchases and either the existence of an earnings per share condition or the proportion of an incentive award linked to that condition, and also no relationship between share repurchases and investment. There will be further research into the potential for a direct link (rather than through buybacks) between executive pay targets and investment levels in companies, and the extent to which pay incentives and performance targets can result in short-termist executive decision-making.</p> <p>BEIS' March 2019 report on executive remuneration included a recommendation that remuneration reports include analysis of the impact on executive remuneration of any share buybacks during the reporting period.</p>	Ongoing	Green
<p>PSC register - Law Society and CLLS Q&A</p> <p>Affects: all UK companies</p>	<p>On 8 November 2019, the Law Society and City of London Law Society published Q&As on the people with significant control (PSC) register requirements under the Companies Act 2006. They aim to highlight complexities not specifically addressed by the PSC legislation or associated government guidance and focus on five main areas: holding shares, votes and board appointment rights; indirect interests and majority stakes; trusts and funds; reasonable steps, restrictions and warning notices; and position on incorporation.</p>	Ongoing	Green
<p>Audit reform</p> <p>Affects: all companies</p>	<p>From 19 July to 13 September 2019, the government consulted on CMA recommendations about statutory audit services. It suggests there should be clear expectations and standards for audit committees to ensure they deliver best results for shareholders, and that there should be a role in this for the new Audit, Reporting and Governance Authority (which will replace the FRC). An update is awaited.</p>	Ongoing	Green



General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Audit reform (continued)</p> <p>Affects: all companies</p>	<p>On 18 December 2019, BEIS published the final report of its independent review into the quality and effectiveness of audit led by Sir Donald Brydon. Recommendations include (among other things):</p> <ul style="list-style-type: none"> ▶ mechanisms to encourage greater shareholder interaction with audit, including the ability to pose questions to auditors at AGMs; ▶ new reporting requirements for directors about the company's resilience and responsibilities to the public interest, and audit policy; ▶ a requirement for audit committees to publish their minutes; ▶ amendment of auditing standards to make it clear that auditors should endeavour to find corporate fraud; ▶ a requirement for directors to explain the actions they have taken to prevent material fraud and to report on internal controls; ▶ obligations on auditors to report to both the audit committee and shareholders on external signals of concern; and ▶ extension of audit to areas beyond financial statements, including alternative performance measures. 	Ongoing	Amber
<p>Register of beneficial owners of overseas entities that own UK property</p> <p>Affects: non-UK companies (and their investors)</p>	<p>The proposal is to create a new register of beneficial owners of overseas entities that own UK property (following a similar test as that used for the PSC register). Draft legislation is set out in the draft Registration of Overseas Entities Bill (published on 23 July 2018). A report of recommendations (published on 20 May 2019) by the House of Commons and House of Lords Joint Committee on the draft Registration of Overseas Entities Bill, and the government's response to that (published on 18 July 2019), aim to improve the draft legislation. The government anticipates that, following royal assent and secondary legislation, the register will be operational in 2021.</p> <p>An overseas entity within scope of the legislation will need to provide information about itself and its beneficial owners. There are 25% ownership and voting thresholds for the definition of a registrable beneficial owner (although the government noted in its July 2019 response that the thresholds will be kept under review). Once registered, an overseas entity will need to update the information annually until it successfully applies to be removed from the register. With updating occurring only annually, concerns have been raised about the register's accuracy at the point at which dispositions of land take place; the government is still considering this aspect.</p> <p>There are criminal penalties for non-compliance and additional civil penalties are currently being considered. Further, a failure to register (or to comply with updating requirements) will result in:</p> <ul style="list-style-type: none"> ▶ an overseas entity being unable to register as a proprietor of UK land (necessary to obtain full legal title) via the three land registries of England and Wales, Scotland, and Northern Ireland; and ▶ certain dispositions made by a registered proprietor that is an overseas entity being incapable of registration at the land registry. <p>The government intends to publish guidance to help relevant parties understand the requirements. The register will, largely, be publicly accessible. Some information will be suppressed due to potential risk to individuals, such as date of birth and usual residential address. (This could affect non-UK subsidiaries in REIT groups.)</p>	Early 2021	Amber

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Narrative reporting</p> <p>Affects: all companies other than 'small companies'</p>	<p>On 2 July 2019, BEIS published the Green Finance Strategy which, among other things, includes an expectation that all listed companies and large asset owners will disclose in line with the Taskforce on Climate-related Financial Disclosures (TCFD) recommendations by 2022.</p> <p>On 21 October 2019, the FRC's Financial Reporting Lab published a report to assist companies with the practical application of the TCFD recommendations, and other obligations on investors (through legislation and their own clients' demands) to report on climate issues as part of wider ESG reporting requirements. The report includes a set of questions companies should ask themselves to help develop their reporting (section two), provides examples of developing reporting practice to illustrate how companies are trying to meet these reporting challenges (section three) and sets out the main regulatory and market initiatives relevant to corporate disclosures on climate change as well as outlining investor requirements and activity.</p> <p>On 5 December 2019, the Climate Disclosure Standards Board (CDSB) launched a consultation to advance the disclosure of nature-related financial information in companies' annual reports and explore the role of the CDSB Framework for reporting environmental and climate change information in that process. The deadline for responses is 28 February 2020.</p> <p>On 26 March 2019, BEIS reported on executive remuneration. It supports replacing the FRC with the new Audit, Reporting and Governance Authority (ARGA) as soon as possible and to strengthen its powers to have a more aggressive and proactive regulator. On 4 November 2019, BEIS published a letter and accompanying annex setting out a series of recommendations which covered (among other things) corporate governance, executive pay and bonuses following its inquiry into the collapse of Thomas Cook plc.</p> <p>On 3 July 2019, the Government Equalities Office published its roadmap for tackling gender equality which included, among other things, assessing the effectiveness of gender pay gap reporting and consulting on any changes by 2021.</p> <p>The FRC's project on the future of corporate reporting (it published a call for participants on 30 October 2018) is designed to explore the needs of investors and stakeholders, the purpose of corporate reporting and the annual report, forms of corporate communication, the role of financial and non-financial reporting, the role of technology, and the role of assurance. As part of the project:</p> <ul style="list-style-type: none"> ▶ On 21 January 2019, it published Artificial Intelligence and Corporate Reporting. A number of possible uses for AI in corporate reporting are considered, such as automatic processing of transactions and transforming data into accounting and management information, and feeding it into annual reports. ▶ On 17 October 2019, it published a survey from stakeholders on the future of corporate reporting, to gauge whether stakeholders are interested in information on a company's operations, governance, audit, performance and prospects, and the way in which they would like companies to present information. The survey closed on 15 November 2019; results are awaited. ▶ In Autumn 2019, the FRC also published a report on understanding citizens' views on the regulation of corporate reporting, corporate governance and audit, setting out deliberative research conducted on behalf of the FRC by BritainThinks. 	Ongoing	Green

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Companies House reform</p> <p>Affects: UK companies</p>	<p>From 5 May to 5 August 2019, BEIS consulted on company law changes to enhance Companies House's role, increasing the transparency of UK corporate entities and helping to combat economic crime by improving the accuracy and usability of the register. Significant reforms of the UK's company registration framework are proposed, including:</p> <ul style="list-style-type: none"> ▶ verifying the identity of individuals with a key role in companies, including officers (directors), people with significant control and those filing information (it is being considered whether this should extend to shareholders), ▶ extending Companies House' powers to query and corroborate information before entry on the register and making it easier to remove inaccurate information, ▶ proposals on storage and control of access to personal information, including when and to whom it may be disclosed, and ▶ crosschecking data held by other government or private bodies, limiting the number of directorships held by any one individual, disclosing banking information, and action to deter the misuse of company names and addresses. <p>This will affect systems, processes and staffing at Companies House, which will likely increase fees. Publication of the findings is awaited.</p>	Ongoing	Green
<p>European Commission consultation – fitness check on public reporting by limited companies</p> <p>Affects: UK and European limited companies</p>	<p>The EC is currently carrying out a 'fitness check' of the EU framework on public reporting by companies, covering the Accounting Directive, Transparency Directive, Non-Financial Reporting Directive, Bank Accounts Directive, Insurance Accounts Directive and IAS Regulation. It is also looking at synergies and interaction with company law (including corporate governance, capital maintenance, the Shareholder Rights Directive and mergers), digitalisation and corporate tax reforms. A public consultation was carried out on this between 21 March and 31 July 2018.</p>	Ongoing	Amber
<p>Late payment - government response to call for evidence</p> <p>Affects: large companies</p>	<p>On 19 June 2019, BEIS responded to its October 2018 call for evidence on tackling late payment. This follows on from the duty on large companies to bi-annually publicly report on, among other things, how quickly they pay their suppliers, introduced by the Reporting on Payment Practices and Performance Regulations 2017. The response includes these corporate aspects:</p> <ul style="list-style-type: none"> ▶ There will be a tough approach to companies not complying with the duty (they may be prosecuted and fines may be imposed). ▶ BEIS is working with the FRC on a requirement for audit committees to review and report on payment practices in annual accounts, to give late payment sufficient board level attention. Guidance will be issued and this may also be subject to future legislation. ▶ On 30 October 2019, in its annual review of corporate governance and reporting for 2018/2019, the FRC stated that (among other things) it encourages boards to disclose, in their section 172 reports, the issues, factors and stakeholders they consider relevant in complying with the section and the basis on which they came to that view including, for example, consideration of reporting on payment to suppliers in line with the BEIS response. 	Ongoing	Green

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Corporate governance and companies approaching insolvency</p> <p>Affects: UK companies in or approaching insolvency (some aspects may affect all companies)</p>	<p>On 26 August 2018, BEIS responded to its March 2018 consultation on the governance of companies in or approaching insolvency. Specific actions and areas of further consultation include:</p> <ul style="list-style-type: none"> ▶ strengthening transparency requirements around group structures (possibly with industry guidance or a requirement for large groups to provide corporate structure organograms and report on corporate governance through the group), ▶ strengthening shareholder stewardship (incorporating stewardship in asset managers' mandates and channels for investors to escalate concerns about company management), ▶ strengthening the framework on dividend payments (which may include giving shareholders an annual vote on dividends if the practice of avoiding shareholder votes by using interim dividends is found to be widespread and pressure is sufficient), ▶ greater accountability of directors in group companies when selling subsidiaries in distress ▶ enhancing insolvency practitioners' powers relating to value extraction schemes designed to remove value from a firm at the expense of creditors when a company is in financial distress. More details on the measures are awaited. 	Ongoing	Green

Looking back

Issues	Status	Key Timing	Impact
<p>Energy and carbon reporting framework</p> <p>Affects: quoted companies, large unquoted companies and large LLPs</p>	<p>The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 implement the regime for streamlining energy and carbon reporting regime (SECR), requiring additional reporting in directors' reports on emissions, energy consumption and energy efficiency action.</p> <p>On 1 February 2019 BEIS published updated Environmental Reporting Guidelines which includes guidance on compliance with the SECR regime and best practice.</p>	Financial years on or after 1 April 2019	Amber
<p>Execution – electronic signatures</p> <p>Affects: all companies</p>	<p>On 4 September 2019, the Law Commission reported on the electronic execution of documents. This followed an Autumn 2018 consultation on whether current law on electronic execution of documents and deeds might prevent the use of electronic signatures. Registered dispositions under the Land Registration Act 2002 were expressly excluded from the scope of the consultation.</p> <ul style="list-style-type: none"> ▶ The Law Commission concluded that an electronic signature is capable in law of being used to execute a document (including a deed) if the person signing the document intends to authenticate the document and any execution formalities are satisfied, and that an electronic signature is admissible in evidence in legal proceedings. ▶ It is recommended to establish an industry working group to consider practical issues on electronic execution of documents and to provide best practice guidelines. A wider governmental review of the use of deeds is also recommended. 	Ongoing	Green





5

Capital markets



Capital markets

Key developments in Q4 2019

- ▶ The Investment Association published updated Principles of Remuneration for the 2020 AGM season
- ▶ The new Stewardship Code was published and will take effect from 1 January 2020
- ▶ The FCA proposed amendments to the Listing Rules to correct some unintended changes made for the new Prospectus Regulation in July 2019 and to add new continuing obligations for disclosing rights attached to securities. It also proposes a new technical note on class tests for investment management agreements with unquantifiable benefits
- ▶ The FCA emphasised and gave guidance on climate change-related disclosures in its annual review of corporate governance and reporting, and announced that it will publish a consultation paper in early 2020 on potential new disclosure rules for certain issuers aligned with the TCFD recommendations
- ▶ ESMA carried out a general review of the Market Abuse Regulation and plans to submit a final report to the European Commission by spring 2020
- ▶ ESMA published a report on short-term pressure on corporations in securities markets which made several recommendations to the European Commission for action in relation to ESG disclosures and institutional investor engagement

Issues	Status	Key Timing	Impact
<p>Brexit related legislation – Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019 and FCA consultations</p> <p>Affects: all listed companies</p>	<p>The government has published a number of draft statutory instruments and policy notes and passed some into legislation, including the Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019 (and accompanying Explanatory Memorandum). These aim to replicate, so far as possible, the current effects of the prospectus regime, transparency rules and listing rules and make a number of changes, including:</p> <ul style="list-style-type: none"> ▶ The FCA will need to approve prospectuses for use in the UK even if they have been approved by a competent authority of an EEA member state. Prospectuses passported into the UK before exit day may be used in the UK until their validity expires. ▶ Existing equivalence decisions on presentation of historical financial information in prospectuses will be domesticated into UK legislation. ▶ HM Treasury intends to issue an equivalence decision (to be kept under review) in time for exit day determining that EU-adopted IFRS can continue to be used to prepare financial statements for transparency requirements and to prepare a prospectus. <p>If there is a Brexit without a transition period, unless there is an equivalence decision (likely to be reciprocal between the UK and EU if it happened), FCA approved prospectuses could not be passported into the EU/ EEA, so that approval by a relevant competent authority would be required for offers into those countries if applicable exemptions were not available.</p>	Exit Day	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>Brexit related changes to the FCA Handbook and technical standards</p> <p>Affects: listed companies</p>	<p>On 28 February 2019, the FCA published its response to various consultation papers on proposed changes to the FCA Handbook and onshored EU-derived binding technical standards (BTS), if Brexit occurs without an implementation period. At the same time it published near final versions of the proposed changes. See also FCA Primary Bulletin No 22.</p> <ul style="list-style-type: none"> ▶ The changes are intended to be those necessary to ensure the Handbook remains functional after Brexit and reflect any governmental legislative changes. Broader policy changes are not proposed. ▶ The proposals impact the Prospectus Rules, Listing Rules, DTRs and MAR regime and mainly update references to EU legislation, UK law which relates to or refers to the EU, EU institutions and concepts, and the EEA. ▶ The amendments to BTS under MAR, the Prospectus Directive and the Transparency Directive will be made as set out the consultation papers. ▶ Proposed changes to the DTRs, LRs and PRs were generally supported and will be adopted, if necessary. <p>Recent FCA quarterly consultation papers (No. 25 and No. 26) include proposals for further minor amendments to the FCA Handbook. On 7 March 2019, the LSE published proposed changes to its Primary Markets Rulebooks. They aim to only reflect the new legal and regulatory framework which will apply if the UK leaves the EU with no deal and largely relate to glossary terms. They follow governmental changes proposed under the European Union (Withdrawal) Act 2018 and relate to admission and disclosure standards and AIM Rules.</p>	Exit Day	Amber
<p>Investment Association statement on executive pensions in 2020 AGMs</p> <p>Affects: listed companies</p>	<p>The Investment Association's new IVIS guidelines for 2020's AGM season (published on 27 September 2019), on pension contributions for existing executive directors, may be relevant to internally managed companies. See also IA: Initiatives: Corporate governance.</p> <ul style="list-style-type: none"> ▶ If an existing director's pension contribution is 25% or more of salary, IVIS will amber top the remuneration report (as currently). ▶ Remuneration committees should disclose a credible action plan to reduce directors' pension contributions to the majority of the workforce level by the end of 2022 – if such a plan is not disclosed, IVIS will red top the remuneration report if any executive director's pension contribution is 25% or more. <ul style="list-style-type: none"> > Fixing the monetary value of contributions over time is generally not considered a credible action plan. > The remuneration report should disclose the contribution rate of the majority of the workforce and how it was derived. ▶ Confirmation should be given that future accrual, for defined benefit pension schemes, is still open to other employees on the same terms as executive directors - if not the remuneration report will be amber topped. ▶ Where a cash supplement in lieu of further accrual above an earnings limit is paid, confirmation should be given that such supplements are also paid to other employees on an equivalent basis – if not the remuneration report will be amber topped. 	2020 AGM season	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>Investment Association principles of remuneration in 2020 AGMs</p> <p>Affects: listed companies</p>	<p>On 1 November 2019, the Investment Association published updated Principles of Remuneration and an open letter to remuneration committee chairmen of FTSE 350 companies, setting out key areas of focus for 2020 AGMs including (among other things) that:</p> <ul style="list-style-type: none"> ▶ performance conditions should be measurable over long periods, and performance periods clearly linked to timing for implementation of business strategy (no less than three years, ideally longer), with additional holding periods expected so that total performance and holding periods should be at least five years ▶ remuneration committees should have discretion in incentive schemes allowing them to limit vesting outcomes if a specific monetary value is exceeded ▶ post-employment shareholding requirements should be established for all executive directors at the earliest opportunity, and at a minimum by the company's next policy vote ▶ investors will continue to scrutinise increases to basic salary or variable pay and expect remuneration committees to show restraint on overall quantum, and ▶ pay for performance must be justified by robust transparency on financial, strategic and personal targets so that the link between pay and performance is clear; strategic and personal targets and outcomes should be disclosed separately. 	2020 AGM season	Amber
<p>New Stewardship Code</p> <p>Affects: premium listed companies and investors</p>	<p>The FRC published a revised version of the Stewardship Code on 24 October 2019, which will take effect from 1 January 2020. Most of the 2012 Code's principles and guidance is retained, but some new requirements bring it in line with the 2018 UK Corporate Governance Code, including "apply and explain" principles for asset owners and managers and separate principles for service providers. It requires annual reporting of stewardship activity and outcomes. Signatories are expected to take ESG factors into account and ensure their investment decisions align with clients' needs.</p>	1 January 2020	Green
<p>Proposed amendments to the Listing Rules</p> <p>Affects: Main Market companies</p>	<p>On 6 December 2019, the FCA published quarterly consultation paper No. 26 which proposes the following Listing Rules amendments:</p> <ul style="list-style-type: none"> ▶ amend LR 13, Annex 1 (documents on display for class 1 transactions) to clarify that the SPA or equivalent document does not have to be available online; a hard copy needs to be available for inspection and the issuer needs to state where it is located (the change would reverse unintended consequences of amendments to the LRs for the new Prospectus Regulation in July 2019), and ▶ changes to require disclosure of rights attached to securities, including new continuing obligations in LR 9.2, LR 14.3, LR 18.4 and LR 21.8; issuers with listed securities would need to keep publicly available in the National Storage Mechanism either the securities' approved prospectus, a document with the securities' terms and conditions, or a description of the securities' rights and how to exercise those rights, available for the duration of the securities' admission to listing (with an exemption where already available). <p>Comments are due by 6 January and 6 February 2020 respectively for the two above proposals.</p>	6 January and 6 February 2020	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>FCA consultation on climate change reporting</p> <p>Affects: premium listed companies</p>	<p>On 16 October 2019, the FCA published its response to its 15 October 2018 to 31 January 2019 consultation on changes to the regulation of climate change risk disclosures. It will publish a consultation paper in early 2020 to propose new disclosure rules for certain issuers aligned with the TCFD recommendations to be introduced, at least initially, on a comply or explain basis. The FCA takes the view that existing disclosure obligations already capture reporting the implications of climate change where they are financially material to a company's prospects. It will continue to consider whether issuer disclosures on other sustainability factors beyond climate change are adequate to support investors' business, risk and investment decisions.</p> <p>On 30 October 2019, in its annual review of corporate governance and reporting for 2018/2019 the FRC stated that, among other things, companies should, where relevant, report on the effects of climate change on their business (both direct and indirect), covering how the board has taken account of the resilience of the company's business model and its risks, uncertainties and viability in the immediate and longer term in light of climate change. It expects disclosure of risks that extend beyond the period covered in the viability statement.</p>	Early 2020	Amber
<p>ESMA market abuse consultation</p> <p>Affects: listed companies</p>	<p>From 3 October to 29 November 2019, ESMA consulted on the Market Abuse Regulation (MAR), including a general review of the definition of inside information, the timing of when information becomes inside information and when disclosure may be delayed, and whether there should be requirements around systems and controls for identifying, handling and disclosing inside information. The consultation also looks at the exception for buybacks, the market soundings procedure, insider lists, and the relevant thresholds for managers' dealings. ESMA plans to submit a final report to the European Commission by spring 2020.</p> <p>While the UK is part of the EU, any amendments to MAR would need to be made through EU legislation. Given the likely timescale required to implement any such amendments and the likelihood of the UK leaving the EU in 2020, it is likely that those amendments will not form part of UK law and it would be up to the UK to decide whether to make similar amendments in due course.</p>	Ongoing	Amber
<p>Updated AIC market abuse guidance</p> <p>Affects: listed companies</p>	<p>In November 2019, the AIC published updated MAR guidance (available to members on the AIC's website), to reflect general changes since 2017.</p>	Ongoing	Green
<p>Related party transactions – proposed new technical guidance</p> <p>Affects: premium listed companies</p>	<p>From 3 October to 14 November 2019, the FCA consulted on a proposed new technical note, 'Class testing changes to an investment management agreement where there are unquantifiable benefits', to clarify its approach where the benefit of the transaction is unclear and class tests difficult to apply. It includes some questions the FCA may ask, explains its approach in certain circumstances (such as where changes relate to payment of the fee being made via something of the same value other than cash), and states that it accepts that where there is a benefit to a related party, but not a quantifiable financial benefit, the percentage ratio is in effect zero. An update is awaited.</p>	Awaiting update	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>Corporate governance consultation</p> <p>Affects: UK listed companies</p>	<p>From May to July 2019, ICASA consulted on the effectiveness of independent board evaluation in the UK listed sector. The aim is to assess the quality of evaluations and find ways to improve them. Feedback is awaited.</p> <p>On 28 May 2019, the Investment Association reported on shareholder votes on dividend distributions in listed companies. It will establish a working group to develop best practice guidance on distribution policies and make recommendations to government on whether a shareholder vote on such policy and/or on yearly distributions should be mandatory.</p>	Ongoing	Green
<p>ESMA consultation on short-term pressure on corporations</p> <p>Affects: large companies</p>	<p>On 18 December 2019, ESMA published a report on short-term pressure on corporations in securities markets following its consultation (carried out in June and July 2019) which was driven by concerns that a focus on short time horizons by corporate managers and financial markets means prioritising near-term shareholder interests over long-term growth.</p> <p>The report makes several recommendations to the EC for action in relation to ESG disclosures and institutional investor engagement, including (among other things):</p> <ul style="list-style-type: none"> ▶ improving ESG disclosures, which should respect a minimum level of comparability, relevance and reliability; ▶ amending the Non-Financial Reporting Directive to include principles for high quality non-financial information and a set of specific disclosure requirements; ▶ including the non-financial statement in issuers' annual financial reports and mandating assurance on its content and consistency with other information in the annual financial report; ▶ reviewing the Public Statement on Information on shareholder cooperation and acting in concert under the Takeover Bids Directive (the White List), in particular whether the White List should include coordination among institutional investors for ESG risks; ▶ considering whether a vote on the non-financial statement would allow investors to express views on how companies address sustainability risks; ▶ monitoring the broader application of the Shareholder Rights Directive to assess whether it encourages long-term engagement; and ▶ considering whether member states should be required to have an adequate independent monitoring framework for remuneration of listed company directors, to ensure the quality of information disclosed in remuneration reports published by companies. <p>The Commission will now decide whether to initiate legislative changes to address these recommendations and monitor the effect of certain legislative acts to assess whether there is a need for further action.</p>	Ongoing	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>European Commission consultation on duties regarding sustainability</p> <p>Affects: asset managers and institutional investors</p>	<p>From 13 November 2017 to 22 January 2018, the EC consulted on institutional investors and asset managers' duties regarding sustainability and ESG issues in order to assess whether and how these duties should be clarified. If the impact assessment demonstrates that action at EU level would produce greater benefits over costs compared with action only at member state level, the EC will propose legislative or non-legislative measures. An update is awaited.</p>	Awaiting update	Amber
<p>European Commission High Level Expert Group report on stewardship principles and institutional investors</p> <p>Affects: asset managers and institutional investors</p>	<p>On 31 January 2018, the EC's high level expert group (HLEG) published its final report on sustainable finance, including recommendations on extending stewardship principles for institutional investors and strengthening director duties. Priority actions include:</p> <ul style="list-style-type: none"> ▶ Clarifying investor duties to extend the time horizons of investment and focus on ESG factors into investment decisions. ▶ Upgrading disclosures to make sustainability opportunities and risks apparent. ▶ Developing official European sustainability standards for some financial assets. <p>The EC will now move to finalise its strategy on sustainable finance on the basis of these recommendations. An update is awaited.</p>	Awaiting update	Amber



Capital markets (continued)

Looking back

Issues	Status	Key Timing	Impact
<p>Shareholder Rights Directive amendment</p> <p>Affects: Main Market companies</p>	<p>On 10 June 2019, the UK implemented the amended EU Shareholder Rights Directive (SRD II). In particular, changes to the regulation of related party transactions and directors' remuneration may affect companies on the Official List (premium and standard segments), Specialist Fund Segment or High Growth Segment.</p> <ol style="list-style-type: none"> LR 11 for premium listed companies has not been amended. A new DTR 7.3 was introduced since SRD II requires material related party transactions to be approved by general meeting <u>and/or the board</u>. <ul style="list-style-type: none"> DTR 7.3 imposes a 5% materiality threshold (as in LR 11) and requires board as opposed to shareholder approval (unlike LR 11), with no need for a third party 'fair and reasonable' report (unlike LR 11). Board approval cannot be delegated and directors linked to the related party must abstain from considering the transaction. The transaction must be announced no later than when terms are agreed (in some cases MAR disclosure must be earlier). <p>For premium listed companies, compliance with DTR 7.3 will broadly be required only if LR 11.1.7R (circular, shareholder approval etc.) does not apply and DTR 7.3 does. This may be the case, for example, due to the wider definition of related party in DTR 7.3 (which says related party 'has the meaning in IFRS') than LR 11 or because LR 11 exempts a transaction and DTR 7.3 does not.</p> The Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019 made changes in relation to directors' remuneration policies, reports and payments. <ul style="list-style-type: none"> Contents requirements for policies have changed as have requirements for when a company loses a shareholder vote on a proposed policy and the availability of details of the vote. The report must include the split of fixed and variable remuneration awarded to each director, changes to the exercise price and date for exercise of shares or share options by directors, and a comparison of the annual change in directors' remuneration to that of the company's employees and its performance over a five year period. Directors' remuneration or loss of office payments that are inconsistent with the approved policy may only be made if shareholders have approved an amendment to the policy authorising the company to make the payment. <p>In June 2019, BEIS published FAQs on the Regulations.</p> <p>On 22 July 2019, GC 100 and Investor Group updated its guidance on directors' remuneration reporting (key changes include extension of coverage to include those considered to be CEO or deputy CEO, even where they are not appointed as directors).</p> 	<p>Financial years or policies made available or approved (as applicable) on or after 10 June 2019; others ongoing</p>	<p>Amber</p>



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Key contacts



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Important note

This document is intended to give a general overview of the matters covered as they affect REITs listed on the Main Market of the London Stock Exchange and by its nature cannot be exhaustive. The information in this document is not intended to be, and should not be used as, a substitute for taking legal advice for any specific situation. Law and regulation are subject to change after the date this document is published. Links to publications and websites are included for convenience and no responsibility is accepted for the contents or accuracy of those documents or websites.

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