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Environment update May 2018

Speaker introduction



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- Legal specialist in environmental and safety risk, across sectors including waste, chemicals, oil and gas, mining, infrastructure and transport.
- Advises companies on Environment Agency and HSE enforcement action, investigations and prosecutions, judicial reviews, and statutory appeals.
- 13 years experience, including 2 years in Dubai, 1 year in South Africa
- Acknowledged in the Legal 500 2016 for both environment and safety expertise. Clients describe Helen as 'very credible in the field of environmental litigation and risk'.



Agenda

-  Invasive species
-  Energy efficiency - hello MEES and goodbye CRC
-  Waste issues - criminal fines for environmental offences
-  Brexit and Defra's 25 Year Plan for the Environment



Invasive species

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Japanese knotweed case

- 2 joined cases against Network Rail Infrastructure Limited
- Japanese knotweed from railway embankment spread on to the claimants' land
- Private nuisance claims
 - Encroachment onto claimants' land (failed)
 - Presence on defendant's land - interference with quiet enjoyment / amenity (success)
- Court granted damages for:
 - The cost of knotweed surveys, treatment programmes and insurance-backed guarantees.
 - The residual diminutions in value of their properties after the treatment had occurred.
 - General damages for loss of amenity and interference with quiet enjoyment.

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Minimum Energy Efficiency Requirements and EPCs

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Until recently, EPCs were easy...



Seller / landlord must provide an EPC whenever a domestic or commercial property is built, sold or rented



EPCs are valid for ten years

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Horizontal lines for notes.

From 1 April 2018!

New prohibition on renting properties rated F or G

- Minimum Energy Efficiency Standards (Private Rented Property) (England and Wales) Regulations 2015

Landlords may not

- grant a new lease or renew an existing lease for properties with an EPC rating of F or G unless specified exemptions apply

Exclusions

- Short lets (less than 6 months)
- Long lets (99 years or more)

In force

- new lets /renewals from 1 April 2018;
- existing tenancies (domestic) from 1 April 2020
- existing tenancies (non-domestic) from 1 April 2023

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Horizontal lines for notes.

Exemptions

Landlord has made all possible "relevant energy efficiency improvements"

There are no "relevant energy efficiency improvements" that would pay for themselves within 7 years.

Third party consent is required and has been denied

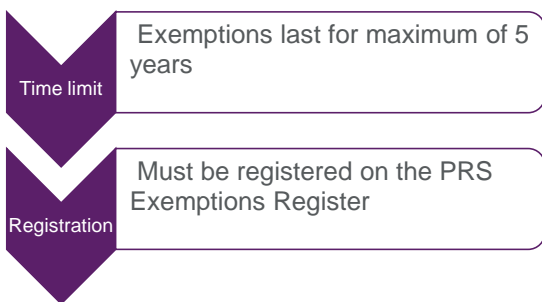
The works would result in a reduction of more than 5% of the market value of the property

Temporary exemption - landlords have a six month grace period to cure a breach (e.g. where a tenancy arises by operation of law, or as a result of tenant insolvency).

A&A DENTONS

Horizontal lines for notes.

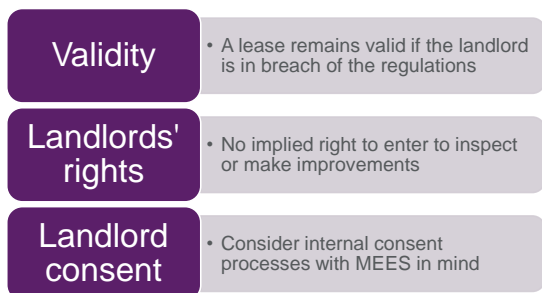
But...



Penalties for breach (per property)

Breach	Period of non compliance	Maximum Financial Penalty
Renting out a non-compliant commercial property	Up to 3 months	10% of rateable value (maximum £50,000)
Renting out a non compliance commercial property	Greater than 3 months	20% of rateable value (maximum £150,000)

Leases - points to consider



Lease drafting to deal with MEES

Landlord's right of entry	<ul style="list-style-type: none"> • To install meters (to monitor energy performance and apportion costs of energy more fairly between tenants in a multi-let building) • To do energy efficiency improvements
Tenant may not	<ul style="list-style-type: none"> • make alterations that could worsen the EPC rating • commission a new EPC, or if it does must use the landlord's energy assessor
Tenant must	<ul style="list-style-type: none"> • inform the landlord of any new EPC obtained • pay the cost (direct reimbursement or via service charge) of any improvement works done by the landlord • carry out any energy efficiency works that are needed to keep the property from becoming substandard

Commercial issues to consider

Minimum rating is 'E' now - but could change	Relationship with other statutory obligations (disability access / health and safety)	Listed buildings
Quality of EPCs	Impact on asset valuation of 'substandard' properties	Business interruption where landlords insist on energy efficiency improvements

End of the CRC Energy Efficiency Scheme

- Last date for CRC Reports - end July 2019
- Last date to surrender allowances - October 2019
- Will be replaced with an increase in the Climate Change Levy

Criminal fines for environmental offences

Thames Water Prosecution - March 2017 Fine - £20.3 million

- Breaches of Environmental Protection Act 1990 (section 33) and Environmental Permitting Regulations (regulation 12 and 38)
- 2013 - 2014 - Multiple releases of 1.4 billion litres of untreated effluent into the River Thames at six sites in Oxfordshire / Bucks
- History of non-compliance plus various operational and management failures



Tesco Prosecution Fine - £5m H&S and £3m environmental

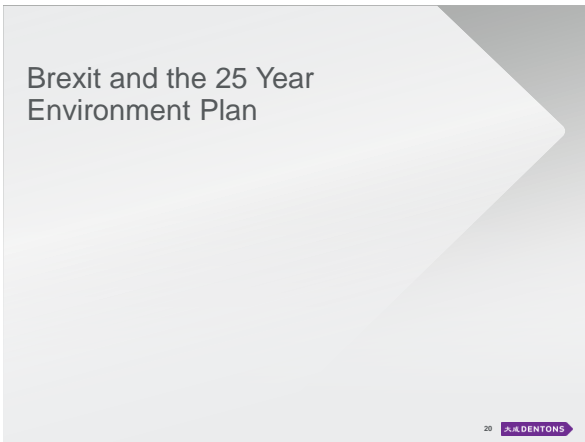
- Joint prosecution by Lancashire County Council and Environment Agency
- Uncontrolled discharge of 23,500 litres of petrol over 24 hours
- Odours caused headaches and sickness. Some escaped product entered nearby stream, killing fish and aquatic life
- Breaches of Environmental Permitting Regulations 2010 and Dangerous Substances and Explosive Atmospheres Regulations 2002



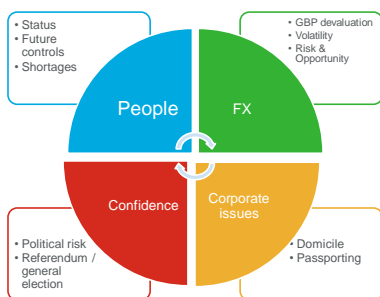
Increased criminal fines for environmental offences

Date	Polluter	Fine	Facts
January 2016	Thames Water	£1 million	Water pollution - Grand Union Canal
April 2016	Powerday Plc	£1 million plus £243,955 (EA costs)	Illegal storage and disposal of 17,000 tonnes of waste
April 2016	Yorkshire Water	£1.1 million	Water pollution - River Ouse
June 2016	United Utilities Water Ltd KMI+ (contractor)	£600,000 £333,000	Water pollution

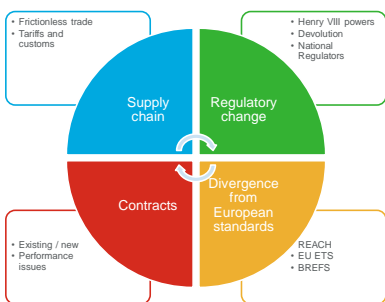
Brexit and the 25 Year Environment Plan



Brexit - Impact assessment (short term)



Brexit - Impact assessment (longer term)



Defra 25 Year Plan for the Environment

UK Politics & Policy + Add to myPT


All shops set to charge for plastic bags

England to follow Wales and Scotland in extending 5p scheme under new plan

Environment + Add to myPT

Theresa May targets plastics in war on 'throwaway culture'

Tories recast green goals with crackdown on 'source' of avoidable waste



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UK property developers required to improve environment

Builders question cost of demonstrating net green gain at project sites

Key policy points

-  Increase woodland in England - target of 12% cover by 2060 (planting 180,000 hectares by end of 2042)
-  Introduce a principle of "environmental net gain" into planning decisions
-  Resource efficiency – target to double resource productivity by 2050
-  New environmental watchdog
-  Farming - various changes to improve environmental impact of farming

Thank you



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