



POTENTIAL IMPACT OF BREXIT ON UK REAL ESTATE LAW

1. **Limited Impact**

Real estate law varies widely between EU member states and is not subject to harmonisation. Indeed, there are significant differences within the UK (i.e. Scotland and Northern Ireland have different regimes from England and Wales). The fundamental laws surrounding ownership of property do not require further legislation in any case as land ownership was always outside the ambit of the Treaty. The direct implications of Brexit for property law and procedure in the UK are therefore limited.

2. **Environmental**

2.1 Environmental policy is a devolved matter within the UK. Following Brexit it will therefore be up to each of England, Scotland, Wales and Northern Ireland to retain as much or as little of EIA, habitats and species protection, and air and water quality protections as they wish, subject to any overarching international treaty obligations and / or any provisions or processes that may form part of the UK's new trading arrangements with the EU.

2.2 Some of the most stringent aspects of environmental law and regulation in the UK will be unaffected by Brexit as they are "home grown", e.g. strict liability for cleaning up contaminated land, the requirements for specific environmental permits and the potential for liability for harm caused by pollution under common law concepts such as nuisance and negligence.

2.3 Additionally, UK legislation relating to minimum energy efficiency standards (MEES), energy performance of buildings (including EPCs) and part L of the Building Regulations could be subject to review, although a complete repeal without some replacement regime seems unlikely given the UK's statutory and international treaty commitments to reduce greenhouse gas emissions.

3. **VAT**

The UK's VAT system is underpinned by EU law - VAT directives have been implemented in the UK through domestic UK legislation. Brexit will not cause this implementing UK legislation to automatically fall away and VAT will, in principle, continue to apply in the UK. For future proofing, lawyers could check their property contracts to see if any definition of VAT is a UK (rather than EU) law based definition.

4. **Public Procurement and works contracts**

4.1 Currently certain types of works contracts (in particular public procurement contracts) need to be advertised in the *Official Journal of the European Union* ("**OJEU**") by way of a contract notice. The EU procurement rules and the implementing UK legislation are

designed to ensure that contracts are awarded fairly, transparently and without discrimination on the grounds of nationality and that all potential bidders are treated equally.

- 4.2 Following Brexit the UK may choose to remove "red tape" by repealing those aspects of the Public Contract Regulations that require UK entities to follow the OJEU notice process. However, it is unlikely that the PCC Regulations will be repealed in their entirety as they deal with transparency, fairness and procedures for public procurements in the UK more generally.

City of London Land Law Committee

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