

# Real Estate & Construction

Legal insights

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We called the 2021 budget a once in generation fiscal intervention and for the real estate and construction sectors there were a number of big changes that need to be understood, all of our guides are available on [our recovery budget hub](#).

The construction sector welcomed the Infrastructure Bank and the MMC Taskforce, both are useful interventions. There is also plenty of none budget news in the sector with the introduction of the VAT Reverse Charge, the announcement of a £3.5billion cladding fund, and the changes laid out in the Construction Playbook which are likely to come into greater focus now that we are post-Brexit. We have recently covered these topics and more - all of our blogs and guides are available on the [new Construction pages of our website](#).

If you are concerned about construction sector insolvencies and getting paid then [please sign-up for our forthcoming webinar](#) with Richard Bailey and Laughlan Steer from our construction team.

You may also be interested in our guide to taking flexible office space, our overview of the possession claims moratorium, our guide to payment fraud in the property sector and Tristan Wark's call for simpler legal language.

Goodman Derrick LLP



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“The Chancellor also announced a “super deduction” tax break, which will incentivise businesses to invest.”

## CONSTRUCTION LAW

### Chancellor gives another push to modern methods of construction - MMC

*Treasury documents published after the Chancellor's Spring budget speech announced a package of support for modern methods of construction (MMC).*

Treasury documents published after the Chancellor's Spring budget speech announced a package of support for modern methods of construction (MMC), which broadly consist of a package of techniques to drive efficiencies in construction, including off-site manufacturing and rapid methods of assembly on-site.

A taskforce consisting of world-leading experts from across government and industry will be established by the Ministry of Housing, Communities and Local Government (MHCLG), with seed funding of £10m to accelerate the delivery of MMC homes in the UK. The taskforce will be based in the MHCLG's new offices in Wolverhampton and will work closely with regional authorities and mayors, providing support in the achievement of national house-building

targets.

The Chancellor also announced a “super deduction” tax break, which will incentivise businesses to invest in the plant and equipment needed for the MMC factory production processes.

The announcement is to be welcomed as MMC is a key component of the strategy spelt out by government in the Construction Playbook to achieve a greener and more efficient construction industry. The new measures will increase the drive towards MMC which had already been gathering momentum, following the government’s appointment of Mark Farmer as an MMC champion in 2019, and the investment of substantial sums in MMC housing projects to date.

Goodman Derrick’s construction team has advised a number of clients in relation to their participation in MMC projects, and looks forward to the adoption of a new generation of smart contracts using modern IT methods to contribute to the drive towards greater efficiency in the construction industry generally.



## PROPERTY FRAUD

### *Fighting against authorised push payment fraud*

*Dan Dodman, Partner in our Dispute Resolution team, has been published in Property Week on authorised push payment fraud. A continuing trend, Authorised Push Payment fraud, or “APP” fraud, is rife in lockdown Britain, particularly in high reward industries like the property sector.*

[Dan Dodman](#), Partner in our [Dispute Resolution](#) team, has been published in [Property Week](#) on authorised push payment fraud.

A continuing trend, Authorised Push Payment fraud, or “APP” fraud, is rife in lockdown Britain, particularly in high reward industries like the property sector.

*“Authorised Push Payment scams occur when someone is deceived into authorising a payment to an account that they believe belongs to a legitimate person or company. Most commonly, fraudsters gain access to an individual’s information and then present themselves as a company with whom the hacked account owner is already doing business.”*

Key issues to consider include:

- What is authorised push payment fraud?
- How do I prevent authorised push payment fraud?
- How do I make a formal complaint of authorised push payment fraud?



**“** *How do I make a formal complaint of authorised push payment fraud?*

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- What is the Authorised Push Payment Scam Voluntary Code?
- How can I get money back from authorised push payment fraud?

The full article can be read via [Property Week](#).



**Tom Pemberton**

Partner

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“ The Chancellor said that at least £40 billion of private finance could be unlocked by this initial support.

## CONSTRUCTION LAW

### *UK Infrastructure Bank - a timely boost from the Treasury*

*This is a very exciting development which it will be hoped will improve on the support previously provided, with its new focus on delivering the government’s social and environmental policy objectives.*

In his 2021 Budget speech, the Chancellor announced the foundation of the UK Infrastructure Bank, as trailed by the Treasury last November. This is a very exciting development which it will be hoped will improve on the support previously provided, with its new focus on delivering the government’s social and environmental policy objectives.

The Bank will be launched this Spring and based in Leeds. It will be supported by £12 billion of initial capital provided by the Treasury and a further £10 billion in government guarantees. The Chancellor said that at least £40 billion of private finance could be unlocked by this initial support, and referred to the role of the new funding in supporting the Conservative Party’s “levelling up” agenda and the transition to net-zero, making it clear that it will only be used to finance projects that contribute to the “green industrial revolution”.

Complementing his announcement of the new Bank, the Chancellor also confirmed the planned launch of the UK’s first sovereign green bond to be offered through National Savings & Investments (NS&I) later this year. This has been trailed by the government as a “world first”. The green bond is intended to give UK savers the opportunity to support green projects while boosting their savings.

Following the Budget speech, the Treasury has released documents which confirmed that the government is also planning to issue at least £15 billion of green gilts in the next financial year. These will help to fund important infrastructure investment which will tackle climate change and other environmental challenges.

The announcements are consistent with the ambition of UK governments since the turn of the millennium to be at the forefront of the global effort to tackle climate change.

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We will follow up with further comment on the new funding when details are released.



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Real Estate Dispute  
Resolution



**“** In brief, landlords must provide tenants with no less than 6 months notice for a section 21 notice.

## REAL ESTATE DISPUTE RESOLUTION

### *Commercial and residential possession claims update*

*Following a winter truce on the enforcement of residential possession claim orders these temporary measures have now been extended to 30 July 2021. Chloe Benson summarises the recent legislation changes.*

In August 2020, Civil Procedure Rule Practice Direction 55C was introduced. CPR 55C provides a temporary modification to the CPR 55 possession claims procedure and was originally due to apply from 20 September 2020 to 28 March 2021. It was introduced to assist the Courts in managing the backlog of possession claims following the expiry of the general stay on possessions which expired in September 2020.

CPR 55C sets out the procedural steps required to reactivate stayed possession claims, as well as introducing procedural changes applying both to existing claims and the issue of new possession claims. Steps include the requirement to serve a Reactivation Notice before a stayed claim is listed, relisted or heard as well as requiring landlords to provide additional information to the Court as to the effect of the Coronavirus pandemic on the tenant and any dependents.

On 29 January 2021 these temporary measures were extended to 30 July 2021.

#### Residential Possessions/Notices for Possession

On 10 March 2021, the government announced that the increased notice periods to be given to residential tenants will continue to apply until at least 31 May 2021.

In brief, landlords must provide tenants with no less than 6 months notice for a section 21 notice (as a reminder, section 21 notices cannot be served within the first 4 months of the tenancy). The notice period for the majority of section 8 notices is currently 6 months. However, there are some exceptions to the rule, such as where notice is served on grounds relating to rent arrears. In those circumstances, the notice period is 4 weeks where the tenant is in at least 6 months' rent arrears.

#### Extension on the Ban on Evictions

A “winter truce” on the enforcement of possession orders (subject to a few

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exemptions) was introduced by the Government late last year. This means that enforcement officers are unable to serve a notice of eviction on tenants or execute a writ or warrant of possession for a temporary period. This was originally due to apply until 11 January 2021 and had been extended until 21 February 2021, but this has been extended again until 31 March 2021.

This was originally due to apply until 11 January 2021 and had been extended until 21 February 2021. It was subsequently extended to 31 March 2021 and as of 10 March 2021 has been extended further to 31 May 2021.

The government has reiterated in their most recent press release of 10 March 2021 that any tenants who are able to pay their rent should continue to do so.

## Forfeiture of Commercial Leases

Section 82 of the Coronavirus Act 2020 prevents forfeiture of commercial leases between 26 March 2020 and 30 June 2021 on the basis of non-payment of rent. The further extension was announced on 10 March 2021.

Proceedings for possession which were issued prior to 3 August 2020 and any new claims issued from this date onwards are subject to PD 55C and additional procedural steps will be required in order to progress those claims (as set out above).

Landlords are not restricted in forfeiting a tenant's lease for other breaches. The restriction is solely in relation to non payment of rent.

## Other Press Release Highlights

A Statutory Instrument to extend the restriction on the use of the Commercial Rent Arrears Recovery (CRAR) will shortly be introduced. It will increase the total number of days' outstanding rent required for CRAR to be used to 457 days' between 25 March and 23 June, and 554 days' between the 24 and 30 June.

Finally, the press release has reiterated the government's intention to carry out a review of commercial landlord and tenant legislation, including Part 2 of the Landlord and Tenant Act 1954, indicating that this will be launched later this year.



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“Adherence to these policies is envisaged on a “comply or explain” basis.

## CONSTRUCTION PLAYBOOK

### *The EU-UK trade deal has heralded a renewed interest in the Construction Playbook*

*The document sets out 14 key policies which pledge to drive “better, faster greener delivery” in respect of the assessment, procurement and delivery of public works.*

The welcome certainty of the Christmas Eve trade deal heralded a renewed interest in the Construction Playbook published earlier in December 2020.

That document sets out 14 key policies which pledge to drive “better, faster greener delivery” in respect of the assessment, procurement and delivery of public works.

Adherence to these policies is envisaged on a “comply or explain” basis for all central government departments and their arm's length bodies. There is also an expectation for sub-contracting authorities under the PCR 2015 to adopt these policies.

The 14 policies are produced in summary below:

1. Publishing pipelines of government contracts to aid suppliers' understanding of demands and opportunities.
2. Regular and early assessment of the health and capability of the market with a view to encouraging innovation and potential entrants to market.
3. Utilising longer-term plans and contracting without stifling innovation or competition.
4. Standardising components through industry collaboration to facilitate delivery of digital and offsite manufacturing technologies.
5. Standardise the management, security and exchange of project data by using Building Information Management (BIM).
6. Engage supply chains early to promote outcome-based designs and avoid downstream issues.
7. Prioritise specification over scope to promote innovation.
8. Benchmarking against previous projects to promote data-driven decision making and better ascertainment of life-cycle costing.
9. Allow an evidence- based process to govern the choice of delivery structure.
10. Promote collaboration and risk management (including data exchange and value improvement) in contracts by setting clear aims.
11. Enhancing perception of Government as a client through market engagement and risk allocation.
12. Promote risk/reward through contractual incentive payment mechanisms. Also ensuring that price correctly reflects risk.
13. Greater consideration of insolvency when selecting a supplier.
14. Requiring “resolution planning information” for critical works contracts, to alleviate risk of supplier insolvency.

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Only time will tell how enthusiastically the ambitious Playbook policies are adopted but in the short term, it appears to be mostly business as usual for UK firms involved in public projects.



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Real Estate

in

“ Kanye West recently criticised lawyers for not speaking in plain English in a tweet headlined ‘LAWYERS’.

## REAL ESTATE

### *Yeezy does it - Tristan Wark addresses Kanye West's appeal for simple legal language*

*Tristan Wark outlines how his personal crusade for straightforward language in legal documents found unlikely support in Kanye West.*

Kanye West recently criticised lawyers for not speaking in plain English in a tweet headlined ‘LAWYERS’, West said:

*“The first thing that changes about record deals is actually lawyers. We need plain English contracts. A lawyers [sic] role is to IMPROVE deals... not charge for contracts we cannot understand or track. Re-write deals to be understandable from FIRST READ.”*

Tristan Wark took on Kanye’s challenge in his latest feature in property sector bible *EG*, Tristan covers:

- Leases - the Clearlet / Model Commercial Lease movement to make leases more understandable - what are the benefits to the parties of this? What are the downsides?
- Latin phrases used in property law - is using Latin helpful for anyone?
- Simplifying complex documentation in Real Estate law, such as Overages and Contracts
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[You can read Tristan's full article on the EG website by clicking here](#) or by contacting Tristan using the details provided.



“ Goodman Derrick's Construction Disputes team will be hosting a webinar to help attendees manage risk and protect themselves.

## CONSTRUCTION WEBINAR

### *Protecting Your Position and Getting Paid - 14 April 2021*

*Goodman Derrick's Construction Disputes team will be hosting a webinar to help attendees manage risk and protect themselves.*

2020 was a bad year for the construction industry and the economy as a whole, the beginning of 2021 has been no better. The UK's construction sector continues to suffer the double whammy of Covid-19 and the UK's transition from the European Union bringing increasing pressure on supply chains and workforces and significant delays and disruption to work. All matters that we can no longer blame on force majeure.

Money is now running tight and the risk of failure is growing. Claims are bubbling under and economic pressure is growing with the additional looming risk of government support coming to an end.

Goodman Derrick's Construction Disputes team will be hosting a webinar to help attendees manage risk and protect themselves. Our webinar will look at construction disputes from an English perspective, it will cover:

- An overview of common claims and contemporary challenges created by Covid-19 and the UK's new status
- Litigation and alternatives to litigation, including disputes avoidance, arbitration, mediation and adjudication
- An adjudication update - is it the best way to get paid?
- Getting paid in pressurised times
- How to protect yourselves against insolvency issues

[Please click here to register](#)

#### Important Details

- Date: 14 April 2021
- Time: 11:00 AM UTC
- Duration: 60 min
- Language: English
- Format: Online

#### Expert Speakers

##### **Richard Bailey, Partner, Head of Construction**

[Richard Bailey](#) leads Construction team at Goodman Derrick, providing specialist advice to contractors, subcontractors, property owners, developers, consultants and project stakeholders. In 2020 the Legal 500 noted that: "Richard Bailey is an outstanding tactician and strategist and has the tact and diplomatic skills needed to provide outstanding service to their clients. He is

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a real pleasure to work with and is peerless in giving sound advice - his knowledge of the legal nuances in his practice areas is at the highest levels."

**Laughlan Steer, Associate, Construction**

[Laughlan Steer](#) is an experienced and well-rounded construction lawyer. He provides specialist dispute avoidance/resolution advice and non-contentious advice to an array of clients, including employers, architects, contractors and sub-contractors. His construction disputes workload often relates to defects, design, delays and final account valuations in both adjudications and litigation (including enforcement proceedings). Laughlan has also led a number of successful mediations. He also provides talks and bespoke training programmes for his clients, recent topics include payment, delay, design liability, variations, and renewable technology.

[Please click here to register](#)

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These guides are for general information and interest only and should not be relied upon as providing specific legal advice. If you require any further information about the issues raised in this article please contact the author or call 0207 404 0606 and ask to speak to your usual Goodman Derrick contact.