



Construction and Engineering

PROFESSIONAL INDEMNITY INSURANCE

In light of the impact of the changed PII market on the ability of contractors / consultants to obtain the levels of coverage typically sought, the Office of Government Procurement published a [Revised Guidance Note](#) and a [Template Letter](#) to contractors / consultants for use in respect of temporary PII arrangements. The objective is to ensure that contractors / consultants can continue to participate in competitions for public works projects and maintain levels of PII proportionate to those projects.

Guidance Note 1.1.2, Procurement Documents, and Conditions of Engagement

[Guidance Note 1.1.2](#) looks at current PII market conditions, requirements at tender stage, and management of existing contractual obligations.

For consultancy services, the [Suitability Assessment Questionnaires](#) will now include statements on required cover for both an each and every claim basis and an annual aggregate basis. Both types of insurance are acceptable. Where the successful tenderer is only able to provide insurance on an annual aggregate basis they can be awarded the contract but will be required to obtain cover on an each and every claim basis should it become available at rates defined in the tender. (Recommended levels that should be required for each of these types of insurance are set out at Appendix I of the Guidance Note.)

For contractors, the [Suitability Assessment Questionnaires](#) reference PII insurance on an annual aggregate basis with a note that in the present market, contractors are normally not able to obtain cover on an each and every claim basis and that, if cover is required on an each and every claim basis, that should be ascertained before requesting it. Contracting authorities are advised to consult the figures in Appendix II of the Guidance Note to see appropriate levels of PII on an annual aggregate basis.

The Guidance Note also considers the merits of obtaining project insurance in situations where pre-tender market engagement indicates that the attainable level of insurance is likely to fall short of the required level.

The Guidance Note also describes requirements post-contract award. Consultants / contractors unable to obtain cover at the levels required under their contract should notify the client as soon as they become aware that they are unable to meet their obligations. The contracting authority should request the consultant/contractor to provide written confirmation from their insurer that the change in the policy is not as a result of claims made against the consultant / contractor. Once confirmed, the contracting authority should not deduct the cost of taking out the required level of insurance from the contract sum where the consultant / contractor fails to maintain the required insurances. The contracting authority may consider a contingency PII policy (taken out and paid for by the contracting authority) such as Owners Protective PII.



Template Letter

The template letter is for use where a consultant cannot provide PII on an each and every claim basis at the level stated in an existing contract / collateral warranty. It sets out the conditions that the consultant must meet that will permit the Client to accept temporary alternative insurance arrangements, which are subject to review on an annual basis. The press release is [here](#) and the letter is [here – MF 1.29](#).

Amendments to the Public Works Contracts

In H2 2022 the OGP intends to publish an amendment to the standard forms of public works contract and conditions of engagement to introduce a cap on contractors' and consultants' liability.

The OGP also announced some general updating of documents (see end of page [here](#)).

COVID-19

The CIF has published V11 of the [Standard Operating Protocol](#). It states that "the approach endorsed by the CIF for construction sites is that the general wearing of face masks / face coverings will not be required, unless it has been determined as a requirement from a site or task-specific risk assessment, or if dictated by site rules". The updated SOP is intended to reflect the [public health measures](#) coming into place on 28 February. The Government also previously published the [Transitional Protocol: Good Practice Guidance for Continuing to Prevent the Spread of COVID-19](#) (see further below in the Employment section). It recommends keeping COVID-19 Response Plans in place and up-to-date; maintaining policies and procedures for prompt identification and isolation of workers who may have symptoms; and maintaining COVID-19 Infection Prevention and Control measures. In addition, the HSA has updated its [Template COVID-19 Response Plan and Checklists](#).

In the UK, the Construction Leadership Council published V9.1 of its [Site Operating Procedures](#) and V6 of its [Face Covering Guidance](#). We understand changes are minimal. While, similar to Ireland, UK Government advice has changed, the CLC's position as at the end of January was that, where a workplace is crowded and enclosed and workers come into contact with others they do not normally meet, their employer should make face coverings available and they should be worn.

DESIGN RISK AND BUILDING CONTROL

The CIF published a [Practice Note](#) on Design Risk and the Building Control Regulations. The CIF considers that the increasing level of complexity, technology and specialisation in modern construction is leading to additional circumstances where the technical design of specified works items continues after the main contract has been awarded (or is being allocated to the contractor / specialist / sub-contractor during at tender stage). The CIF states that the Practice Note is intended to assist these parties in managing the risk associated with design responsibility and obligations under the Building Control Regulations.

ADJUDICATION

Last month we looked at the case of John Paul Construction v Tipperary Co-operative Creamery Ltd., which is the fourth example of the High Court in Ireland enforcing an adjudicator's decision. Our website briefing is available [here](#).

Energy & Climate



EU

This month the invasion of Ukraine brought war to Europe and suffering to many millions of people. Energy concerns have been evident for some time. In January the EU indicated it was [exploring alternative sources](#) for gas importation (US, Norway, Qatar, Azerbaijan, Algeria and others) and Commissioner Simson [opened an ad hoc meeting](#) of the EU Gas Coordination Group with experts from Member States to discuss security of supply and storage levels. [Recent reports](#) suggest the EU is considering requiring Member States to fill their gas storage to prescribed levels. Germany has [halted](#) the certification process for the Nord Stream 2 Baltic Sea gas pipeline project. The statement of the EU's response to the invasion of the Ukraine as at the end of February is available [here](#).

Renewable Energy Directive || A short [corrigendum](#) was issued for Directive (EU) 2018/2001. It corrects the date in Article 35(3) up to which the Commission is permitted to make delegated acts for calculating the quantity of energy used for cooling and district cooling (31 December 2021).

Consultation: Permit granting for renewables & CPPAs || The Commission is [consulting](#) on how to improve permit-granting procedures for renewables projects and better facilitate corporate Power Purchase Agreements with a view to preparing a guidance document aimed at accelerating renewables' deployment. The consultation looks at barriers and good practices, with general questions and specific questions for public authorities, project promoters and associations. || **Closing date: 12 April 2022.**

Consultation: Solar energy || The Commission is [consulting](#) as it prepares a strategy on solar energy. The consultation underlines that the cost-efficient development of the technology within a more integrated energy system cannot be sufficiently achieved at Member State level alone, and seeks to clarify the measures needed. || **Closing date: 12 April 2022.**

Consultation: Greening and digitalisation of mobility, transport and automotive ecosystem || As part of the process of developing transition pathways in a range of sectors, the Commission [invites views](#) on how the mobility ecosystem can accomplish the green and digital transitions while increasing their resilience. || **Closing date: 31 March 2022.**

Methane emissions || Last month we mentioned the proposal for a new [Regulation](#) aiming to establish a legal framework requiring the conventional energy sector to measure, report and verify ("MRV") methane emissions. Rules would require companies to detect and repair methane leaks and stop venting and flaring practices except in narrowly defined circumstances. On the other hand, obligations regarding energy imports to the EU would focus, at least to start with, on requiring importers to obtain data about suppliers' MRV and mitigation practices. As the Regulation is considered in Parliament, some MEPs have [raised concerns](#) the proposal does not do enough to tackle upstream methane emissions (emitted before oil/gas enters the EU). The Commission's view is that its proposal is ambitious but realistic, and that methane emissions could be added to the Carbon Border Adjustment Mechanism, also under development as part of Fit for 55. Meanwhile, the [IEA considers](#) that methane emissions from the energy sector are 70% higher than official figures. || In other news, Member States approved the marketing of a [feed additive](#) to reduce methane emissions from cattle.

Emissions || [Eurostat reports](#) that, in 2020, [GHG](#) emissions generated by economic activities of EU resident units stood at 3.5 billion tonnes of [CO2 equivalents](#). This was a 9% decrease on 2019 figures and a 24% decrease on 2008 figures. The activity with the highest emissions in 2020 was manufacturing (740 million tonnes of CO2-eq) followed by the supply of electricity, gas, steam and air conditioning (719 million tonnes of CO2-eq) and activities by households (693 million tonnes of CO2-eq). || The [Copernicus Climate Change Service](#) also published its [conclusions](#) on air surface temperatures and greenhouse gas concentrations for 2021. The upward trend in global temperatures persists and carbon dioxide and methane concentrations continue to increase.

Regulation of energy statistics || The Commission adopted what it describes as the [most encompassing](#) amendment of energy statistics regulation ever conducted. The intention is to provide new and more detailed data on generation, efficiency, consumption and decarbonisation initiatives including the [Energy Union](#) and [Fit for 55](#), the [Hydrogen Strategy](#) and the [Initiative on Batteries](#). The new statistics will be first available for the year 2022.

Work Programme on Standardisation || The Commission published the 2022 annual Union [work programme](#) for European standardisation which identifies priorities for the revision of technical standards to support several areas including the green and digital transitions, the internal markets for renewable & natural gases and hydrogen, energy efficiency and climate, climate resilience of infrastructure and cement, hydrogen technologies and components, transport and storage of hydrogen, certification of chips, and smart contracts for data spaces.

Batteries || A European Battery Academy was announced at the [sixth Ministerial meeting](#) of the European Battery Alliance to develop and roll out high quality training programmes.

INTERNAL MARKETS

New Joint Structure || ENTSO-E announced that NEMOs and TSOs have implemented a new joint governance structure called the [Market Coupling Steering Committee](#). It is intended to ensure co-ordination, efficiency and faster decision-making as regards market coupling in the day-ahead and intraday timeframes.

Regional Coordination Centres || ACER [invites views](#) on ENTSO-E's proposed methodology for training and certification of staff working for RCCs. || **Closing Date: 18 May 2022.**

Knowledge Partnership || ACER signed a knowledge partnership with the [Florence School of Regulation](#) with the aim of informing the energy policy debate and advancing regulatory thinking in Europe.



TYNDP || ENTSO-E published the draft list of the electricity [transmission and storage projects](#) that will be assessed in the next edition of the TYNDP. They include the North-South IC, the Celtic IC, the Greenlink IC, MaresConnect IC, Lir IC, Sea-Socket for connection of West coast ORE, associated converter stations, a line from Turleenan in NI to Woodland in Ireland, and a pumped storage hydro scheme. || ENTSO-E also published a guiding instrument for the [collaborative research programme](#) of TSOs for the next five years.

Resource Adequacy || ACER has [decided](#) not to approve ENTSO-E's first pan-European resource adequacy assessment due to shortcomings. ACER considers that ENTSO-E has overestimated resource adequacy concerns: it underestimates the level of profits that resources could make in the market; underestimates the volume of capacity available for cross-zonal trade; and does not recognise the value of demand-side response sufficiently.

Electricity Markets || ACER's overview of wholesale [electricity](#) markets in 2021 is now available. Economic recovery drove demand and there was an increase in coal generation, meaning generation from fossil fuels did not decrease. || ACER requested [information](#) from NEMOs operating in the Single Intraday Coupling Market for the purpose of monitoring the market's integrity and transparency in line with REMIT. || ACER has also invited European associations of energy market participants to express interest by **4 March 2022** in being involved in [REMIT Roundtable meetings](#) in 2022 and 2023.

Gas Markets || ACER's overview of [wholesale gas markets](#) in 2021 is now available. Supply did not keep up with overall increased demand. LNG will play an increasing role in future years. There was some fall in power sector consumption as there was gas-to-coal switching for generation due to the rising gas prices.

Regulatory Frameworks || The CEER published a report describing [Regulatory Frameworks](#) for European Energy Networks 2021 – it includes overviews for Ireland, NI & GB.

INVESTMENT

Request for proposals of green technology projects

|| [Breakthrough Energy Catalyst published a request for proposals](#) for large-scale deep green tech projects. The request is intended to mobilise €820 million investment between 2022-2026 in high-potential projects in clean hydrogen, sustainable aviation fuels, direct air capture, and long-duration energy storage. || The RFP is expected to remain open for submissions until 31 December 2027 (or until all funds are fully committed). Respondents seeking funding in the first half of 2023 must provide their Part I submission by **13 May 2022**.

Renewable Energy Financing Mechanism || Member States have until 15 March to [express interest](#) in the EU [renewable energy financing mechanism](#). On the basis of expressed interest, the Commission will match the preferences and draft the conditions for the first ever EU-wide tender for renewable energy projects. On that basis the Commission will launch a call for proposals to project promoters.

Taxonomy Regulation || The publication of a Complementary Climate Delegated Act to include certain gas and nuclear activities in the transition activities category of the Taxonomy Regulation attracted significant attention. The Commission's position is that these are activities that cannot yet be replaced by technologically and economically feasible low-carbon alternatives, but do contribute to climate change mitigation and with the potential to play a major role in the transition to a climate-neutral economy without crowding out investment in renewables. Once the scrutiny period is over the complementary delegated act will enter into force and apply from 1 January 2023. || [Q&A](#) || [Press Release](#) || [Fact Sheet](#) || The Commission also published an [interpretative notice](#) on certain legal provisions of the Article 8 Disclosures Delegated Act under the Taxonomy Regulation. This document complements the previously-published [FAQs](#), which will be revised as additional queries arise.

Connecting Europe Facility || Member States agreed to [invest](#) €1.037 billion in five cross-border infrastructure projects under the [Connecting Europe Facility](#) for trans-

European energy networks. The largest amount of funding will go to the EuroAsia interconnector project, connecting Cyprus to the European grid.

CLIMATE LITIGATION

UK Net Zero Strategy || ClientEarth [announced](#) that it is applying for leave to judicially review the UK Government's [Net Zero Strategy](#). ClientEarth argues that the Strategy breaches sections 13 and 14 of the [Climate Change Act 2008](#) (which provide duties to prepare, and report on, proposals for meeting carbon budgets). It intends to argue that these provisions require the Government to demonstrate by means of a quantified assessment that it expects existing and planned policies to deliver the necessary emissions reductions to meet budgets but that the only assessment provided in the Net Zero Strategy shows UK emissions being more than double the level allowed under the sixth carbon budget (with the fourth and fifth carbon budgets also being exceeded). ClientEarth intends to plead breaches of the Human Rights Act 1998, arguing that legislation must be given effect in such a way to comply with Articles 2, 8 and 14 of the Convention (rights to life, private and family life and non-discrimination (in this case on the basis of age, the argument being that the alleged breaches have a disproportionate effect on young people)).

Friends of the Earth also [announced](#) it has applied for leave to judicially review the Net Zero Strategy, as well as the Government's October 2021 Heat and Buildings Strategy. It argues it did not assess the impacts of this strategy on protected groups such as disabled or elderly people.

Update on French litigation || Last February we mentioned litigation taken by Oxfam and other NGOs in which the Paris Administrative Court [found](#) that the French State was responsible for aggravating ecological damage by failing to do enough to meet its emissions reduction targets. It ordered the State to take all allowed measures to achieve France's emissions targets in order to prevent future aggravation of ecological damage. It determined that an appropriate remedy would focus on addressing the



failure to meet emissions reduction targets (rather than awarding damages). A further ruling was awaited and, in late 2021, the Court delivered this [ruling](#). It ordered the State, by the end of 2022, to take all useful measures likely to repair the ecological damage caused by its failure and to prevent the aggravation of the damage up to the uncompensated share of emissions under the first carbon budget.

DOMESTIC DEVELOPMENTS

Internal Market in Electricity Regulations || Certain provisions of the Internal Market in Electricity [Directive \(EU\) 2019/944](#) have been transposed into Irish law in two sets of Regulations, the European Union (Internal Market in Electricity) Regulations 2022 ([S.I. No. 20/2022](#)) and European Union (Internal Market in Electricity) (No. 2) Regulations 2022 ([S.I. No. 37 of 2022](#)). Provisions in the first set of Regulations include the following:

- Amendments to section 9(1) of the Electricity Regulation Act 1999 to give the CRU additional functions:
 - o to ensure a level playing field where electricity undertakings are subject to transparent, proportionate and non-discriminatory rules, fees and treatment, in particular with respect to balancing responsibility, access to wholesale markets, access to data, switching processes and billing regimes and, where applicable, licensing, and
 - o to ensure that market participants from third countries, when operating within the internal market for electricity, comply with applicable Union and national law, including that concerning environmental and safety policy.
- Amendments to section 9(3) of the Electricity Regulation Act 1999 to require the Minister and the CRU to carry out their functions and exercise the powers conferred on them in a manner which, in

relation to electricity, ensures that no undue barriers exist for electricity as regards market entry, operation and exit, without prejudice to any competence retained in relation to third countries.

- Amendments to section 9(4) of the Electricity Regulation Act 1999 to require the Minister and the CRU, in carrying out functions under Article 59 (Duties and powers of the regulatory authorities) of the IME Directive, to have regard to the need to ensure that electricity prices reflect actual demand and supply. Further, nothing shall unduly hamper – (i) cross-border trade in electricity, (ii) consumer participation, including through demand response, and (iii) investments into, in particular, variable and flexible energy generation, energy storage and the deployment of electromobility and new interconnectors between Member States.
- There are amendments to section 14 of the Electricity Regulation Act 1999 on licences to generate and supply to cover carrying out the functions of aggregation, demand response, and energy storage. It is an offence to carry out these activities without authorisation.
- Amendments to section 16A of the Electricity Regulation Act 1999 on construction of an interconnector require the Minister to take into account the electricity interconnection targets set out in point (1) of Article 4(d) of Regulation (EU) 2018/1999 on the Governance of the Energy Union.
- Amendments to section 34 of the Electricity Regulation Act 1999 on terms for connection to and use of systems include requirements relating to a refusal to offer an agreement, and requirements to provide information on measures necessary to reinforce the network.
- The requirement on the CRU to grant permission for a direct line under section 37 must be done without making such permission subject to disproportionate administrative procedures or costs. However, section 1A (requiring the application to first be refused / disputed) has not been amended. The CRU can refuse a permission if it would obstruct the application of the

provisions on public service obligations in Article 9 of the IME Directive. Supplying electricity through a direct line shall not affect the possibility of contracting electricity in accordance with Article 6 of the IME Directive.

- One of the criteria for granting an authorisation to construct a generating station is changed to align with increased renewable targets.
- Remaining amendments deal with free choice of electricity supplier, market-based supply prices, basic contractual rights, entitlement to a dynamic electricity price contract, right to switch, comparison tools, billing information, single points of contact and out of court dispute settlement, universal service, tasks of DSOs (including as neutral market facilitator for system services), and integration of electromobility to the electricity network.
- There are further requirements in the areas of DSO unbundling and there is prohibition on the TSO or DSO from owning or operating energy storage.

The [second set](#) of Regulations are concerned with smart metering requirements, functionalities, and data management, and interoperability of energy services in the EU. They are intended to update the legal basis for the National Smart Metering Programme in line with the requirements of the Clean Energy Package - to transpose Articles 19 (Smart metering systems) & 24 (Interoperability requirements and procedures for access to data) of the [IME Directive](#). While these do not amend the Electricity Regulation Act 1999 or European Communities (Internal Market in Electricity) Regulations 2000, they do set out new functions for the CRU at Regulation 3, relevant to energy management services, innovative pricing, interoperable smart metering systems, and active participation of consumers in the electricity market.



Fit for 55 Gas Proposals || Last month we mentioned the European Commission's proposals to revise the internal market in gas legislation and introduce new legislation on methane emissions reduction. The Government is now [consulting](#) to inform Ireland's views on these proposals. || **Closing date: 15 April 2022.** || It is worth noting that ENSTOG published its [high-level position paper](#) on the proposals – it broadly welcomes the proposals but suggests improvements in a number of areas.

Electricity Costs Bill || The [Electricity Costs \(Domestic Electricity Accounts\) Emergency Measures Bill 2022](#) is before Dáil Éireann for consideration following amendments proposed by the Seanad. It would provide for an Electricity Costs Emergency Benefit Scheme to make a once-off payment in 2022 to domestic electricity accounts and, for that purpose, to confer functions on the distribution system operator and electricity suppliers.

Offshore Phase 1 || The Government held a [short consultation](#) setting out the proposed approach to assessing Phase 1 Projects (i.e. the [Relevant Projects](#)) for the grant of Maritime Area Consents ("MAC") and information on the MAC Regime for Phase 1 Projects. It is anticipated that the first MACs will be launched in H2 2022.

Capacity Market || The SEMO published [provisional results](#) for T-3-2024-2025 for the period commencing October 2024. The results include over 1100MW of new gas-fired generation and 120 MW of battery storage. Further results for the period commencing October 2025 are anticipated next month. Procurement of temporary generation for next winter is underway. The Minister welcomed the provisional results [here](#).

EV Charging Infrastructure || Minister of State Hildegard Naughton TD called for a [swift rollout of charging infrastructure](#) and indicated that the Department of Transport is developing a National EV Charging Infrastructure Strategy. || Re-opening of the [EV taxi](#)

[scheme](#) was announced, comprising €15 million of grant support in 2022.

National Heat Study || The SEAI published the [National Heat Study](#). As might be anticipated it indicates an urgent need for fast deployment of sustainable technologies and indicates that a combination of district heating and heat pumps will play a vital role in fast decarbonisation.

Retrofitting || The Government launched the [National Retrofitting Scheme](#) to support the target of achieving 500,000 home upgrades by 2030. The main measures are increased grants for the upgrade of residential houses to a B2 BER standard; a one stop shop project management service; more free energy upgrades for those at risk of energy poverty; increased grant rates for insulation; and Exchequer investment of €8 billion up to 2030 to support scale up of the supply chain. || It was also reported that a new fund designed to improve the energy efficiency of infrastructure such as buildings, the Solas Sustainable Energy Fund ICAV, has received an investment of €30 million from the EIB (see [here](#)) and €20 million from the Ireland Strategic Investment Fund (see Irish Times report [here](#)). The fund has a target size of €200 million and intends to provide debt financing to energy service companies to carry out energy efficiency and small renewable energy projects, mainly in the EU.

Research || The SEAI announced it awarded [49 new projects](#) €19.8 million funding to support a wide range of energy research.

CRITICAL INFRASTRUCTURE

EirGrid 2022 || EirGrid published its list of planned [publications](#) and [consultations](#) along with its [Stakeholder Engagement Plan](#). Included are: a Community Benefit Policy; EWIC Trading Arrangements and consultation on forwards access arrangements for EWIC; and consultation on Balancing Market Principles.

Flexible Demand || EirGrid published a revised [Flexible Demand Operating Protocol](#) to be entered into by customers in respect of individual sites. Failure of the customer to respond to an instruction to reduce their electrical demand will result in disconnection of the customer from the system without further notice.

ESB || ESB delivered its strategy, [Driven to Make a Difference: Net Zero by 2040](#). Three strategic ambitions are decarbonised electricity, empowered customers, and resilient infrastructure (which includes a statement that ESB Networks and NIE Networks will invest in smart, reliable network infrastructure to enable increasing levels of renewable generation and to underpin widespread electrification of transport and heating).

CRU BUSINESS

GNI's TYNDP 2021 (CRU/2022/03) || The CRU is consulting on GNI's proposed Ten-year Network Development Plan 2021. GNI indicates its commitment to delivery of a net-zero carbon gas network by 2050 by gradually replacing natural gas with renewable gases, such as biomethane and hydrogen. It indicates that it will continue to explore opportunities for greater energy system integration, building on the existing synergy between the gas and electricity transmission systems. It indicates it has begun work packages to ensure the gas network is ready to transport hydrogen when it arrives in blends and at scale. || Annual gas demand is expected to grow by 15% between 2020/21 and 2029/30 (under the Best Estimate demand scenario) albeit that medium-term Best Estimate growth is projected at 28% over the first seven years of the horizon, where there is a more direct tracking of gas demand to electricity demand growth, ahead of projected build out of offshore wind generation. || GNI has developed a combined offering of natural gas, renewable gas and dark fibre services (through Aurora Telecom) to provide the data centre sector with its primary source of energy and fibre connectivity. || GNI is conducting a project for a nationwide CNG fuelling network, co-located in existing forecourts, on major routes and/or close to urban centres, to help meet the requirements of the EU's Alternative Fuels Directive. || **Closing date: 1 March 2022.**



Suppliers - PSO Levy ([CRU/2022/09](#)) || The CRU notified suppliers of the information requirements and timeline for 2022/23 PSO submissions under both the REFIT and RESS schemes.

Clean Export Guarantee ([CRU/2022/07](#)) || The CRU published guidance to electricity suppliers on the interim Clean Export Guarantee – the payment to renewables self-consumers for their surplus electricity. The CRU expects suppliers to set a CEG export-tariff reflecting a fair market rate and intends to review arrangements after 12 months, with the possibility of introducing a non-zero floor if the review identifies evidence that suppliers are not providing fair remuneration to customers.

LPG Distribution Networks ([CRU/2022/12](#)) || The CRU decided to introduce a new class of LPG Safety Licence that requires Class 2 operators to comply with an Operator Handbook. It has published the Class 2 Safety Licence & handbook which elaborates safety obligations required to operate a piped LPG distribution network.

Celtic Interconnector ([CRU/2022/13](#)) || The CRU published a Decision setting out a fully regulated cost recovery model for the Celtic Interconnector. There will be different approaches for the pre-operational phase and post-2026 operational phase.

Offshore Grid Connection ([CRU/2022/14](#)) || The CRU published a Decision on the next stage of processing for Phase 1 offshore grid connection applications. EirGrid will issue a Grid Connection Assessment, based on criteria in this Decision, to each Phase 1 project detailing method and cost of connection to the transmission system at an onshore connection point. This is intended to provide projects with information needed to compete in ORESS 1. The timeline indicates a process culminating in grid offers being issued from 2023 onwards.

EU Electricity Network Codes ([CRU/2022/15](#)) || The CRU published a Decision approving the Test Plan submitted by EirGrid in accordance with Article 43(2) of

EU Regulation 2017/2196 Emergency & Restoration. Article 43 requires each TSO to periodically assess the proper functioning of all equipment and capabilities considered in the system defence plan and the restoration plan. Each TSO is required to define a test plan identifying the equipment and capabilities relevant for the system defence plan and the restoration plan that have to be tested.

Interconnector Operating Licence ([CRU/2022/17](#)) || The CRU published the Licence to be granted for interconnectors operating under a Cap and Floor regime.

Administrative Sanctions ([CRU/2022/18 & 20](#)) || The CRU is consulting on the proposed specification for standards of performance in electricity and gas supply licences. This involves the specification of 15 licence conditions as standards of performance. Proposed approaches to Condition 18 (Consumer Protection) involve regularising the requirement for licensees to comply with the Suppliers' Handbook, Code of Practices, Customer Charter and household terms and conditions. The consultation also invites suggestions for new/alternative standards of performance. || **Closing date: 6 May 2022.**

SEMC BUSINESS

Capacity Market Code ([SEM-22-003](#)) || Working Group 23 Modifications Timetable was published. There will be consultations in March and April on three proposed modifications to do with New Interdependent Combined Units; timely publication of Final Auction Information Packs; and transparency on publication of qualification result.

Market Monitoring ([SEM-22-004](#)) || THE SEMC published the market monitoring report for Q4 of 2021. It is significant that the average DAM price for the period was €223.42/MWh compared to €50.97 MW/h in the same period in 2020 – attributed primarily to increased wholesale fuel prices and carbon costs, while an increase in wind had a slight dampening effect on prices. Liquidity was concentrated in the DAM, where over 85.84% of ex-ante volumes traded with an overall value of over €2.54 billion.

Cross Border Trading Arrangements ([SEM-22-005](#))

|| The SEMC is consulting on: the operation of the SEM since Brexit in terms of the impact (short-term, medium-term and enduring) of decoupling of the DAM; whether there is a need for change to the exiting fallback arrangements given the delays in implementing Multi-Region Loose Volume Coupling (MRLVC); and what improvements could be made to the existing arrangements in advance of MRLVC to either continue or fall away once MRLVC is implemented. || **Closing date: 28 March 2022.**



Environment & Planning

RECENT JUDGMENTS

High Court [quashes](#) SHD permission for failure to assess **capacity** in the public transport network

In quashing the Board's decision to grant permission for a SHD, the High Court found that there was a failure by the Board to recognise or address what amounted to material contravention of the Development Plan regarding the density of the proposed scheme. Furthermore, the Court found that the Board had failed to consider a relevant consideration as to the capacity of the public transport network and give adequate reasons for its decision on density in that context. In doing so, it was of the view that frequency and capacity are two different things. Finally, the Court also held that the Board's reasoning in relation to traffic was inadequate, specifically as to the disagreement between traffic experts for the developer and the Applicants regarding methodology and the reliability of the results arising from the application of that methodology.

High Court [refers](#) questions on costs in environmental proceedings to the CJEU

The Applicants argued that given that environmental proceedings covered by the Aarhus Convention should not be prohibitively expensive, they were entitled to bring these proceedings without the possibility of adverse costs orders - that reach the level of being prohibitively expensive - being made against them. They argued that an Applicant should be able to predict the costs of proceedings before bringing them, in order to give effect to the 'Not Prohibitively Expensive' rule. On that basis the Court decided that it was necessary to refer the following questions to the CJEU:

Q1: does the 'Not Prohibitively Expensive' rule have the effect that the domestic law of a member state should provide rules that are sufficiently certain so that an applicant can know prior to initiating proceedings whether the NPE rule applies and if so what the maximum amount of the NPE costs can be predicted to be in advance?

Q2: in the absence of domestic provisions that are sufficiently certain so that an applicant can know prior to initiating proceedings whether the NPE rule applies and if so what the maximum amount of the NPE costs can be predicted to be in advance, does that general interpretative obligation mean a domestic court should disapply national procedural rules allowing for any costs to be awarded against Applicants in proceedings covered by the NPE rule thus providing for no order as to costs if the Applicants are unsuccessful?

High Court [refuses](#) application to amend statement of grounds in order to respect 8 week limit

The Applicants sought to amend their Statement of Grounds by adding a claim that, in granting planning permission for the SHD, which the Applicants said would negatively affect bats, the Board failed to comply with Article 12 of the Habitats Directive. The High Court decided that while the rights of bats are important the public interest in the provision of badly needed housing should take precedence. Accordingly, the Court refused the application to amend the Statement of Grounds on the basis that the Oireachtas has set down very tight time limits for any challenges to planning applications to be brought and these should not be thwarted. To allow the Applicants to amend the Statement of Grounds *after* the expiry of those statutory time limits where no good and sufficient reason had been offered as to why the ground had not originally been included would "undermine the effectiveness of the eight-week limit". The Applicants had given no 'good and sufficient' reason as to why they had not included this ground when the Statement of Grounds was first filed.

High Court lifts [stay](#) on SHD permission for student accommodation and holds that further prosecution is not conditional on the applicants [undertaking](#) in damages

In [these proceedings](#) the Developer applied to lift a stay to allow it to commence certain works on site, arguing that if it missed certain deadlines in the works programme it would be unable to let the accommodation until the following academic year and would suffer significant

financial losses. The Applicants argued that if the stay was lifted, trees would be removed from the site causing irreparable environmental harm (in the form of both loss of the intrinsic value of the trees and of their value as a bat and bird habitat). This would render their judicial review proceedings moot. The Court noted that there was no evidence of bat roosts on the site and considered that *if* bats are found on the site during the course of construction, the obligation to strictly protect them under Article 12 of the Habitats Directive could be upheld by mitigation measures like replanting the trees. On this basis given the urgent public interest in not delaying construction and the significant losses that would be suffered by the Developer, the Court decided to lift the stay.

However, in a [second interim judgment](#) following an application brought by the Applicant the Court decided to leave the stay in place pending appeal of the first judgment, on the basis that the Developer had felled trees before the order of the first judgment had been perfected and before the Applicants could appeal. The Court expressed its surprise that the Developer had commenced these works in circumstances where it had been made clear that no works should commence pending perfection of the final order. The Court drew an inference from this that the Developer would carry out further works if no stay on proceedings was ordered.

Finally in a [third interim judgment](#), the High Court refused the developer's application to make the further prosecution of the proceedings conditional on the applicant's providing undertakings in damages.

LEGISLATION

[The Maritime Area Planning Act 2021](#) has been passed into law. The Act regulates the maritime area by means of a National Marine Planning Framework and establishes licences for maritime usages. The Act establishes the Maritime Area Regulatory Authority, to grant, revoke and suspend such licences and generally enforce the Act. The Act also amends the Planning and Development Act 2000 to provide for how that Act will treat applications for development permission which must have a maritime



area consent before being made.

Sections of the [Housing \(Regulation of Approved Housing Bodies\) Act 2019](#) have been commenced. The Act provides the Approved Housing Bodies Regulatory Authority (AHBRA) with [additional powers](#), including responsibility for establishing and maintaining the register of Approved Housing Bodies (ABHs) and for registering organisations as ABHs.

DOMESTIC REPORTS, CONSULTATIONS AND DECISIONS

The Department of the Environment, Climate and Communications closed its public [consultation](#) on Carbon Budgets on 8 February 2022. Carbon budgets are part of a roadmap of actions set out in the Climate Action and Low Carbon Development (Amendment) Acts 2015-2021. The Acts commits Ireland to reach a legally-binding target of a climate neutral economy no later than 2050 (the "National Climate Objective"), and a reduction in emissions of 51% by 2030 compared to 2018 levels. The carbon budgets will determine the level of greenhouse gases that may be emitted in Ireland in a given five-year period and will be consistent with furthering the achievement of the National Climate Objective.

The Department of Agriculture, Food and the Marine has published its Forestry [Licencing Plan](#) 2022, which includes a range of forestry priorities for 2022. This includes the delivery of a new Forest Strategy and Forestry programme which involves (i) the ongoing implementation of the recommendations in Project Woodland; (ii) the administration of forestry schemes and payments to landowner; (iii) the implementation of wider Government policy including the Climate Action Plan; (iv) amendment of Forestry Act 2014 and development of related initiatives to facilitate small scale tree – planting; (v) the implementation work around Brexit and export certification; (vi) the essential work on Forest Reproductive Material (FRM) and our plant health control and checks; (vii) the publication of data in the National Forest Inventory by end of 2022; (viii) administration of and participation in the COFORD Council

working groups and reports; (ix) servicing Ireland's international and EU forestry obligations; and (x) defending the Department's decisions at the Forestry Appeals Committee.

COMMISSIONER FOR ENVIRONMENTAL INFORMATION

In two recent decisions the Commissioner for Environmental Information decided that monetary value of consideration for grant of an easement was "environmental information"

In the [first decision](#) the Appellant had requested a copy of a Deed of Easement granting the ESB the right to place electricity infrastructure on lands owned by Kildare County Council. Kildare County Council provided the Appellant with a copy of the Deed but redacted the information relating to the consideration paid which it said was commercially sensitive. The Appellant argued that the monetary value of the consideration provided for under the Deed was "environmental information" and that the erection of the electricity infrastructure on foot of the grant of easement was a measure or activity which affected or was likely to affect the environment.

In the [second decision](#) the Appellant sought information on payments received by Coillte from ESB in respect of an electricity line to be placed on Coillte's lands. Coillte refused to provide the payment information on the basis of commercial sensitivity. Coillte maintained that the disclosure of the information would release commercially negotiated terms specific to the land and that such disclosure could prejudice Coillte's future negotiations.

In overturning the decisions of Kildare County Council and of Coillte, the Commissioner held that the *construction* of electricity infrastructure is a measure which has a "real and substantial possibility" of environmental impact. Therefore, the Commissioner found that the decision to enter into the Deed and to agree to the conditions under it, including the monetary value of the consideration was a "measure" or "activity" which has a "real and substantial possibility" of environmental impact.



Employment

RETURN TO WORK

On 31 January, the Government published a transitional protocol providing guidance to employers on the phased return to physical attendance in workplaces. The [Transitional Protocol: Good Practice Guidance for Continuing to Prevent the Spread of COVID-19](#), is a revision of the Work Safely Protocol.

The guidance also recommends the continued implementation of certain measures to prevent the spread of COVID-19. These procedures include:

1. keeping COVID-19 Response Plans in place and up-to-date;
2. maintaining policies and procedures for prompt identification and isolation of workers who may have symptoms; and
3. maintaining COVID-19 Infection Prevention and Control (IPC) measures.

The Government has also called on employers to develop or finalise long-term arrangements with employees for blended or remote working options.

For further information on the changes and recommendations under the transitional protocol please see our briefing [here](#).

RIGHT TO REQUEST REMOTE WORKING

The General Scheme of the Right to Request Remote Working Bill 2022 has been published [here](#). The Bill will provide a legal framework for requesting, approving or refusing a request for remote work. This is part of the Government's National Remote Working Strategy, 'Making Remote Work', which is aimed at ensuring that remote working is a permanent feature in the Irish workplace in a way that maximises economic, social and environmental benefits.

The Bill will require all workplaces to have a written statement which sets out the company's Remote Working Policy. This must:

1. specify the manner in which remote working requests are managed;
2. outline the time frame within which decisions will be made; and
3. set out the conditions that apply to remote working within the organisation.

Failure of an employer, without reasonable cause, to inform an employee of the Policy upon commencement of employment and at least annually thereafter will be an offence under the Bill.

For further information on the proposed scheme of the Bill please see our briefing [here](#).

REDUNDANCY PAYMENTS (AMENDMENTS) BILL

The Redundancy Payments (Amendment) Bill 2022 (available [here](#)) will give employees who lost out on reckonable service while on lay-off due to COVID-19 restrictions, and have subsequently been made redundant, a special payment of up to a maximum payment of €1,860 tax-free to bridge the gap in their redundancy entitlements. The Bill was published on 21 January 2022 and is currently at Second Stage in the Dáil.

The amount an eligible worker will receive will depend on the length of time they were placed on lay-off due to COVID-19 before the date they were made redundant. The maximum to which any employee will be entitled is €1,860 if they earned €600 or more a week and were laid off for the full emergency period. It is expected payments will become operational in the first half of this year. In the normal course of events, employers are liable for the cost of lump sums on statutory redundancy, and this continues to be the case. However, the cost of this additional payment will not be

imposed on employers, because the pandemic-related restrictions were outside of their control and imposing this cost could endanger the viability of some businesses which would otherwise be able to recover.

GOVERNMENT LEGISLATION AGENDA

Government Chief Whip Jack Chambers published the [2022 Spring Legislation Programme](#) on 23 January 2022. The priority list includes notable proposals like that of the Work-life Balance Bill, the Right to Request Remote Work Bill, the Sick Leave Bill and the long awaited Protected Disclosures (Amendment) Bill.

Read our full briefing on the proposed agenda [here](#).

WRC FINDS THAT WITHHOLDING OF EX GRATIA PAYMENT CONSTITUTES PENALISATION UNDER THE SAFETY, HEALTH AND WELFARE AT WORK ACT 2005

A recent Workplace Relations Commission decision found that reluctance on the part of an employer to pay an employee an ex gratia amount because of his ongoing personal injuries claim against his employer constituted penalisation under section 27 of the Safety, Health and Welfare at Work Act 2005.

The decision serves as an important reminder for employers that what constitutes "penalisation" under section 27 of the Act is very broad. It includes dismissal, demotion, lay-off and the imposition of any form of disciplinary sanction. In this case it was held to include the non-payment of an ex gratia payment.

For further details on the case please see our briefing [here](#).



Public Procurement

IRELAND

Challenges by Word Perfect Services Ltd to the terms of a Request for Tender has resulted in two recent decisions.

The decision handed down by the Court of Appeal in November 2021 ([\[2021\] IECA 305](#)) dealt with Word Perfect's appeal against the High Court's decision on 23 September 2021 to lift an automatic suspension and permit the Minister for Public Expenditure to conclude a Multi-Supplier Framework Agreement for the provision of Irish Language Translation Services.

The Court of Appeal found in favour of Word Perfect and refused the Minister's application to lift the automatic suspension. The Court of Appeal considered that: (i) the trial judge ought to have found that damages would be an inadequate remedy for the appellant, having regard to the complexity of the exercise in assessing damages and the number of variables involved in that exercise; and (ii) the trial judge ought to have concluded that the balance of convenience lay in favour of keeping the suspension in place in the particular circumstances of the case, and having regard to the likely duration of the suspension (a date was obtained for substantive hearing in January 2022).

The High Court has now heard the case and, pending full judgment, was asked to lift the automatic suspension. It has first, however, decided a preliminary argument in judgment [\[2022\] IEHC 54](#) which the Minister argued could determine the case – namely whether Word Perfect had standing to bring the challenge at all.

The High Court has decided that Word Perfect never had standing because it had not submitted a tender. Thus it has dismissed the proceedings and brought the automatic suspension to an end. The Court indicated that, since it concluded that Word Perfect does not have standing, it is not necessary to make a determination regarding Word Perfect's claims that the Request for Tender was itself unlawful.

Another entirely separate challenge taken by Word Perfect was also heard by the High Court in January. It concerns the award of interpretation services (as opposed to translation services).

EU

[Case C-669/20](#) concerns a request for a preliminary ruling in the area of the entitlement to reject abnormally low tenders for which there is no satisfactory justification. The case concerns a contract for the planning, establishment and management of a system for the issue of Bulgarian identity documents. The questions are: (i) under what conditions and with what scope the contracting authority has a duty to verify whether any abnormally low tenders exist, and (ii) at what time a judicial review of a contracting authority's assessment ruling out the existence of an abnormally low tender has to be carried out, and whether reasons must be given for that assessment.

The Opinion of Advocate General Campos Sánchez-Bordona is that: (i) contracting authorities have a duty to check, in all cases, for the presence of any abnormally low tenders, and (ii) if the contracting authority has no reason to commence the procedure for examining whether a tender is genuine, its assessment may be the subject of judicial review in the context of an action challenging the final decision awarding the contract.

UK DEVELOPMENTS

COVID-19 Litigation

Further judgments were handed down in challenges taken by the [Good Law Project](#) and they provide useful analysis on the running of fair competitions in the unusual circumstances where a negotiated procedure without prior notification is used in a procurement process.

Briefly, on 12 January in [\[2022\] EWHC 46 \(TCC\)](#), the Court considered the Government had lawfully used the negotiated procedure without prior notification. While the claimant was unsuccessful in several of its grounds of challenge, the High Court found that use of a "High Priority

Lane", established to receive offers of PPE and medical devices, breached Regulation 18 (Principles of Procurement) of the Public Contract Regulations 2015 and obligations of equal treatment and transparency. The operation of the High Priority Lane resulted in preferential treatment to suppliers who had been nominated by senior referrers (MPs and senior officials). It was better resourced and able to respond to offers more swiftly than the regular portal. The Court did not grant declaratory relief however – it considered that the contracts in issue would have been awarded on their merits irrespective of the fact that they were awarded through the High Priority Lane.

On 18 January in [\[2022\] EWCA Civ 21](#), the Court of Appeal overturned the High Court's finding that the award of a contract in March 2020 to Public First Ltd was unlawful. The contract concerned communications support services and was awarded following use of the negotiated procedure without prior publication.

The Court of Appeal considered that the central context for an assessment of the fair minded and informed observer's belief was the emergency conditions arising out of the pandemic which, in turn, led to the engagement of the negotiated procedure without prior publication under Regulation 32 of the Public Contract Regulations 2015. Regulation 32 allowed the Minister to proceed without a competition. That left only the ground of challenge relating to the successful tenderer's links with the Conservative Party. However the High Court had found that that relationship did not create any apparent bias.

The Court of Appeal considered that the effect of the lower Court's conclusions was to find breach on the part of the Minister of "an unspecified obligation to carry out a process that involved a formally documented consideration of other research agencies (by reference to experience, expertise, availability and capacity) which gave rise to apparent bias". This conclusion was at odds with the finding that the Minister was at the same time justified in using a negotiated procedure without prior publication, something which did not require consideration of any other agencies. The Court of Appeal said that it was



unable to accept that, in these circumstances, “*the impartial and informed observer would, in effect, require the creation of a common law ‘procurement regime-light’ in the absence of which he would think there was a real possibility of bias*”.

Court refuses extension of time to issue proceedings

In *Access for Living v London Borough of Lewisham* [2021] EWHC 3498 (TCC), proceedings were issued two days late but before the agreed extended standstill period expired. The High Court considered that the fact that the delay was short was not a reason to extend time, and neither was the fact that Access for Living had conflated the extension of the standstill period with the time in which to issue a challenge. A good reason might have included where there was a factor beyond the control of the claimant.

Retained EU law

Last month we referenced the treatment of retained EU law in the UK as discussed in recent case law. This seems to be a topic that will continue to develop. It was reported that the House of Commons European Scrutiny Committee launched an [inquiry](#) into the future of EU retained law. The Government also announced its intention to bring forward a [Bill](#) to ensure that retained EU law can be more easily amended and repealed, and to end its current status in the UK legal framework.



Real Estate

ELECTRONIC EXECUTION OF DOCUMENTS RELATING TO REGISTERED LAND

The [Electronic Commerce Act 2000 \(Application of Sections 12 to 23 to Registered Land\) Regulations 2022](#) came into effect on 9 February 2022 and provide that Sections 12 to 23 of the Electronic Commerce Act 2000 will apply to the law governing the manner in which an interest in registered land may be created, acquired, disposed of or registered. Guidance in relation to the how the Regulations will be implemented in practice is awaited from the Property Registration Authority.

CONTRACT DEPOSITS – NEGATIVE INTEREST

The Law Society Conveyancing Committee has published [sample special conditions](#) for the treatment of negative interest on contract deposits. Options are given for the following scenarios:

- purchaser bears negative interest cost;
- vendor bears negative interest cost; and
- sharing of interest costs.

REGISTRATION OF JUDGMENT MORTGAGES

New [Land Registration Rules](#) came into effect on 16 December 2021. In addition to updating various Land Registry forms, the Rules provide for the registration of judgment mortgages to specifically include judgments of the Court of Appeal. The Rules also amend the provisions relating to the registration of judgment mortgages against registered property in execution of civil and commercial judgments obtained in courts of Member States of the European Union so that an enforcement order of the Master of the High Court is no longer required.

New [Registration of Deeds Rules](#) also came into effect on 16 December 2021. The Rules provide for the registration of judgment mortgages to include judgments of the Court of Appeal, as well as updating various forms to provide for certain registrations under the [Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010](#).

LEGISLATION

Spring 2022 Legislation Programme

The Government has published its [Spring 2022 Legislation Programme](#). Property-related legislation is summarised below.

Property legislation on the priority drafting and publication list	
Tailte Éireann Bill	To establish Tailte Éireann, a single body incorporating Ordnance Survey Ireland, Commissioner of Valuation, Boundary Surveyor and the PRA.
Courts and Civil Law (Miscellaneous Provisions) Bill	To update the Land and Conveyancing Law Reform Act 2009 to provide for a presumption that a deposit paid on a property purchaser's behalf to a person in connection with such purchase shall be held as stakeholder, and to prevent joint tenants benefiting from homicides and other matters.
Planning and Development (Substitute Consent) Bill	To amend the Planning and Development Act 2000 to streamline the substitute consent provisions.
Other property legislation (not on the priority list)	
Industrial Development (Miscellaneous Provisions) Bill	To provide that IDA Ireland would partner with the Ireland Strategic Investment Fund to commercially development advance office buildings on IDA-owned lands.
Housing (Miscellaneous Provisions) Bill	To amend the Housing (Miscellaneous Provisions) Act 2009 in relation to social housing assessments and rent schemes and amend the Housing (Miscellaneous Provisions) Act 2014 in relation to tenant purchase.
Housing and Residential Tenancies Bill	To strengthen the statutory framework for the enforcement of overcrowding provisions of the Housing Act 1966 and amend the Residential Tenancies Act 2004 to further enhance tenancy protections, particularly during receivership.
Land Value Sharing and Urban Development Zones Bill	To amend the Planning and Development Act 2000 to introduce new provisions to deal with land value sharing and urban development zones as set out in the Government's ‘Housing for All’ plan.



Monuments and Archaeological Heritage Bill	To replace and modernise the National Monuments Acts 1930 to 2014, to establish a Register of Monuments to replace current overlapping systems and related matters.
Planning and Development (Judicial Review) Bill	To provide for reform of the judicial review provisions in the Planning and Development Act 2000.
Planning and Development Bill	To review and replace the Planning and Development Act 2000 with a consolidated Bill.
Property Services Regulation (Amendment) Bill	To revise the Property Services Regulation Act 2022 in light of the Services Directive and Recognition of Foreign Qualifications Directive.

Monuments and Archaeological Heritage Bill

The [revised general scheme of the Monuments and Archaeological Heritage Bill](#) has been published. The Bill will replace all existing National Monuments Acts and certain related legislation and provides for the Registration of national monuments as burdens on Land Registry folios. The Joint Committee on Housing, Local Government and Heritage met on Thursday, 17 February, to resume Pre-Legislative Scrutiny of the revised general scheme.

'Housing for All' Update

The Government published an update on the [actions](#) listed in its 'Housing for All' plan on 27 January 2022. The update includes progress on:

- the owner-occupier guarantee;
- tenancies of unlimited duration;
- large-scale residential developments;
- retro-fitting of local authority homes;
- the Commission on Housing;
- the Croí Cónaithe Cities Scheme; and
- land value sharing and urban development zones.

Approved Housing Bodies

The Minister for Housing, Local Government and Heritage, Darragh O'Brien TD, has approved the [standards for Approved Housing Bodies \(AHBs\)](#) which were submitted by the Approved Housing Bodies Regulatory Authority (AHBRA) in accordance with the provisions of the [Housing \(Regulation of Approved Housing Bodies\) Act 2019](#).

National Housing Strategy for Disabled People

The Government has published the [New National Housing Strategy for Disabled People 2022 – 2027](#).

The new strategy places a greater emphasis on independent living and community inclusion than the previous strategy. The Housing Agency is overseeing the preparation of an implementation plan for the strategy, to be published in by the end of Q2 2022 detailing how outcomes will be achieved.

Town Centre First Policy

The Government has [launched](#) its Town Centre First policy that aims to tackle vacancy and combat dereliction in town centres.

The policy is underpinned by investment spread across a number of Government schemes including the Rural Regeneration and Development Fund (RRDF), the Urban Regeneration and Development Fund (URDF), Croí Conaithe (Towns) Fund and the Town and Village Renewal Scheme.

Defects in Housing Survey

The Government has [launched](#) a survey requesting input from homeowners, landlords, owners' management companies, and property agents in relation to their experiences of housing defects relating to fire safety, structural safety and water ingress in purpose-built apartment and duplex buildings constructed in Ireland between 1991 and 2013. Minister Darragh O'Brien states that the full extent of legacy problems needs to be understood so that these issues can be addressed going forward.

'Mortgage to Rent' Update

The Government has [announced](#) changes to the 'Mortgage to Rent' scheme for people who have borrowed from commercial private lending institutions and who are at risk of losing their homes due to mortgage arrears.

The Government states that the changes will result in more people being able to benefit from the scheme, which has been amended to reflect current housing market conditions and most up-to-date research on those in long term mortgage arrears. Key changes that apply from 14 February 2022 are:

- an increase to the positive equity limit, which is being adjusted by region to align it with the range of house prices and market conditions across the regions;
- purchase price thresholds updated to take account of current market conditions; and
- additional flexibility in the number of allowable bedrooms in a dwelling – this will apply for borrowers aged 65 and above, and borrowers who have a disability, or where a dependant has a disability.



Social Housing Design and Pre-Construction Processes

The Government has [launched](#) two new publications with the aim of improving the quality and speeding up the delivery of social homes.

The Design Manual for Quality Housing is predominantly aimed at local authorities, Approved Housing Bodies and their design consultants, who are involved in the design of social housing and delivering individual social housing developments or as part of larger mixed-tenure developments. However, the Government view is that the high-level design principles should be equally applicable to any residential development. The Pre-Construction Processes for Social Housing Construction and Mixed Tenure Projects Working Group Report set out a number of practical actions which aim to further streamline approvals and other pre-contract processes, while ensuring cost effectiveness for the taxpayer.

LANDLORD AND TENANT

Tenant Statutory Renewal Rights and Landlord Defence of Redevelopment Planning Permission

In the case of [Clydaville Investments Limited v Setanta Centre](#), Setanta Centre (the landlord) resisted the tenant's (Clydaville Investments) application for a new tenancy in office premises on the first floor of the building on the basis that it planned to redevelop the premises pursuant to planning permission. The landlord sought but failed to secure an order that the tenant's claim for a new tenancy be struck out as bound to fail.

It was held that when a landlord has obtained planning permission and has established an intention to redevelop on the basis of that permission, it can rely on [Section 17\(2\)\(a\)](#) of the Landlord and Tenant (Amendment) Act 1980 to invoke an absolute defence to a tenant's claim to a new tenancy, provided that there is no other impediment to the landlord proceeding on the basis of the permission it has obtained.

In this case, an impediment existed in the form of separate legal proceedings between the same parties in relation to a retail unit on the ground floor (also occupied by the plaintiff but not subject to a statutory tenancy claim) where the plaintiff asserted that it had a number of quasi property rights in the nature of both express and implied easements over the Centre that were outside its retail unit, but were covered by the proposed demolition and redevelopment works. Barr J held that a landlord must first address the separate proceedings before a defence can be raised under Section 17(2)(a).

LOCAL PROPERTY TAX

Revenue have published [eBrief No. 023/22](#) in relation to the publication of two new LPT Tax and Duty Manuals. The manuals deal with:

- the valuation of residential properties for LPT purposes, such as whether a property is to be valued as residential, the way in which certain properties are to be valued and the components of a property that are to be valued; and
- the basis on which residential properties used for certain diplomatic purposes are outside the scope of LPT.



State Aid

COMMISSION FORMALLY ADOPTS NEW GUIDELINES ON STATE AID FOR CLIMATE, ENVIRONMENTAL PROTECTION AND ENERGY

The Commission has adopted the Guidelines endorsed in December 2021, and which will apply from 27 January 2022. The new Guidelines provide the framework for public authorities to support the European Green Deal objectives efficiently and with minimum distortions of competition. Questions and answers on the new Guidelines are available [here](#).

COMMISSION INVITES COMMENTS ON THE GREENING AND DIGITALISATION OF THE MOBILITY, TRANSPORT AND AUTOMOTIVE ECOSYSTEM

On 24 January 2022, the European Commission launched a consultation inviting companies across the ecosystem, public authorities, social partners, research organisations and all interested parties to express their views on how the mobility ecosystem can accomplish the green and digital transitions, while increasing their resilience. They are all invited to help better define the costs, needs and conditions to accompany the transformation of the industrial mobility ecosystem. Through this process of co-creation, a jointly agreed plan, known as a transition pathway, will be finalised in the course of 2022. The proposal includes a push towards automated and connected vehicles as well as more robust investment policies, including through public funds. Interested parties can respond to the consultation until **31 March 2022**. See full article [here](#).

IRISH COVID-19 CREDIT GUARANTEE SCHEME EXTENDED UNTIL 30 JUNE 2022

Unsecured loans of up to €250,000, at reduced interest rates, are available to SMEs, primary producers and small mid-caps (companies employing less than 500) under the scheme. The scheme is available through a wide range of lenders including three banks, six non-bank finance

providers and 19 credit unions. The continuation of the scheme for a further six months will provide options for small businesses who need increased liquidity as they move toward a changed but more stable trading environment. This extension has been made possible by an extension of the European Commission's State Aid Temporary Framework, which allows exceptional aid for businesses impacted by COVID-19. See full article [here](#).

COMMISSION APPROVES €1.4 BILLION SCHEME FOR THE DEVELOPMENT OF RENEWABLE ELECTRICITY IN GREECE

The European Commission has approved, under EU State aid rules, a €1.4 billion support scheme to promote renewable electricity in the 29 autonomous non-interconnected island electricity systems in Greece (covering 47 islands). The 47 islands involved will be covered by the scheme until their eventual connection to mainland Greece. The Commission concluded that the measure will contribute to the expansion of solar photovoltaic and onshore wind energy in the Greek islands, as well as to the reduction of greenhouse gas emissions by replacing oil and diesel installations, in line with the European Green Deal objectives, without unduly distorting competition. See full press release [here](#).

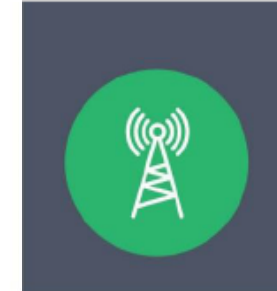
COMMISSION APPROVES RESTRUCTURING AID OF UP TO €2.66 BILLION FOR ROMANIAN POWER COMPANY

The European Commission has approved, under EU State aid rules, Romania's plans to grant power company Complexul Energetic Oltenia SA ('CE Oltenia') restructuring aid for up to €2.66 billion. The Commission found that the aid is appropriate, as it addresses both liquidity and solvency issues of the company. The Commission found the aid proportionate, with an own contribution from the company and market investors to the expected costs of restructuring amounting to over 30% of the restructuring costs. Finally, compensatory measures are provided to limit potential distortions of

competition triggered by the aid. This includes the creation by CE Oltenia, alongside other electricity producers, of dedicated special purpose vehicles for co-investment and operation of natural gas and photovoltaic power plants, as well as bans on the acquisition of interests in competing operators and on the advertisement of State support as a competitive advantage. The Commission also found that the aid will support the decarbonisation of electricity production in Romania and, more generally, in Europe, in line with the European Green Deal. See full press release [here](#).

COMMISSION APPROVES €3.8 BILLION ITALIAN SCHEME UNDER RECOVERY AND RESILIENCE FACILITY TO SUPPORT DEPLOYMENT OF GIGABIT NETWORKS

The European Commission has approved, under EU State aid rules, a €3.8 billion Italian scheme made available through the Recovery and Resilience Facility to deploy high-performing gigabit networks in underserved areas of the country. The scheme will run until 30 June 2026 and support will take the form of direct grants. The Commission found that the measure is necessary to address market failures resulting from the absence of current or planned broadband networks that would adequately address end-users' needs. The Commission found that sufficient safeguards to avoid any undue distortion of competition are in place. In particular, the measure ensures the respect of the principle of technological neutrality by not favouring any technology over the others. Furthermore, Italy will identify the beneficiaries by means of an open, transparent and non-discriminatory competitive selection procedure and will encourage the reuse of existing infrastructure. See full press release [here](#).



Telecoms

PUBLICATION OF THE COMPETITION (AMENDMENT) BILL 2022

On 25 January 2022, the Government published the Competition (Amendment) Bill 2022, which transposes Directive 2019/1 (ECN+ Directive) into Irish law and expands the powers of both ComReg and the Competition and Consumer Protection Commission (“**CCPC**”) to enforce European and Irish competition law. The draft legislation will provide ComReg with administrative fining powers whereby ComReg may, subject to confirmation by a court, impose fines that are sufficiently high so as to act as a credible deterrent to anti-competitive behaviour. ComReg and the CCPC will also receive enhanced investigatory and information gathering powers with the potential to impose fines where companies do not cooperate properly with investigations.

The draft legislation is currently at Committee stage in the Oireachtas, and may be subject to further amendment during the legislative process. See the full text of the Bill [here](#).

DELAYED TRANSPOSITION OF THE EUROPEAN ELECTRONIC COMMUNICATIONS CODE

ComReg has reminded electronics communication providers that they must continue to comply with the existing communications regulatory framework, pending the enactment of the European Union (Electronic Communications Code) Regulations, 2022 (the “**Regulations**”) and the Communications Regulation (Enforcement) Bill, 2022 (the “**Bill**”), which will implement the European Electronic Communications Code (“**EECC**”).

The Government approved the priority drafting of the Bill in December 2021. The Bill will give effect to the EECC, which will repeal and replace the EU’s Framework Directive, Authorisation Directive, Access Directive and the Universal Services Directive. The EECC was published in December 2018 and was due to be transposed into Irish law by no later than December 2020. In addition to the Bill, the Government has published the text of the draft Regulations. See ComReg update [here](#). See the EECC full text [here](#), and the draft Regulations [here](#).

COMREG PUBLISHES COVID-19: POTENTIAL FURTHER TEMPORARY ECS LICENSING UPDATE

On 19 January 2022, ComReg published an information notice on the current COVID-19 temporary licensing framework, which applies to licences that are due to expire by 1 April 2022. The notice provided information relevant to the consideration of any further licensing framework beyond 1 April 2022, including next steps and prospective consultation timelines. See ComReg notice [here](#).