

### what is a sustainable home?

The Government have issued a new code for sustainable homes which measures how sustainable a new home actually is. The home is then given a star rating. The intention is that each separate performance standard will be regularly reviewed and amended as techniques and materials change. One recent change is to bring the definition of a zero carbon home into line with the definition used to gain exemption from Stamp Duty Land Tax. There is still considerable debate over what a sustainable/zero carbon home actually is and how far those definitions should go. Whether that will ever be resolved and the various definitions actually harmonised remains to be seen!

### are you insured?

A recent judgment has highlighted that making a claim for pollution incidents under a general insurance policy may be problematic. In view of this a thriving market in specialist environmental insurance policies has developed over recent years. The cover available from these has dramatically increased and the cost fallen. These policies can be used as an environmental risk management tool during an acquisition or disposal and as part of a routine property insurance programme. These specialist insurance policies do vary dramatically in terms of their policy wording and the nature of contamination and other risks that they cover.

### Energy Performance Certificates

The Government has introduced some new transitional arrangements for buildings that require an energy performance certificate (EPC). Under the transitional arrangements any property on the market before 1 October and remaining on the market after that date will require an EPC as soon as practicable, but by 4 January at the latest, even if it is sold in the

meantime. Careful consideration needs to be given to multi-let buildings and how to manage the process of when an EPC is required for different parts of the building or the whole building.

### air conditioning systems

The first inspections of air conditioning systems over 250kw should take place by 4 January 2009. If your system is over 12kw but under 250kw you have until 4 January 2011 to have your first inspection take place.

### Carbon Reduction Commitment

The Carbon Reduction Commitment (CRC) is an obligatory emissions trading scheme covering larger businesses and the public sector. According to the Government the aim of the CRC is to provide a financial incentive on an organisation to reduce their carbon emissions. It will commence in April 2010.

All organisations whose annual half-hourly metered electricity use in the UK is above 6,000 mega watt hours per year will be covered. As a guide this will include organisations spending more than £500,000 a year on electricity in the UK, although with energy costs dramatically rising this figure needs to be kept under constant review! Organisations include any UK based parent company and the UK subsidiaries of those organisations.

From April 2010 any organisation included in the scheme will have to calculate all their energy use and surrender carbon allowances to cover the emissions that they generate. They will need to buy these allowances at a fixed price for the first three years and after that purchase them through an auction.

Proceeds from the sale and the auction will be returned to participants in proportion to their performance in reducing their emissions from their energy use. This will be determined by their position in a league table. The intention is

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that as well as a financial benefit there will reputation benefits from good performance in the league table which will be publicly available.

## REACH

The REACH Regulation requires any organisation, that manufactures or places on to the market, to register any chemical substance, including those in preparations such as inks, dyes, paints or other mixtures. You should:

- ensure any chemical substance you manufacture or import into the EU is registered
- check the REACH status of any substance that is part of your business. Each substance should have been pre-registered by all manufactures or importers covered by the regulations. If you do not manufacture or import you should check with your suppliers that they have met their REACH obligations

## green leases

With energy costs rising, CSR policies requiring environmental improvements and the Government introducing measures to reduce CO2 emissions the Australian concept of the green lease has emerged in the UK.

These leases contain alternative or additional clauses dealing with a wide range of environmental issues including recycling, energy efficiency, water management and the use of sustainable materials in fitting out/alterations.

While a developing area there are considerable benefits for certain landlords and tenants in adopting such documents. These benefits have to be weighed against moving away from an

industry standard form of lease which the market is use to and funders are comfortable with.

Those organisations that do not wish to enter into a full green lease could always consider a green memorandum of understanding detailing management arrangements at the property.

## unincorporated associations

The Court of Appeal has confirmed the position that individual members of an unincorporated association can be prosecuted for criminal offences and potentially receive a criminal record. In a recent case the Environment Agency prosecuted the treasurer and chairman of a golf club following an oil leak from a storage tank which had leaked into a watercourse. Neither of the club's officers were personally to blame nor did they have any maintenance responsibilities, however the court confirmed that the Environment Agency could bring criminal proceedings directly against them.

## what is contaminated land?

The Government have issued further guidance on the legal definition of contaminated land under the Environmental Protection Act 1990. This guidance restates the present position and confirms that local authorities have a responsibility to identify contaminated land in their area. The Government have also confirmed that they will not be setting a level of contaminants over which remediation will be required. The onus is on a local authority as a regulator to judge each site on a case by case basis undertaking an assessment of the actual risks posed by the contaminants.

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