The Chancery Lane Project

Toolkit

# Climate risk and construction

Updated: 17 September 2025

***This toolkit helps practitioners identify and structure climate risks. It is not a compliance checklist but a framework to guide professional judgment, with a deliberate focus on physical and transition risks to highlight their growing relevance in everyday legal practice.***

## Understanding climate risk in the construction sector

Climate risk is already reshaping the construction sector. From flooding disrupting supply chains to rising temperatures affecting site conditions, the physical risks of a changing climate are clear, growing and reasonably foreseeable. Meanwhile, transition risks (such as new regulation, evolving planning requirements, changing investor expectations, and green building standards) are accelerating as we move toward a low-carbon economy.

**Two illustrative scenarios:**

> *A contractor breaks ground on a mixed-use development in a location that, following the project's initiation, is reclassified as high flood risk. The increase in insurance premiums and retrofitting costs significantly impact margins.*
>
> *A speculative commercial development is brought to market without factoring in future climate resilience or anticipated changes in energy performance standards. The building's design leads to high projected operational emissions, particularly due to increased future cooling demand. When the developer seeks pre-let tenants, demand is weak - potential*

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*occupiers are under pressure to meet their own net zero targets and avoid high energy liabilities. The building risks becoming a stranded asset sooner than expected and may require costly retrofits to remain viable.*

Those wishing to understand further examples of climate risks in property transactions and/or more detail on how to advise on climate risk should consult The Law Society's *Climate change and property practice note*.

## Impacts and legal consequences

Climate risk gives rise to a range of legal and commercial consequences in the construction sector. Delivery disruption is increasingly common, with extreme weather events such as storms, flooding or heatwaves delaying progress due to site conditions or availability of suppliers, damaging works-in-progress, or requiring design modifications to account for changing environmental conditions. These impacts are not only foreseeable but are becoming embedded features of project timelines.

As the regulatory landscape evolves, so too does the risk of contractual dispute. Force majeure and change-in-law clauses are coming under heightened scrutiny. Parties who fail to clearly allocate climate-related risks at the outset may find themselves locked in complex and costly litigation, particularly where legal obligations or physical conditions change during the life of a project.

Professional liability is also in sharper focus. Contractors, designers and consultants may face claims for failing to take reasonably foreseeable climate impacts into account in their advice, specifications or project planning. Increasingly, courts and insurers are recognising that foreseeable climate risks fall within the scope of professional duties.

Tighter planning frameworks and new compliance requirements (such as net zero building codes, biodiversity net gain and embodied carbon limits), whilst beneficial for achieving decarbonisation, present risk to projects. Projects that fail to keep pace with these standards may encounter delays, redesign costs, or in some cases, legal challenge or refusal of planning permission.

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Finally, there are reputational consequences. Construction firms that fall short on sustainability through, for example, poor material choices or opaque reporting, risk exclusion from procurement processes, investor divestment, and a loss of public or client trust. In a sector where brand credibility and client relationships are paramount, these reputational risks are commercially significant and increasingly difficult to reverse.

## Practical tools for risk management

Lawyers have a key role to play in managing climate risk, not just by allocating liability, but by helping clients design projects, contracts and relationships that are resilient, future-proof and aligned with decarbonisation goals.

The following checklist is designed for legal advisers, organised by stage of involvement:

1. **Pre-contract and due diligence**

    a. **Appoint climate-aligned consultants or sustainability coordinators** where appropriate.

    b. **Identify physical risks** to the site (e.g., flood, heat, subsidence) using forward-looking data. This may include instructing a climate risk search (for conveyancers) or engaging technical/climate advisors (for developers or contractors).

    c. **Raise climate considerations in due diligence questionnaires.** Identify whether suppliers and contractors can meet the project's climate-related requirements [drafting can be cribbed from Gordon's Clause - ESG DDQ for M&A and capital markets].

    d. **Advise clients on compliance** with planning policy and green building standards (e.g., BREEAM, NABERS UK).

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e. **Flag climate risks in early reports to clients**, particularly if advising funders, acquirers or board-level decision-makers [see The Law Society's Climate change and property practice note and Marni's Clause - Report on Title].

2. **Contract negotiation:**

   a. **Use bespoke clauses** to require:

      i. Sustainable materials and low-carbon design

      ii. Emissions-conscious transport and logistics

      iii. Waste management aligned with circular economy principles [see Francis' Clause - Climate Aligned Construction Waste Management]

   b. **Apply a climate standard of care** for professionals involved in the works, ensuring that foreseeable climate risks are addressed in line with evolving expectations of competence and the project meets its decarbonisation or net zero objectives [see Estelle's Clause].

   c. **Clarify responsibility for compliance** with evolving regulation (e.g., building regulations, EPC thresholds, net zero codes). Aim for balanced allocation rather than unilaterally shifting risk.

   d. **Introduce collaboration mechanisms** such as:

      i. Climate KPIs [see Daniel's Clause] and carbon budgeting

      ii. Sustainability working groups and data-sharing

      iii. Joint progress reports and adaptive governance

   e. **Review force majeure and material adverse change clauses**, ensuring they reflect that many climate risks are now foreseeable and should be actively managed.

f. **Enable net zero-aligned modifications** during construction, with cost-sharing or incentive mechanisms to encourage innovation [see Luna's Clause].

g. **Set outcome-based performance targets**, such as energy efficiency ratings or emissions thresholds to be achieved at completion [see Mary's Clause].

3. **Construction phase (delivery and monitoring):**

   a. **Include climate-related metrics and reporting** in contracted obligations, linked to project milestones or payment schedules where appropriate.

   b. **Track whole-life carbon impacts**, and allow for adaptive strategies to respond to emerging risks or improved practices over time.

4. **Post-completion (operation and legacy)**

   a. **Ensure handover includes environmental data,** including embodied and operational carbon reporting, to support future management, disclosure or transactions.

   b. **Include ongoing obligations for monitoring and climate adaptation** in longer-term operation, maintenance or asset transfer agreements, especially where the asset is at risk of becoming stranded or non-compliant.

***Use this toolkit flexibly: select the tools and drafting approaches most relevant to your transaction, adapt them to your client's context, and let us know how you're using it.***

***For now, we're only asking for your name and email through this feedback form so we can follow up with you later about your experience.***

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