

# Brexit and trade

Key features of the legal position post-Brexit and what businesses should focus on

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# Agenda

- UK law and its relation to EU law after 31 December 2020
- UK-EU trade: life outside the EU single market / customs union
- UK-EU negotiations: prospects for and impacts of a deal
- Other Brexit-related ways that UK law is changing
- New UK trade deals with non-EU counterparties
- Questions – and a request for feedback

# UK law and its relation to EU law after 31 December 2020

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# Poll: the future of EU law in the UK

Which of these statements do you most strongly identify with?

- a) I have a good understanding of the mechanisms by which “retained” EU law will continue form part of UK law after 2020
- b) There is quite a lot of EU law in my sector, but I’m not quite sure what is happening to all of it after 2020
- c) EU law isn’t very important to my business

# Retained EU law: key points



## Some areas of potential difficulty / uncertainty

- Supremacy of EU law
- Direct effect
- General principles
- Case law
- Divergence
- References in contracts

# UK-EU trade in 2021

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# Poll: UK-EU trade after 2020

*“The bit that worries me the most is trader readiness.”*

*Lord Agnew, Cabinet Office Minister, 13 October 2020*

Thinking about your business, your counterparties, and systems being put in place by Governments, how confident are you that trade in goods between the UK and EU will avoid serious disruption in H1 2021?

- a) Very confident – there won't be much disruption at all
- b) On balance the disruption won't be too bad
- c) Not very confident – some significant disruption seems likely
- d) It'll be a disaster

# UK-EU trade after 2020: key points

- **More friction and complexity is inevitable**
  - New customs formalities (Border Operating Model)
  - Tariffs, VAT / excise duty on imports
  - Infrastructure constraints (physical and IT)
  - Product certifications, registrations, labelling requirements
  - Trade in services: many obstacles (eg mutual recognition, residence)
- **Even the best deal can't provide key benefits of EU law**
  - Enforcement under a post-Brexit deal: not in business's hands
- **“Deal” in next few weeks may not be the end of the matter**
  - Decisions on “adequacy” and “equivalence” could change in future

# UK-EU negotiations: prospects for a deal?

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# Poll: deal or no deal?

Which of these statements do you identify most strongly with?

I think that the current UK-EU “future relations” negotiations...

- a) ...will result in a deal, this year, that will give my business the vast majority of what it needs from them;
- b) ...will result in a deal, this year, but it will be one that does not cover some areas of key importance to my business;
- c) ...will not result in a deal this year: 31 December 2020 will be a “cliff-edge”; we will start 2021 on “WTO terms” with the EU.

# UK-EU negotiations: direction and impact

- UK aim was for agreement similar to CETA.
- Potential elements include:
  - broad removal of tariffs that would otherwise apply
  - Protection for GDOs, IP rights etc
  - Robust enforcement mechanisms (likely EU demand following IM Bill spat)
- Prominent likely omissions include:
  - Removal of “national reservations” to enable UK professional services across EU
  - Permanence of decisions on data adequacy or financial services equivalence
- Complexities include:
  - Rules of origin for goods (global content levels and cumulation rules important for cars and food/drink)
  - Level playingfield provisions (alignment of regulatory standards, state aid)

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# UK from 2021

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# Immigration: the new regime

- Free movement of workers will end on 31 December 2020.
- UK nationals currently resident in the EU/EEA and EU/EEA nationals currently resident in the UK need to apply for new residence documents before the hard deadline of 30 June 2021.
- From 1 January 2021 EU/EEA nationals arriving in the UK to commence work will need to apply for immigration permission.
- New immigration regime being introduced in response to end of free movement.
- UK nationals travelling to an EU member state to commence work will likewise require immigration permission.

# UK Internal Market Bill

- Filling a gap left by Brexit
- Underlying principles based on EU law
- But
  - Deliberate avoidance of EU law language
  - Uncertain effects
  - Weak procedural / enforcement framework
- Devolution: serious problems, especially around state aid
- Northern Ireland
  - Special status / unresolved tensions in Withdrawal Agreement
  - “Specific and limited” breach of international law + ouster of JR

# UK trade framework (customs, procurement, FTAs and remedies)

- **Taxation (Cross-border Trade) Act 2018** establishes:
  - new customs framework (import tariffs, export duties etc)
  - trade remedies framework (anti-dumping, anti-subsidy measures and safeguards)
- **Trade Bill:**
  - provides delegated powers enabling UK government to implement UK's obligations under the WTO **Government Procurement Agreement**
  - enables UK government to implement “**trade continuity agreements**” (notably procurement and mutual recognition provisions);
  - establishes a **Trade Remedies Authority** (to assess the case for, and where appropriate impose, duties)

# UK trade framework (sanctions and export controls)

- Independent UK sanctions law and policy separate from EU
- **Sanctions & AML Act 2018** provides for:
  - UK country-based sanctions (eg Iran, Syria, N. Korea, Russia, Venezuela et al);
  - UK thematic sanctions (including new “Magnitsky” human rights sanctions, terrorism and others)
- **Export Controls:**
  - current regime continues (with amendments to existing ECO)
  - EU Dual Use Reg continues as Retained EU law (with amendments)
  - New UK OGEL for controlled export UK to EU; UK likely to be added to EU GEA 001 for controlled exports from EU to UK; UK retained law GEAs
  - Northern Ireland/EU shipment “intra-EU”; what about NI/UK?

# New UK trade deals with third countries

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# Poll: new UK trade agreements

Which of these statements do you most strongly identify with?

I expect that future UK trade agreements with non-EU counterparties...

- a) ...will enable my business in overseas markets to expand
- b) ...could present a material threat to my UK business
- c) ...will make little difference to my business (e.g. because they will not cover it / because I only trade with the EU)

# New UK trade agreements: update

Agreements signed	Over 20 including <a href="#">Switzerland</a> (limited scope), <a href="#">South Korea</a> , <a href="#">Cariforum</a> , <a href="#">Chile</a> , <a href="#">Andean countries</a> , <a href="#">Israel</a> , <a href="#">Ukraine</a> , <a href="#">Eastern &amp; Southern Africa</a>
Deal agreed but not yet signed	<a href="#">Japan</a>
Discussions ongoing (EU trade agreement currently applies)	17 countries/blocs including <a href="#">Canada</a> , <a href="#">Singapore</a> , <a href="#">Turkey</a> , <a href="#">Vietnam</a> , <a href="#">Mexico</a> (and EU of course)
Discussions ongoing (no current EU trade agreement)	<a href="#">USA</a> , <a href="#">Australia</a> , <a href="#">New Zealand</a>

# Poll: topics for future webinars

Which of the following would you like to hear more about?

- a) Freeports
- b) UK free trade arrangements with third countries
- c) The United Kingdom Internal Market Bill
- d) State aid and competition law in UK after 2020
- e) Changes to judicial review
- f) Retained EU law

# Questions

