

# After Brexit: Navigating a new world

OCTOBER 2020

On 31 January 2020 (at midnight CET, 11pm UK time, **exit day**), the UK ceased to be a member state of the EU. More than 8 months later, very little seems to have changed. Yet the story of Brexit has not come to an end. For many, its legal implications are just beginning to manifest themselves.

As the world's largest law firm, we have access to regulatory and trade expertise in all the world's major economies, and UK specialists who have been analysing the Brexit process and its impacts from the start. We are uniquely well placed to help you deal with the post-Brexit legal landscape, wherever your business is based and whatever the nature of its involvement in UK markets.

## Legal overview

On exit day, the European Communities Act 1972 – the statutory basis for giving effect to EU law in the UK – was repealed. This profound change has so far had only a very limited impact on UK law and regulation. There are two reasons for this.

- Under the UK-EU agreement on the UK's withdrawal from the EU (the **Withdrawal Agreement**), virtually the whole of EU law remains "applicable to and in the UK" from exit day until at least 31 December 2020. The Withdrawal Agreement calls this the "transition period". Here, we call it the **"implementation period"**, following

terminology used in the European Union (Withdrawal Agreement) Act 2020 (the **2020 Act**). The 2020 Act implements the Withdrawal Agreement into UK domestic law.

- Under the European Union (Withdrawal) Act 2018 (the **2018 Act**), all the EU law that applies in and to the UK immediately before the end of the implementation period (a substantial proportion of all UK regulation) will continue in force as UK domestic law unless and until it is replaced or amended by new UK legislation. Under powers contained in the 2018 Act, the UK government has made a large number of statutory instruments to amend that "on-shored" body of law, with a view to making it workable as purely domestic legislation. These amendments are due to come into force at the end of the implementation period.

The UK Parliament has also been busy with a raft of new primary legislation designed to fill significant regulatory gaps in areas where it is not possible to carry on simply with on-shored, amended versions of existing EU law, including Bills relating to customs,

immigration, trade remedies and agricultural subsidies. Some of these are either still going through the legislative process. In other cases, the new regimes that they introduce have yet to come into effect.

The Withdrawal Agreement provides for the implementation period to end on 31 December 2020. There is currently no expectation that it will be extended, and the deadline for agreeing an extension under the Withdrawal Agreement expired on 1 July 2020. It therefore appears that it will be from 31 December 2020 (at midnight CET, 11pm UK time) that the full legal consequences of the UK's decision to leave the EU will begin to be felt.

## Deal or no deal

When the Withdrawal Agreement was being negotiated, the phrase, "deal or no deal?" referred to the fact that at the point when the UK ceased to be an EU member state, there would either be no agreement on the terms of the UK's withdrawal (and so effectively a complete legal vacuum in UK-EU relations), or the UK would enter a transition period in which, for the duration of that period, the status quo would be largely preserved. As we look beyond 2020, the question of whether or not there will be a deal on future UK-EU relations has a different context and implications.

The Withdrawal Agreement established the terms of the UK's separation from the EU. As the controversy over the UK government's proposed United Kingdom Internal Market Bill shows, aspects of that deal and its implications remain controversial. However, with the partial exception of Northern Ireland, the Withdrawal Agreement does not regulate future trade between the UK and EU after 31 December 2020, or any of the other areas of potential future EU-UK cooperation flagged in the Political Declaration that was signed at the same time as the Withdrawal Agreement.

Instead, these matters were to be addressed in one or more UK-EU agreements that would be the subject of EU-UK negotiations during the implementation period. Depending on the outcome of those negotiations, any given area of post-2020 UK-EU relations either will or will not be regulated by such an agreement (a **future relationship agreement**). As the deadline for concluding these negotiations approaches, what has changed from the time when businesses were waiting to see whether the UK and EU would conclude a Withdrawal Agreement?

## This time, there is no "no change" option

Unlike in the run-up to Brexit itself, there is no possibility of an outcome that will deliver "no change", even in the short term. For example, with or without a deal, those engaged in trade in goods between the UK and EU will face significant changes. There are thousands of UK businesses that have only ever traded with EU counterparties, and therefore have never had to deal with such things as export declarations and customs checks. Very soon, they will have to deal with a new bureaucracy of cross-border trade with which they are unfamiliar, and which is supported by physical and IT infrastructure that may or may not be fully ready in time.

In some areas, there is an obvious legal fall-back framework in the absence of a deal. For example, if agreement is not reached on tariff-free trade, "WTO rules" will apply. In other areas, such as aviation, there is no current fall-back.

In one sense, 31 December 2020 may be a hard deadline for reaching a deal (and in practice, agreement would need to be reached some weeks earlier in order for it to be legally finalised and take effect on 1 January 2021). But in other respects, if agreement is reached in 2020, the result may be a fairly basic or "thin" free trade agreement between the EU and the UK, that will not cover all the areas on which the parties may wish eventually to reach agreement. Accordingly, negotiations on some aspects of the UK and EU's longer-term post-Brexit relations may continue into 2021 or beyond.

Finally, although the deadline for extending the transition period under the terms of the UK-EU Withdrawal Agreement has passed, it may be possible for the two sides to agree some form of extension separately. Whilst it is very unlikely that the EU would be prepared to agree an extension to give more time for negotiations, it is quite possible that any deal agreed this month or later may take more time than the parties have this year to finalise and implement. In that context, it is not impossible that there will be some kind of short-term roll-over of the transition period: for example, to give the UK Parliament time to pass any legislation that is necessary to implement the terms of the deal in the UK.

## Areas under the spotlight

We set out below some areas where Brexit will lead to significant changes in any event, and where it may make a big difference whether and on what terms the EU and UK conclude a future relationship agreement, or whether the UK continues to follow EU rules after 2020. Click on the links below for an outline of the issues and/or to get in touch with our relevant experts.

<b>People, reward and mobility</b> 	<b>Data protection</b> 	<b>Energy markets and policy</b> 	<b>UK and EU market access</b> 
<b>Intellectual property</b> 	<b>Trade, WTO and customs</b> 	<b>Equity capital markets</b> 	<b>Merger control and competition law</b> 
<b>Environment, Health and Safety</b> 	<b>Financial services regulation</b> 	<b>Lending and loan documentation</b> 	<b>Real estate</b> 
<b>Corporate transactions</b> 	<b>Construction</b> 	<b>Cross-border disputes</b> 	<b>Insurance</b> 

## Changing the terms of trade?

Alongside the UK-EU negotiations, the progress, or otherwise, that the UK makes in negotiating trade agreements with non-EU countries like the US will have a significant impact on some UK businesses in both their home and export markets. More generally, the shift from having many of your trading relationships regulated by EU law to relying on a framework set by a range of other, more limited international trade or investment protection agreements is a significant one.

## Mitigating risks, maximising opportunities

Overall, the general picture is that businesses operating in the UK face significant and wide-ranging short-term regulatory uncertainties, and cannot be sure when those uncertainties will be clarified. But there are, of course, steps that you can take to mitigate the potential risks, and even to look for opportunities, arising from this situation. We list below some of the ways in which we can help.



## Brexit risk assessment

It's never too late: we can provide you with checklists to help you identify risks that your business may face as a result of Brexit; work with you to rank those risks on a "traffic light" matrix (based on impact and probability); and put you in touch with contacts who can help you to develop a plan for addressing them.



## Commercial contracts review

Ongoing contracts need to make appropriate provision for the way that either a "deal" or a "no deal" outcome could disrupt performance, and the ways that the regulatory environment in which the parties operate may change as a result of Brexit. We can carry out a targeted audit of your key contracts in this context and provide guidance on how to future-proof them.

## Strategic planning tools

Our network of sector, geographic, and legal topic specialists can provide you with a range of tools to inform your strategic approach to Brexit and its aftermath – ranging from overview training or a quick sense-check of your existing strategy to an in-depth workshop on specific issues.



## Interface with trade negotiations

Our experts can help you to keep up to speed as negotiations between the UK and the EU and other countries progress. We can also advise you on the potential for influencing outcomes by engaging with one or more of the negotiating parties on points of key importance to you.

## Immigration and people review

We have a wealth of experience advising on the implications of Brexit for UK and EU/EEA employees; preparing businesses to deal with the new UK immigration regime; training HR teams and helping them to proactively manage employees' concerns and requirements.



## Webinars, events and insights

We have held a series of webinars and events on Brexit developments, and published a range of briefings and more in-depth pieces of analysis. If you would like to receive notifications of future webinars, events or publications, please [click here](#).

# Our global Brexit board



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