

**Brexit accelerates  
the pace of change:  
Staying on track  
of emerging legal  
developments**



**As the legal implications of Brexit continue to evolve across different practice areas, companies and the lawyers who represent them must quickly and confidently ascertain what changes are occurring, what's on the horizon, and what to do about it.**

This requires them to stay abreast of changes in both the United Kingdom (UK) and the European Union (EU) and understand how regulations are diverging between the two. Due to the increased volume of regulation arising from Brexit, lawyers must master complex information from multiple regulatory bodies and agencies in multiple jurisdictions in order to effectively advise their stakeholders.

For in-house lawyers, this task impacts several key objectives — risk mitigation, crisis management, overall operational efficiency, and delivery of strategic advice to their company's leadership. Law firms, meanwhile, must continue providing their clients with deep, timely knowledge and value to avoid becoming a victim of budget pressures.

Indeed, corporate law departments are being pushed to do more with less, a trend with clear implications for in-house legal teams and their partner law firms. The latest **2021 State of Corporate**

**Law Departments** report from Thomson Reuters, for example, found that nearly five times as many corporate law departments experienced budget cuts as saw budget increases in 2020, and almost two thirds (58%) saw increased workload — and these trends are expected to continue in 2021 and beyond. This underlines the pressure that law firms are under, as recent data from Acritas, a Thomson Reuters company, demonstrates in the **2020 State of the Legal Market in Europe** report, the pushback from law firms' corporate clients, as almost one third of respondents (28%) felt that the main thing that firms could do to improve their satisfaction was to be more competitively priced.

As law firms and in-house legal departments continue to adjust to the evolving post-Brexit legal landscape, there are several areas that will impact businesses large and small, whatever industry they serve. Having a robust know-how solution will be essential in aiding legal teams better understand the changes and complexity spurred by Brexit and other developments. Such information will enable lawyers to remain proactive and provide their clients and organisations with the expertise that informs strategic decisions and helps achieve objectives. Drawing on expert insights from the Thomson Reuters® Practical Law editorial team, this report highlights several key practice areas affected by the implications of Brexit — and the key developments that practitioners should be aware of.





## Brexit and beyond

- The UK left the EU at 11.00 pm (UK time) on 31 January 2020 ('**exit day**') and was no longer a member state. The **UK-EU withdrawal agreement** came into force on exit day and provided for a post-Brexit **transition period**. During the transition period, most EU law continued to apply to the UK, and the UK continued to be treated for most purposes as if it was still an EU member state.
- The transition period (referred to as 'implementation period' in much UK legislation), and the transitional arrangements in the withdrawal agreement, ended at 11.00 pm (UK time) on 31 December 2020.
- From the end of the transition period, a limited range of EU law continues to apply in the UK (or in Northern Ireland) under the terms of the withdrawal agreement, for example, in relation to citizens' rights, separation provisions, and the Northern Ireland Protocol. Other important aspects include:
  - The **CJEU** and the European Commission continue to have limited involvement in UK-related matters after the end of the transition period, for example, where cases are pending at the end of the transition period.
  - UK law passed or made before the end of the transition period must be interpreted, as far as possible and so far as relevant, in accordance with EU law.
- At the end of the transition period, the three **future relationship agreements** (the UK-EU trade and co-operation agreement (TCA), the supplementing UK-EU security of classified information agreement, and the UK-Euratom nuclear co-operation agreement) started to apply on a provisional basis. These agreements do not replicate the transition period, or the UK's former status as an EU member state.
- At the end of the transition period, the EU's international agreements stopped applying to the UK, but some new UK international agreements came into force, and the UK acceded to some international agreements in its own right.
- At the end of the transition period, to maintain continuity in the UK legal system, a new category of law, **retained EU law**, was created under the European Union (Withdrawal) Act 2018, but many amendments to retained EU law also came into effect.

Many legal matters affected by the UK's withdrawal from the EU are not addressed by the withdrawal agreement or the future relationship agreements and remain unresolved.

# Employment and immigration

Attracting and retaining employees, post-Brexit, particularly for UK companies desiring to bring people in from the EU, is subject to new rules, obligations, and duties that are likely to add cost and complexity for companies. A few points to keep in mind:

- The EU-UK Trade and Cooperation Agreement (TCA) includes 'level playing field' provisions that seek to prevent the UK from reducing existing employment protection or significantly diverging from future EU employment law developments where this would impact on trade or investment. However, these commitments do not completely prevent the UK from reducing employment protection, nor must it align UK employment law with developing EU employment law.
- There has been speculation that the UK government intends to review and relax EU-derived worker's rights and protections, and that UK labour standards would significantly diverge from those in the EU. The government has denied this rumour and it seems unlikely at present, but it's conceivable that initiatives to weaken the Working Time Directive could be pursued to bolster businesses seeking stability as they emerge from COVID-19. In-house counsel and lawyers representing companies need to keep a watchful eye on developments.
- The TCA allows UK-qualified lawyers to practise UK law and public international law in the EU, but this does not extend to EU law or to representation before the European Commission and EU courts, according to the Law Society of England and Wales. In addition, UK lawyers' right to practise in the EU is subject to limits and exceptions imposed by each EU member state. "An overarching issue is how firms can continue to serve their clients in the most efficient and effective way going forward", reports the Law Society, which is attempting to put UK lawyers on the same footing they enjoyed pre-Brexit. "Yet, amid the challenges, Brexit may also present opportunities that firms will be keen to seize."
- The end of free movement means it's more difficult and more expensive for companies to recruit foreign national workers to the UK. Businesses may be required to sponsor foreign national workers — depending on whether the worker came to the UK before or after 31 December 2020 — which requires the company to hold a sponsor licence and entails significant further time and expense. The costs for sponsoring migrants are high and include the immigration skills charge, visa application fees for both the main applicant and any dependants accompanying them as well as the immigration health surcharge. Sponsors must also comply with onerous reporting and record keeping duties in relation to their sponsored workers.
- Businesses must avoid discriminating against EU applicants when they advertise jobs; they cannot exclude potential EU migrants simply because of costs or sponsorship requirements.
- Immigration issues are more likely to come into play when businesses are involved in mergers and acquisitions, with additional due diligence required in relation to the more complex standing of migrant workers.
- EU citizens resident in the UK before 11.00 pm on 31 December 2020 must apply for status under the EU Settlement Scheme or another immigration category by 30 June 2021 to stay in the UK legally beyond that time. Companies found to be employing EU nationals after 30 June who have not applied may be subject to illegal working penalties, including criminal offences for corporate directors and fines of up to £20,000 per illegal worker.
- EU citizens starting work in the UK after 30 June 2021 cannot evidence their right to work using just their passport or national ID card. They must have valid immigration status under the EU Settlement Scheme or another UK immigration category.

*"Our focus is to help customers with their ongoing research needs as they navigate the UK's post-transition legal regime and assess the relevance of the UK-EU withdrawal agreement and UK-EU trade and co-operation agreement provisions to their client's businesses."*

**Joanna Morris**

**Senior Director, Practical Law**

# Intellectual property

Prior to Brexit, many organisations took advantage of the EU-wide protections available for protecting their valuable trade marks and designs. However, the UK's departure from the EU has had significant legal implications for companies' intellectual property, which will require ongoing diligence from their legal advisers. Knowing what those changes are, how they affect your business and understanding what challenges you need to mitigate will be critical to ensuring the continued protection of your organisations' ideas, concepts and innovative assets.

- Applications for EU trademarks and designs that had not reached completion by 31 December 2020 should be reviewed to determine whether they are being used in the UK or are likely to be in the future. Businesses only have until the end of September 2021 to file new UK applications for those marks and designs that take advantage of the EU trade mark or design priority date.
- When a business wants to rely on an unregistered design right—which is particularly likely in, for example, the fast-moving fashion sector—it needs to consider more carefully than before where to first disclose the design. This is because first disclosure in the EU now triggers an unregistered design right for the EU that no longer includes the UK. First disclosure should be made in the UK for designs that are to be used only in the UK.
- Companies should review their plans for UK court proceedings involving EU trade marks or designs. Injunctions issued in these proceedings will now be limited to the UK, so it may be necessary to initiate equivalent proceedings in an EU country. Conversely, in future when proceedings in the courts of EU member states result in remedies for infringement of EU intellectual property rights, they will no longer be enforceable in the UK—so the owners of those rights should consider whether to start equivalent UK proceedings as well.
- Opposition and invalidity proceedings before the European Union Intellectual Property Office (EUIPO) that involved claims relying solely on UK rights have been dismissed. As a result, rights owners must assess whether they can issue new invalidity proceedings based on grounds arising in an EU member state and/or pursue invalidity proceedings against the corresponding new UK right.
- Owners of registered rights should confirm whether they have recorded an EU-based representative for the EUIPO, because solely UK-based firms can no longer act before the organisation except in proceedings that started before 1 January 2021.



- Businesses that make parallel imports between the UK and the EU will find these imports can now happen in only one direction: from the EU to the UK. Parallel imports from the UK to the EU became unlawful at the end of the Brexit transition period. This means rights owners can monitor imports into the EU and request that customs authorities in relevant EU countries seize these goods.
- UK citizens and businesses who have registered a .eu web domain will find that its use was suspended from 1 January 2021 and that it will remain suspended until 30 June 2021 (when it will be withdrawn) unless it is transferred to the ownership of an EU person or entity—for example, a subsidiary company registered in an EU state.
- New databases are protected only by the database right arising in the jurisdiction in which it was created, the UK or the EU, but not both.

# Data protection

An ongoing challenge for organisations is determining which data protection regimes apply case-by-case and day-to-day. This is compounded by the complexities arising out of Brexit, and organisations should consider where changes to their compliance programmes may be required. The evolving nature of changes surrounding data protection means that businesses and their legal advisers must continue to monitor developments ensure their data protection compliance programmes continue to be effective.

- The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419) took effect at the end of the transition period and, among other things, amended the retained EU law version of the GDPR (which is renamed the **UK GDPR**), which applies to organisations established in the UK, and renamed the General Data Protection Regulation (Regulation (EU) 2016/679) as the **EU GDPR**, which applies to EU organisations. However, both regimes have extra territoriality in cases where an organisation residing in one jurisdiction offers goods and services to data subjects or monitors their behaviour in the other jurisdiction. As a result, multinational organisations may be subject to both regimes. Generally, the rules are similar today, but this may change over time and activities such as regulatory oversight and complaint handling may be executed differently.
- Companies covered by the extra-territorial effect are required to appoint a data protection representative in the relevant jurisdiction to manage regulatory and data subject enquiries and compliance.
- Companies may also need to appoint a Data Protection Officer (DPO) under the EU or UK GDPR, this DPO must be accessible to regulators and individuals and should be different from the representative—so they should assess whether they need a DPO in both the UK and the EU and who to appoint.
- Data transfers can be made from the UK to the EU and the EU has approved adequacy decisions in relation to the UK's data protection regime meaning that data can flow freely from the EU to the UK. This is subject to review after four years. However, the Schrems II decision leaves organisations to review, case-by-case and following the EDPB's guidelines, whether a third country in a transfer provides a level of protection essentially equivalent to that guaranteed within the EU.
- The expected appointment of a new Information Commissioner later this year may also impact the data privacy regime in the UK.
- There is additional uncertainty related to the impact of potential changes to EU ePrivacy rules.



## Staying on track every step of the way

When the UK voted to leave the EU back in 2016, the initial surprise of the result quickly gave way to an understanding that Brexit would have significant legal implications. Untangling a complex relationship of almost half a century was likely to keep lawyers busy for the foreseeable future. Monitoring significant developments in the UK-EU negotiations, grasping the practical implications of any legislative and regulatory changes, and understanding what they mean for clients every step of the way, became more important than ever.

Practical Law decided to start coverage of the potential impact of Brexit well before the EU referendum, which was held in 2016. Although at the time most commentators did not anticipate the eventual outcome of the referendum result, we thought it prudent to have a basis for what leaving the EU might mean from a legal perspective. In the event, this proved extremely useful and gave us a head start on developing our Brexit content set.

Our first step was to talk to our customers about what they saw the key issues to be from different practice area/sector perspectives, and how they thought we could help them keep on top of developments.

As a result, we decided to create a dedicated central Brexit team, focused on tracking and covering the negotiations with the EU, UK parliamentary and EU institutional developments, and other useful material, such as House of Commons Library briefings and industry reports. Our aim was to cut out the noise and speculation as far as possible and focus on concrete proposals and important developments. This included making plans on three separate occasions for our content to be ready in the event that the UK left the EU without a deal.

In addition, we started working on a set of foundational maintained content to cover the UK-EU withdrawal negotiations and agreements, and the central UK Brexit legislation, accompanied by fast response legal updates and a weekly email. A further strand was working closely with the Practical Law EU team, and UK practice areas, to ensure detailed coverage of the implications of Brexit for those areas. All of these can be linked to from the main Practical Law Brexit page.

We returned to our key customer contacts once the UK government decided to approach the legislative difficulties of leaving the EU legal regime by creating a set of retained EU law, much of which would (and still does) require amendment by Brexit statutory instruments (SIs). This time, our customers asked to be alerted about the latest Brexit SIs, and for us to track what their status was in the parliamentary process, summarise the changes they would be making, and consolidate the amendments against the relevant UK legislation (including retained EU law). To achieve this, we worked closely with our Westlaw® UK colleagues, to develop a tracker providing details of Brexit SIs by practice area, which then links through to the suite of retained EU legislation on Westlaw.

Our focus is to help customers with their ongoing research needs as they navigate the UK's post-transition legal regime (including retained EU law) and assess the relevance of the UK-EU withdrawal agreement and UK-EU trade and co-operation agreement provisions to their client's businesses. We also ensure that our practice area-specific content is regularly maintained to highlight changes in UK policy and the gradual process of divergence from EU policy and legislation.



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# Dispute resolution

As a practical matter, law departments and law firms may want to educate their teams regarding the changed legal framework for resolving cross-border disputes and the impact this may have on new and existing contracts (in particular, dispute resolution clauses) and enforcing foreign judgments. As a result of Brexit, companies have lost the relatively simple and inexpensive enforcement regime when it comes to enforcing judgments in proceedings commenced after 31 December 2020, and must now default to enforcement under national law, which varies from one country to another, and may be more costly and less predictable. Here are a few additional points to consider and areas to watch:

- For pre-emptive action in relation to clause drafting, lawyers may need to take different stances on jurisdiction and choice of law clauses. It appears that some clients are reviewing these clauses on a contract-specific basis, but not necessarily undertaking a wholesale revision of these clauses—which would be expensive. In addition, the review and re-negotiation of jurisdiction clauses could result in the re-negotiation of other clauses that organisations would prefer not to re-open.
- The UK has applied to join the 2007 Lugano Convention, which (if successful) would reinstate a substantial part of the framework that existed prior to Brexit, in terms of the

rules for determining jurisdiction and enforcing judgments. The European Commission has issued a formal notification indicating that the EU should not consent to the UK's accession and a final decision from the EU is awaited. The future course is subject to political winds and is likely to be embedded within the negotiations over other issues.

- Although service of proceedings can no longer be effected under the EU Service Regulation, it can be carried out under the Hague Service Convention in all member states. The process can be slower and more costly than under the EU Service Regulation (depending on which method is used), and so parties may wish to consider including in their contracts a clause allowing proceedings to be served on an agent within the jurisdiction, which can avoid the time and costs involved in serving proceedings abroad.
- European Small Claims Proceedings and European Order for Enforcement are no longer available avenues.
- The Singapore Mediation Convention is worth noting as a potential future option for dispute resolution in the UK, and the Hague Judgments Convention, a potential global framework for enforcing judgments, could be on the horizon.





# Financial services

Brexit presented the financial services sector with several significant challenges. While the UK-EU Trade and Co-operation Agreement does contain provisions on financial services, it does not provide anything like the levels of market access available while the UK was part of the single market and offer little more than would have been available had the UK defaulted to World Trade Organization rules.

For now, UK and EU regimes are broadly similar, but it is inevitable that they will diverge in future. For financial services companies and their legal advisers, a key challenge will be dealing with the two differing regimes side-by-side. Tracking these changes will require lawyers to monitor multiple regulatory bodies in multiple jurisdictions—a time-consuming, costly and error-prone task. Key issues for the financial services sector include:



- A practical headache applies to financial groups with companies based in both the UK and the EU. If they want common compliance standards across the group—on governance, for example—they will need to track developments in both jurisdictions and, where there are divergences, decide on a single standard (which will presumably mean adopting whichever is more rigorous.) The alternative is to take different approaches on different standards in different parts of their business.
- Another aspect to divergence will be seen as the UK and the EU tackle emerging sectors such as FinTech and cryptocurrencies that currently have little or no established body of law or regulation. Significant divergence in approaches is likely as each jurisdiction places different emphasis on issues relevant to their respective markets including competitiveness and consumer protection.
- Another consequence of Brexit is an increased volume of regulatory initiatives affecting financial institutions. For example, the UK government and regulators are likely to act on the flexibilities allowed following Brexit—e.g., the Prudential Regulation Authority is considering a simpler prudential regime for smaller banks, which would not currently be possible in the EU. UK regulators and policymakers haven't had capacity to focus on much beyond Brexit since the referendum, but that is changing. They now have more bandwidth to address reforms that have been delayed since 2016, and the regulatory floodgates may be opening.
- The UK Financial Services Future Regulatory Framework Review marks the start of the government's first set of structural reforms for the financial services sector post-Brexit. It will likely result in the introduction of a Financial Services Bill in Parliament and may attract more reforms as the discussion proceeds.
- On the EU side, the European Commission is using the ongoing Capital Markets Union project to build up the EU as a leading financial centre and alternative to the City of London. As it develops, there is likely to be additional divergence from the UK side.

## Conclusion

Whilst Brexit was formally completed with the UK and EU signing the future relationship agreements, changes will continue for years and the impact on businesses will range from small to profound. As the information outlined above illustrates, companies and their legal counsel need to view the EU-UK relationship as ceaselessly fluid. Regulations will undoubtedly continue to change and diverge, making it essential for UK organisations with a footprint in the EU and beyond to stay abreast of legal developments as they unfold. Indeed, the regulators who set and adjudicate these rules and the politics that drive them are also subject to change.

As a result, understanding the rules and how they apply will be a significant issue for organisations and their employees who move between borders. Ensuring you know what the law is, how it's changing and what it means for you is more important than ever. For lawyers specialising in a wide range of practice areas, a reliable source of information is needed to navigate the complexity and change spurred by Brexit and other global events. Such information will enable you to provide your clients and organisations with proactive, expert advice that informs strategic decisions and helps achieve objectives.

With the right know-how solutions, legal teams can build a foundation of understanding that enables you to ask the right questions, go straight to the answer, easily interpret the information, and quickly and confidently provide expert advice. They can ensure compliance with ever-changing and increasingly complex regulations, anticipate future challenges, mitigate risk, and ensure their teams' and client's long-term success.



# Key Practical Law resources to help you navigate the post-Brexit landscape (licence required)

## Brexit

### **Brexit essentials: Q&As on agreements and operation of UK law**

This note gives short answers to common questions about Brexit withdrawal matters, the transition period, the future UK-EU relationship, and the operation of UK law during and after transition.

## Employment and immigration

### **Brexit: implications for employment law in the UK**

This practice note considers some of the potential employment law implications for both employers and employees of the UK's departure from the EU.

### **Business immigration: overview**

This note introduces some of the most relevant concepts of business immigration law, such as who can work in the UK without permission, business and work-related immigration categories, and the scope of employers' legal duty to prevent illegal working. It also sets out the immigration implications of Brexit for UK employers.

### **Brexit: managing workforce disruption and skills shortages**

This note provides practical guidance and tips on managing the issues of workforce disruption and skills shortages arising from and in preparation for Brexit.

## Intellectual property

### **Brexit: implications for intellectual property rights**

This practice note considers the implications for intellectual property (IP) rights arising from the UK's exit from the EU, in particular for unitary EU intellectual property rights. It also covers types of rights that are often grouped with IP rights, such as plant variety rights, geographical indications and .eu domain names.

## Data protection

### **Brexit: implications for data protection**

This note provides an overview of the implications of Brexit for data protection regulation in the UK and transfers of personal data between companies in the EU and UK.

### **Brexit post-transition period: data protection (UK)**

A summary of the changes to the UK data protection legislation in force after the end of the UK-EU transition period. The note also summarises key areas that organisations should consider in relation to data protection updating.

### **Appointing a data protection representative in EU or UK (UK)**

An overview of the key requirements and considerations in appointing a data protection representative. It discusses the requirements for appointment in the EU under Article 27 of the General Data Protection Regulation ((EU) 2016/679) (EU GDPR) by a UK controller or processor after the end of the UK-EU transition period and also in the UK by an EU or non-EU controller or processor under Article 27 of the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR).

### **Appointing a representative in the EEA and the UK: FAQs**

A list of frequently asked questions and answers on appointing representatives in the UK under the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR) and appointing EU representatives in the EEA under the General Data Protection Regulation ((EU) 2016/679) (EU GDPR), after the end of the UK-EU transition period.

## Dispute resolution

### **Brexit: implications for civil justice and judicial co-operation**

This note provides an overview of the key legal issues affecting civil justice and judicial co-operation arising from the UK's exit from the EU. It explains how the UK's withdrawal is likely to impact on the framework of rules which apply in this area, in particular the rules relating to jurisdiction, enforcement of judgments, governing law, service of proceedings, taking evidence and mediation.

### **Enforcement of English judgments in other jurisdictions**

A summary of the rules and procedure and practical guidance relating to the enforcement of English judgments in other jurisdictions, including Scotland, Northern Ireland and EU member states.

### **Brexit: UK-EU developments on future relationship for civil justice and judicial co-operation: tracker**

A tracker charting the key stages in the Brexit negotiations between the UK and the EU regarding the framework for judicial co-operation in civil and commercial matters, in particular the terms of the future UK-EU relationship.

## Financial services

### **Brexit and Financial Services: overview**

This note provides an overview of the key legal and regulatory issues affecting the financial services sector arising from the UK's departure from the EU. It also acts as an introduction to Practical Law Financial Services' suite of materials on the implications of Brexit for financial services legislation and regulation.

### **Brexit and Financial Services: tracking EU and UK divergence**

A guide to Practical Law and Westlaw resources to help you compare key EU and UK financial services regulations following the end of the Brexit transition period and track divergence between them.

### **Hot topics: UK financial services future regulatory framework review**

This note provides an overview of the UK government's Financial Services Future Regulatory Framework (FRF) Review, which is intended to address issues relating to legislation and the governance of the financial services regulators that have arisen as a consequence of Brexit.

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