



POST-BREXIT BUSINESS

SIGNAL BIZHUB COLLABORATION SESSION
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Post-Brexit Review

This section is broken into a few sub-sections as there are so many different areas that imports and exports cover and therefore need careful consideration.

This is a short overview of the areas that may affect your business and should kickstart a review how things may have changed in your business.

Contents

- Exports & Imports
- Certificates & Authorisations
- Localisation Requirements
- Labelling & Markings
- Customs Intermediary
- Suppliers
- Online Sales VAT
- Direct Taxation
- Chemicals
- Professional Qualifications
- Services
- Data, Digital & IP Rights
- UK Registered Companies
- Contracts: Jurisdiction Clauses
- Travel



Exports & Imports

EU businesses buying goods from the UK for resale in the EU will become importers, while those that currently sell products in the UK will become exporters. Both have to comply with a new set of obligations according to the applicable Union rules.

Ask yourself:

Have I reviewed the changes to the relevant statutes and laws?

Do I have a good understanding of the obligations of an exporter/importer according to applicable EU rules?

Certificates & Authorisations

Marketing authorisations issued by UK authorities will no longer be valid for the EU. Markings or labelling of goods placed on the Union market, which refer to bodies or persons established in the United Kingdom, will no longer comply with Union labelling requirements.

Ask yourself:

Have I transferred certificates and authorisations issued by a UK-based body or authority to an EU body or authority, or sought new ones?

Are any EU produced goods and services I resell correctly marked and labelled for release in the UK?

Localisation Requirements

In order to facilitate the effective enforcement of EU product rules, certain persons with a regulatory responsibility have to be established in the EU (localisation requirements). Post-Brexit, persons established in the UK will no longer comply with these localisation requirements.

Ask yourself:

Have I ensured compliance with EU localisation requirements?

Labelling & Markings

Post-Brexit, markings or labelling, when referring to bodies or persons established in the UK, no longer comply with labelling requirements when placed on the EU market.

Ask yourself:

Have I ensured that products placed on the EU market are correctly labelled and marked?

Customs Intermediary

Have you appointed an intermediary? If not you need to make the correct customs declarations. Companies also have to demonstrate the originating status of goods traded in order to be entitled to preferential treatment under a possible future EU-UK agreement.

Ask yourself:

Am I acquainted with the relevant procedures and documents for the demonstration of the originating status of goods?

Have I adapted my supplier declarations, including long-term supplier declarations, accordingly?

Suppliers

You will need to comply with customs procedures at the UK and EU borders. Failure to complete these correctly could lead to goods being delayed or rejected and/or additional charges applying. Review:

<https://www.gov.uk/government/publications/the-border-operating-model>

Ask yourself:

Am I acquainted with the EU customs formalities that will apply post-Brexit, in particular, if I have so far had little or no experience in trading with third countries?

Are my supply chains prepared for the longer timeframes resulting from these additional formalities and procedures?

Online Sales VAT

The "Mini One Stop Shop" (MOSS) allows businesses that sell digital services to consumers in EU member states to report and pay VAT via a single return and payment. UK businesses can continue to use the system after the transitional period ends by registering in an EU member state.

Ask yourself:

Should I register for MOSS for online sales in the EU-27?

How do I claim refunds on sales into the EU?

Am I acquainted with the relevant VAT procedures?

Have I factored in the longer timeframes resulting from these additional formalities and procedures into my supply chain organisation?

Direct Taxation

National rules on direct taxation of companies have to take account of EU law, including harmonisation measures in certain cross-border situations. Post-Brexit, the rules for direct taxation of companies in situations involving the UK will be those applicable to third countries.

Ask yourself:

Have I taken the necessary steps to ensure compliance with national rules for direct taxation where the UK is involved?

Chemicals

As of 1st January 2021, EU rules on the registration, evaluation, authorisation and restriction of chemicals (REACH) will no longer apply in the United Kingdom. Registrations held by manufacturers and producers established in the United Kingdom will no longer be valid in the EU.

Ask yourself:

Have I ensured that my substances are registered with a manufacturer or importer in the EU, or appointed a person in the EU who is legally responsible for that import as official registrant for the substance?

As a downstream user, have I checked whether substances I use are properly registered?

Professional Qualifications

As of 1st January 2021, the UK will no longer be covered by EU rules on the recognition of professional qualifications.

UK nationals, irrespective of where they acquired their qualifications, and EU citizens with qualifications acquired in the United Kingdom will need to have them formally recognised in the relevant Member State, based on that country's rules for recognition of third-country qualifications. In many cases, this recognition process is more burdensome.

Ask yourself:

Have I/my members of staff obtained the mutual recognition of my/their professional qualification obtained in the UK?

Services

UK service providers and professionals established in the United Kingdom will need to demonstrate compliance with any rules, procedures and/or authorisations that cover the provision of services in the EU by foreign nationals and/or companies outside the EU.

Those requirements are frequently set out in national regimes. EU service providers and professionals established in the Union and operating in the United Kingdom will need to demonstrate compliance with all relevant UK rules.

Ask yourself:

Have I assessed whether I need to/ can continue to rely on services provided by entities established in the UK?

Does my business rely on licences or authorisations issued by UK authorities?

Have I applied for similar licences or authorisations in the EU-27, or transferred such licences or authorisations issued by the UK to an EU-27-authority?

As a client/customer, did I check whether my provider has the licence or authorisation required to provide services in the EU?

Data, Digital & IP Rights

Trademarks and designs, geographical indications, plant variety rights. As of 1st January 2021, while existing EU unitary intellectual property rights remain protected under the Withdrawal Agreement, any new EU unitary rights will have a reduced territorial scope as they will no longer have effect in the United Kingdom.

Ask yourself:

Have I taken the necessary steps to ensure continued protection of my intellectual property?

Will intellectual property rights be affected in the EU?

UK Registered Companies

As of 1st January 2021, UK incorporated companies will be third-country companies and will no longer be automatically recognised. Their recognition will become subject to national law for third country-incorporated companies.

Ask yourself:

If my company is incorporated in the UK, have I checked against national law that having the central administration or principal place of business in the EU suffices to keep an EU company status?

Contracts: Jurisdiction Clauses

As of 1st January 2021, Union rules facilitating the cross-border recognition and enforcement of judgements in the EU and in the United Kingdom during the transition period will no longer apply.

Also, as of 1st January 2021, the EU Online Dispute Resolution (ODR) platform will no longer be available for the out-of-court resolution of disputes between consumers residing in the European Union and traders established in the United Kingdom. Judgments handed down by a UK court might no longer be swiftly enforceable in the European Union compared to today's situation.

Ask yourself:

Have I reviewed and made provisions for an EEA-based terms and conditions?

Have I reviewed and made provisions for an extended time frame for EEA court cases?

Have I re-assessed a choice of UK jurisdiction in my commercial contracts?

Travel

Border procedures have changed and controls will apply at both the UK and EU borders. Controls are being introduced in three phases between January and the end of June 2021. Simplified procedures apply to imports for the first six months.

Ask yourself:

Do I know how the border will operate & what new procedures are being phased in?

Do I have all the relevant clearances from all relevant bodies?

GDPR Review

Overview of the current position

The General Data Protection Regulation (GDPR) has been retained in UK law and will continue to be read alongside the Data Protection Act 2018, but with some technical amendments to ensure it can function in UK law.

The Information Commissioner (ICO) remains the UK's independent supervisory authority on data protection. The UK is now deemed a 'third country' by the EU and will require an adequacy decision to continue personal data transfers from the EU/EEA.

However, the EU-UK Trade and Cooperation Agreement contains a bridging mechanism that allows the continued free flow of personal data from the EU/EEA to the UK after the transition period until adequacy decisions come into effect, for up to six months.

Transfers of personal data from the UK can continue as before. So, do you know the UK GDPR rules and regs that affect you? For example: Under GDPR you can't get someone's email address off LinkedIn or a company's website for example.

Did you know that? Do not neglect your GDPR responsibilities it could cost you dearly. It's a good idea to stay informed about changes and updates on an ongoing basis.



Website Checklist

- Do your forms have a data handling agreement checkbox? ☐
- Do you have a current Privacy Notice updated with UK GDPR laws & state Data Protection Officer details? ☐
- Terms and Conditions updated post-Brexit? ☐
- Do you have a Cookie policy on arrival stating all cookies and why you use them? ☐
- Does your site use an SSL certificate? ☐
- Have you ensured your data bases are encrypted and use 'pseudonymisation'? ☐
- All tick boxes for subscriptions are set so a user has to OPT-IN and not opt out? ☐
- Are you using secure and encrypted user account creation, especially if offering ecommerce? ☐
- Have you checked payment gateways privacy policies and referenced them in your privacy policy? ☐
- Do your enquiry and contact form comply with all GDPR and data protection laws? ☐
- Have you ensured any live chat service is covered by your cookie policy and privacy policy? ☐
- Is Google Analytics referred to in your cookie policy and privacy policy? ☐
- Have you selected the "anonymisation" option in Google Analytics to conform to GDPR? ☐
- Do you add users to your CRM and is it compliant with all GDPR laws? ☐
- Data handling/storage: Where is it and how secure is it? Do you comply with EU rules transferring personal data in/out the UK? ☐
- Is your website using the latest security to protect users "by default and design"? ☐

Checklist

- Do you receive personal data from the EU/EAA? ☐
- Are you registered with an EEA agent? ☐
- Understand your GDPR responsibilities - do you know them? ☐
- Understand your data - where is it, who has access & when? ☐
- Review or define your data consent policy - ensure it is known. ☐
- Delete old data, delete old email lists, dump business cards. ☐
- Data storage and security - where is your data? Is it secure? ☐
- Appoint a Data Protection Officer, even if you're a solopreneur. ☐
- Train staff on data handling and know who should do what. ☐
- Create a Subject Access Request plan and implement it. ☐
- Are suppliers GDPR compliant? Get written proof. ☐
- Create data processing notices and share them! ☐
- Do you give people the option to unsubscribe whenever you contact them? ☐
- Do you protect the data you collect online? ☐
- Do you only collect personal data you actually need for a specific purpose? ☐
- Do you periodically review the data you hold and delete anything you don't need? ☐
- Can you demonstrate you have appropriate processes to ensure you comply? ☐

Find out more here:

<https://ico.org.uk/for-organisations/resources-and-support/getting-ready-for-the-gdpr-resources>

Urgent actions:

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Horizon Scanning Checklist

With so many changes to the business landscape in such a short space of time you are likely to feel a little overwhelmed. Horizon scanning allows you to look up the "road" a little and see what is likely to affect you and your business.

As Emma mentions in her Horizon Scanning Checklist: "It's so easy to get fixated on the short-term and close-up agenda when things are busy. But a long-term view and peripheral vision will really help you anticipate changes and be ready to flex – while staying on course. And when it comes to being a resilient business, this is key."

Can you identify your top 3 business priorities that will move you towards that vision?

☐

Can you articulate your top 3 business concerns that might get in the way of your vision?

☐

Who are your 3 nearest competitors for your customers?

☐

Can you identify their priorities? TIP: Find them on social media to work this out

☐

Can you identify their concerns?

☐

Who are your three best customers right now?

☐

Can you identify their priorities?

☐

Can you identify their concerns?

☐

What changes can you see coming this year in your industry?

☐

What changes can you see coming globally?

☐

When you have completed, write any insights down and then return to the first two questions. Have your answers changed? If so, how?

Writing down your answers and referring to them at regular intervals will help you keep an eye on the horizon and adapt and plan accordingly.

SWOT Analysis

Emma mentions that another great tool for scanning the horizon and figuring out what might affect your business is a SWOT analysis.

Periodically reviewing your Strengths, Weaknesses, Opportunities and Threats, especially post-Brexit is a worthwhile exercise.

Costs are likely to increase, and supplies may become more in demand, plus many other issues in every industry.

So, what are your issues, positive and negative?

Strengths

Define the company's current focus or prime mission.

What market segments can the company take advantage of?

What is the company's value proposition and how might it be improved?

What are your Post-Brexit strengths?

Weaknesses

Are there barriers to market entry that the company needs to overcome?

Are there any risks inherent to the organisation that need to be mitigated?

Is there a training or staffing shortfall?

What are your post-Brexit weaknesses?

Opportunities

Can you identify any underserved markets?

Do you have proprietary processes, intellectual capital or other resources?

Have you got access to capital, technology or other key advantages?

Is there a commercial opportunity for you post-Brexit?

Threats

Who are your key competitors?

Is there any technology that might disrupt your market or industry?

Are there any financial threats to your business?

What are your post-Brexit threats?

References

Information has been collated from:

<https://www.gov.uk/transition-check/questions>

https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/na0220590enn_002.pdf

https://ec.europa.eu/info/sites/info/files/brexit-preparedness-communications-checklist_v3_en.pdf

<https://www.icaew.com/brexit/brexit-checklist>

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