



Myerson Preparing for Brexit

Our guide for SMEs

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myerson



Welcome

We understand the challenges and opportunities which Brexit presents to SMEs and we are passionate about taking care of your business interests and helping you to navigate the transition into the Post-Brexit era. It is a deep source of satisfaction that so many businesses choose Myerson as their trusted adviser.

Why Myerson?

We are proud to be ranked as 'Top Tier' in the prestigious international directory **The Legal 500**, and commended by The Times 'Best Law Firms 2019'. Therefore, you can rest assured you will receive a high quality and truly personal service.

With change comes opportunity and being informed of the impact of Brexit is crucial in order to plan effectively for the post-Brexit era. We can advise you and your business to help you to mitigate the unforeseen issues, and take advantage of the opportunities, which Brexit presents.

How we work.

Every client is different, and we are here to support you every step of the way.

Personal, partner-led service. Our most experienced solicitors get to know you and your business inside out. We strive to become your trusted advisers, providing added value and most of all, a genuinely personal service.

The highest level of expertise. Combining commerciality, practicality and legal expertise enables us to deliver every time. Our solicitors have a wealth of knowledge gained from advising clients of all shapes and sizes.

A team you can trust. You're in safe hands. We have a team of specialist lawyers from across our employment, litigation, corporate & commercial departments who have in-depth knowledge of the economic changes following the impact of Brexit. Our departments work together to ensure that the best outcome for our clients - our expert team knows its stuff!

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Preparing for Brexit

Prepare your business for the new rules that will apply from the 1 January 2021.

The United Kingdom left the European Union (EU) on Friday 31 January 2020 (the Brexit Date). Following the Brexit Date, a transition period started, during which time the United Kingdom remains subject to the laws of the EU and remains a member of the EU single market and customs union (the Transition Period).

The Transition Period will come to an end on 31 December 2020, regardless of the outcome of the ongoing negotiations between the EU and the UK with regards to a new trade deal and other additional arrangements.



Contents of this guide.

This guide is intended to provide an overview to help your business prepare for Brexit. The guide includes:

- sections explaining the key implications of Brexit;
- guidance on steps your business needs to take to prepare for Brexit; and
- links to resources, tools and further information to help you prepare for Brexit from the end of the Transition Period.

In particular, this guide provides information and guidance about changes that will impact a large number of SMEs, including:

- importing/exporting goods and services;
- data protection and GDPR issues.
- intellectual property;
- contractual arrangements with your customers, clients and suppliers; and
- the impact on your workforce, including EU workers and employees.

The guide is intended to provide a summary of some of the key issues which your business may face.

If you would like to receive further advice on any particular issues (whether or not in this guide) which your business is facing. Please contact us:

Email: lawyers@myerson.co.uk
Call: **0161 941 4000**



What are the key considerations for SMEs as they prepare for Brexit?

Cashflow and Economic Impact

With the impact of Covid-19, cashflow for many businesses has been stretched. Covid measures, including furlough and tax deferrals, are coming to an end or taking a different form and businesses are now being required to fund the full cost of employees, pay taxes due, and will soon start making repayments for any loans (Coronavirus Business Interruption Loans typically being repayable on an interest free basis for 12 months).

The economic consequences of Brexit are unclear and will depend to a large extent on whether the UK can negotiate a free trade agreement with the EU and/or with other key trading partners.

A free trade agreement with the EU may not be finalised when the Transition Period ends on 31 December 2020. Businesses therefore need to consider the impact of further economic uncertainty, including on cashflow, sales, collection of debtors and the ability to pay creditors.


ACTION 1:

Complete a cashflow forecast and budget.

It is crucial for business to plan for the possibility of an economic downturn. This includes ensuring that the business has cashflow forecasts, budgets and has factored in different eventualities in order to consider the worst-case scenarios. This will also help to guide the business as to whether further funding/borrowing may be required or whether other measures could and/or ought to be taken to help minimise the impact.

Does your business import or export goods?

If your business imports or exports goods either as sales or in your supply chain, there are a number of factors to consider as the Transition Period comes to an end on 31 December 2020.



Custom duties in the UK are a tax levied on imports. Currently, there are no tariffs on trade within the EU customs union, however unless the UK agrees a free trade deal with the EU, then customs duties will apply to trading of goods between the UK and the EU.

At present, the UK's trade with the rest of the world is subject to EU tariff rates. However, at the end of the Transition Period, the tariffs will change and will depend on any preferential trade agreements which the UK has negotiated with those countries.

It is likely these will differ from country to country or will be determined by the World Trade Organisation (WTO) if nothing specific has been agreed between the UK and the country in question, including with the EU.

It is also worth noting that the rate of tariffs depends on three elements:

- the type of goods (known as the 'commodity code');
- the country the goods are being imported into; and
- where they are judged to have 'originated' from.

The government has a helpful page and tool detailing commodity codes, duty and VAT rates here <https://www.gov.uk/trade-tariff>

Key steps all importers and exporters should take.

ACTION 2:

Make sure the classification of your goods (tariff/commodity code) are correct.

- If you source raw materials from outside the UK, have you considered the cost and tariff which will apply from 1 January 2021?
- If you source raw materials inside the UK, you should check whether your supply chain is reliant on suppliers from outside the UK and, if so, what measures can be taken to ensure this doesn't adversely impact your business.
- If you sell your goods to overseas customers, including exporting goods into the EU, have you checked what tariffs, pricing and shipping will apply from 1 January 2021?

ACTION 3:

Use the Government **Trade Tariff** website to ensure you are aware of the commodity codes, duty and VAT rates for your goods.

ACTION 4:

Ask **HMRC for help to classify your goods** or find out how to obtain a legally binding decision on the commodity code to use for your goods. **Apply for a Binding Tariff Information decision by clicking here.**

ACTION 5:

Ensure your company is registered for both imports and exports (Obtain an EORI number).

Does your company have an EORI number that starts with GB?

From 1 January 2021, you will need an EORI number if you intend to trade goods between the UK and the EU.

You should ensure that you apply for your EORI number in advance of 1 January 2021. It normally takes up to a week to obtain an EORI number.

If your business will be making customs declarations or obtaining a customs decision in the EU, then your business will need an EU EORI number. You can obtain this from the customs authority in the EU country where you submit your first declaration or request your first decision.

ACTION 6:

If you already have an EORI number: from 1 January 2021, you will need an EORI number that starts with GB to move goods to or from the UK. Check your EORI number and apply for a new one if yours does not start with GB: <https://www.gov.uk/eori>



ACTION 7:

Be ready for the new customs paperwork.

Regardless of whether a deal is reached between the UK & EU, import and export customs declarations will be required for the movement of goods as of 1 January 2021.

It is estimated that the number of customs declarations will increase from 50 million to 200 million.

Exporters should speak with their customs broker or import-export agent who acts on their behalf to secure the service they need from 1 January 2021 or look at setting up your business to make declarations internally. [Customs declarations for goods you bring or receive into the UK or EU click here.](#)

HMRC has made funding of £50 million available to enhance its Customs Grant Scheme. Since 29 July 2020, organisations have been able to apply for funding to reimburse several costs associated with increasing their capacity and enhancing their ability to complete customs declarations, ahead of the new rules from 1 January 2021. For further information about the [Customs Grant Scheme click here.](#)

ACTION 8:

Check the new UK tariff for imported goods.

From the 1 January 2021, the UK will apply a new tariff in respect of all imported goods. This UK Global Tariff (UKGT) will replace the EU's Common External Tariff, which will continue to apply until 1 January 2021.

The UK has already published the tariffs which apply to goods which will be imported into the UK when the UKGT takes effect on 1 January 2021.

The UKGT has removed a lot of tariffs on imports in anticipation to facilitate a smoother transition. Check the tariffs which apply to goods you import from the EU when the UKGT takes effect on the 1 January 2021: [Check UK trade tariffs from 1 January 2021.](#)

Border delays and supply chain problems.

From 1 January 2021, the increase in border checks and additional controls over product standards/safety regulations will risk delays in the import/export of goods. Businesses will need to plan carefully to minimise the impact of this on its supply chain and contractual obligations.

In June 2020, the Government announced that it would phase in its own checks on goods over the course of 2021 in order to facilitate a smoother transition on imports.

However, the EU has not reciprocated on this and remains insistent that it will implement full checks on UK exports.

ACTION 9:


Discuss supply chain issues with your suppliers and customers and put into place a contingency plan if there are concerns regarding the impact of possible border delays.

Review your contracts, in particular any supply or purchasing terms, in light of the possible issues, to ensure it is clear who is responsible for delays, compliance and to ensure your business is not likely to be in breach of any service level agreements or guaranteed lead times.

Data protection and GDPR in a post Brexit world.

After the Transition Period ends on 31 December 2020, the Data Protection Act 2018 (which implemented the GDPR into UK law) will remain in force and, accordingly, from most practical perspectives, GDPR will continue to apply, subject to certain changes implemented by legislation passed by the UK Government last year.

One area which will be affected by Brexit is overseas transfers of personal data between the UK and the EEA.



After the transition, the UK will be deemed to be a "third country" until such time as the EU makes an adequacy decision regarding the UK. Whilst it is hoped that an adequacy decision will be forthcoming, until this happens, the rules which restrict transfers of personal data outside of the EEA will apply and the transfer of personal data from the EEA to the UK will therefore only be allowed if 'appropriate safeguards' are in place or a specific derogation applies.

Such safeguards include Standard Contractual Clauses (SCCs). SCCs must follow the format which has been approved by the European Commission. It should be noted however that the SCCs are only intended for use between data controllers (and not between controllers and processors at the time of this guide) and care should therefore be taken to ensure that your business is compliant in adopting appropriate safeguards.

The UK Government has stated that transfers of personal data from the UK to the EEA will not be restricted, and this is the position currently cited by the Information Commissioner's Office (ICO), so it is not currently anticipated that this will be problematic.

The ICO has published a checklist of steps which businesses should take to start preparing for data protection compliance in the event of a no-deal, for further information [visit the ICO website here](#).

The Government has also produced [guidance on using personal data after Brexit, available here](#).

ACTION 10:

If your business receives personal data from countries in the EEA, you should carefully consider how this will be impacted by Brexit and ensure that you have put into place the appropriate SCCs or you are able to rely on another derogation in order to ensure compliance with the provisions of GDPR which restrict personal data transfers outside of the EEA.

Brexit and IP – how can you protect your intellectual property?

The UK government has provided some certainty to businesses that upon expiry of the Transition Period, the legal provisions relating UK intellectual property (IP) rights will remain the same or substantially similar. This is because many of the laws governing IP rights in the UK are derived from domestic legislation.



Notwithstanding this, there will be some consequences for IP in the UK stemming from the UK's departure from the EU. Of particular importance is the fact that EU trademarks and community registered designs will cease to cover the UK – instead the UK will automatically create new comparable rights to fill this gap in protection.

Businesses should also be aware that where EU trademark applications have not been registered by 31 December 2020, applicants will have 9 months to apply for comparable UK trademarks and claim priority from the pending EU trademark.

One of the areas in which significant divergence may be felt between the EU legislative framework and the UK legislative framework is around the Digital Copyright Directive as the UK government has stated it will not proceed with implementation of this into UK law. The directive has been viewed as one of the most significant changes to copyright laws in the last 20 years and consequently highly controversial.

ACTION 11:

1. Identify the UK trademarks which have been automatically created following the end of the Transition Period to fill the gap where EU trademarks would normally have provided UK protection. Update your records accordingly.
2. Plan to make UK trademark filings and claim priority for any EU trademark applications which may be pending when the Transition Period ends.

Contracts.

Some provisions in your existing contracts may no longer be relevant post-Brexit or may raise legal or practical questions in the future.

Furthermore, if your contracts (for example, terms of business, sale of goods and employment contracts) make reference to the UK being a member state of the EU or rely on EU regulation, contain EU focused dispute resolution procedures or contain terms governing personal data transfers, they may need updating.

As mentioned above, you should also be careful about service level agreements (SLAs) and key performance indicators (KPIs) on supply arrangements and projects, particularly if there is a possibility of delays or problems with your supply chain (whether goods or services) following the end of the Transition Period.



ACTION 12:

Review your standard terms and conditions/precedent contracts in order to determine whether changes are needed.

Review your existing contracts in order to ascertain whether Brexit heightens any risks of non-compliance or breach, and whether any steps can be taken to mitigate those risks.

Brexit impact on your workforce

The expiry of the Transition Period on 31 December 2020 will bring an end to the freedom of movement rights currently enjoyed by EU citizens. This will have a clear impact on UK businesses employing EU workers who must familiarise themselves with the new visa requirements.

The EU Settlement Scheme.

EU, EEA and Swiss nationals, and their families, who are living and working in the UK before 31 December 2020, and who wish to remain, must have the relevant permissions to remain from 1 January 2020 onwards.

They can ensure this by applying to the EU Settlement Scheme, which will either grant them permanent settled status or pre-settled status, depending upon on how long they have lived in the UK. The deadline for applications is 30 June 2021 (until this date, a passport, national identity card or biometric residence document can still be used to establish a right to live and work).

ACTION 13:

Existing employees of UK businesses who are EU nationals and who wish to stay should apply for settled status as soon as possible. For more details on the EU settlement scheme and what employers can do to help their EU workers, [please see our Settle Status Guide here](#).

The New Immigration System.

EU, EEA and Swiss nationals, and their families, who arrive in the UK to live or work from 1 January 2020 onwards, will need to obtain a visa under the new points-based immigration system before entering the UK. Provided they pass a new set of rules around skills, qualifications and salaries, the new system offers visas to three categories of worker: (1) skilled workers; (2) highly skilled scientists, researchers and mathematicians; and (3) international university students and graduates.

ACTION 14:

Employers who plan to use EU workers in their UK operations from 1 January 2020 will need to apply for a sponsorship licence under the new immigration rules and ensure that the position they wish to fill qualifies for a visa under the new system. For more information, [review our Immigration Guide here](#).

In addition, employers that operate in EU countries and who rely on migrating UK workers will also be impacted by the end of freedom of movement. Most EU countries have an equivalent to the Settlement Scheme which may be available to such workers. Otherwise, employers will need to take specialist advice on the new immigration systems that EU countries implement from 1 January 2020.

ACTION 15:

Do you employ UK nationals living in the EU/EEA/Switzerland? If so, please note this [government guidance for living in Europe here](#).

If you have UK staff that travel to EU countries on business trips, additional permissions may be required. For further [government guidance on travel and visa requirements for the EU visit the government website here](#).

In Summary

There are a number of issues which your business will need to consider as the UK nears a formal exit from the EU.

Note that there may also be tax implications which your business should be aware of and we would recommend that you speak with your accountants or tax advisers to ascertain the impact of these.

This guide highlights some of the key considerations you need to take into account, however further advice should be taken on these areas in order to ensure your business is compliant and the risks are minimised.

Please get in touch if you wish to receive guidance and advice that is specific to your business and your circumstances.

You're in safe hands!

If you would like further information about how we can help you, or if you have any questions, please don't hesitate to contact a member of our Brexit Team today.

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Because
life is rarely
**black and
white.**



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