

Key legal implications of a “no deal” Brexit





This publication explores some key legal risks and issues which may arise when the United Kingdom exits from the European Union potentially without a Withdrawal Agreement ratified by the EU and the UK for the purpose of Article 50 of the Treaty on the European Union. In spite of the political rhetoric and speculation that has been, and continues to be prevalent, this remains a risk which businesses need to be prepared for.

We seek to focus on the main legal issues flowing from such a Hard or No Deal Brexit. Of course no two businesses are the same and individual businesses will be affected by the issues addressed here to a greater or lesser degree. Other issues may well be relevant. If you require further information or if you need more tailored advice, please do get in touch with your usual Ashurst contact, or any of our people listed on the last page of this publication. We will be pleased to hear from you.

Key legal implications of a “no deal” Brexit

As we approach the end of 2020, the UK is coming to the end of a four and half year process to realign its relationship with the EU. On 17 October 2019, Prime Minister Johnson agreed the texts of the Withdrawal Agreement (“WA”) and Political Declaration with the EU, and these texts were quickly ratified by the European and UK Parliaments. Under the WA, which took effect on 31 January 2020, the UK withdrew from the EU, but the legal relationship between the UK and EU will remain largely unchanged until 31 December 2020. This period is referred to as the **Brexit Transition Period**.

If the EU and UK have not concluded a future trading relationship in accordance with the Political Declaration by that date, then the EU and UK will treat each other as “third countries”, and a “hard” or “non deal” Brexit will have occurred. The UK and EU had reserved to themselves the possibility that the Transition period could be extended, but the extension was not used and expired. As at 25 November 2020, there are still significant issues to resolve in order to conclude a future trading relationship. With time short, it is appropriate for businesses to act as if a “no deal” Brexit is going to happen.

In anticipation and expectation of ratification of the WA, the UK Parliament passed primary legislation (principally, the European Union (Withdrawal) Act 2018 (the Withdrawal Act 2018), and secondary legislation, the principal purpose of which is to ensure that the UK’s domestic laws remain, to a significant extent, the same as EU law (at least, as those laws apply from 1 January 2021).

Key Issues

We set out below our overview of the likely material issues that may affect businesses as a result of a “no deal” Brexit.



HUMAN RESOURCES/PEOPLE

- **No significant changes foreseen:** It is unlikely that the UK government will substantively change employment laws based on EU law (certainly in the short-term), notwithstanding a “no deal” Brexit.
- **Settled status:** EU nationals (and their dependants) who are in the UK by 31 December 2020 and who satisfy the relevant criteria may apply for “settled status” allowing them to remain and work in the UK. Applications may be made until 30 June 2021. EU nationals who arrive in the UK after 31 December 2020 will need to have the appropriate UK immigration status under the proposed new immigration system (outlined below). This will take effect from 1 January 2021.
- **New UK immigration system:** Any EU nationals wanting to work in the UK (without settled or pre-settled status) will need to comply with the proposed new immigration system from 1 January 2021. Those EU nationals looking to visit may be able to undertake very limited activities, such as attending a meeting or signing a contract and under the current proposals will not need a visa as is the case for non-EU nationals. However, they will not be able to carry out substantive work without proper immigration authority.
- **A new points-based system:** A new points-based immigration system will apply from 1 January 2021 to both EU and non-EU citizens. As at August 2020 the entire picture on the UK’s future immigration system is still unclear because the Immigration Bill which will end freedom of movement on 31 December 2020 is still continuing its passage through Parliament.
- The government has confirmed the following:
 - ◇ **Criteria:** Skilled workers will need to demonstrate that they meet a specific set of criteria for which they will score points. A total of 70 points will be required. There are three mandatory requirements which together will earn the applicant 50 points. These include that the applicant must have a job offer from an approved sponsor. The other 20 points required can be earned in a more flexible way and are known as “tradeable points.” For example, earning the higher of £25,600 or the “going rate” for the particular job earns the full 20 points.
 - ◇ **Skilled workers:** For employers who sponsor skilled workers, the Resident Labour Market Test will be abolished. This means that sponsors will not have to advertise the job and ensure that there are no suitable workers already permanently living in the UK. This should speed up the visa process.
 - ◇ **Highly-skilled workers:** A broader unsponsored route within the points-based system will be created to allow a smaller number of the most highly-skilled workers to come to the UK without a job offer. A cap on numbers would apply. How this will work is still being explored and it will not be put in place by 1 January 2021.
 - ◇ **Global Talent visa:** The new Global Talent visa which was introduced in February 2020 for non-EU citizens and replaces the Tier 1 visa will continue to operate under the new immigration system when it will also apply to EU citizens. This route allows those who are leaders or potential leaders in their fields to work in the UK if endorsed by a relevant designated body. Applicants may be either employed or self-employed and there is no cap on numbers.
 - ◇ **Low-skilled workers:** There will be no specific immigration route for low-skilled workers.
 - ◇ **Intra-company transfer route:** Multi-national companies will be able to transfer personnel to the UK under the intra-company transfer route. Applicants do not need to meet any English language requirements but must satisfy specified criteria.
 - ◇ **Switching immigration routes:** Most migrants will be able to apply to switch from one immigration route to another without having to leave the UK. When applying to switch, the migrant will still need to meet the necessary requirements for the route that they are switching into.

POTENTIAL OPERATIONAL IMPACTS – QUESTIONS TO BE CONSIDERED

1. **Identify EU nationals:** Identify whether any employees are currently EU nationals and/or relying upon derivative family rights in order to establish a right to live and work in the UK.
2. **What support do EU nationals need?:** Understand what right to work applications will need to be made by employees who are EU nationals (and their dependants) in the UK, and what your business might do to support them (for example in the way of FAQ documents, drop in clinics or access to immigration advice).
3. **Contractors:** Require contractors to inform you of the basis of their right to work.
4. **Workforce skills management:** Conduct gap analysis of skills at risk and review long-term recruitment and succession planning: identify the potential areas for labour shortages and the impact of increased labour costs.
5. **Secondments and new starters relying on EU rights:** Consider bringing forward, where possible, any new starters/ secondees relying on EU or derivative rights to start before 31 December 2020.
6. **Secondments of UK employees:** Review secondment or other arrangements placing UK employees in EU27 Countries and the potential impact of no-deal on their ability to remain (currently country specific advice must be sought).
7. **Relocating consequences:** Consider the impact of relocating any business operations to the EU such as consequential restructuring and redundancy plans and consultation obligations.



ACCESS TO EU SINGLE MARKET/SUPPLY CHAIN

- **Default to WTO terms:** The current “frictionless” access to the EU Single Market (subject to relevant national laws) enjoyed by the UK at present will cease at the end of the Transitional Period. The UK’s trade with the EU (and likely the rest of the world) will then default to WTO terms in the absence of specific trade agreements.
- **New customs and excise duties:** As a result, new or increased customs and excise duties may apply to goods imported/exported between the UK and the EU. This may increase costs (although, on the updated temporary tariffs schedule issued by the government in early October 2019, some 88% of imported goods are planned to be tariff free).
- **New customs clearance system:** New customs and excise administrative formalities will need to be followed, including customs declarations and safety and security declarations - although from 1 January 2021 to 30 June 2021 there will be a simplified import customs clearance system (Customs Freight Simplified Procedures/Entry In Declarants Records or “CFSP – EIDR”) to smooth the changeover.
- **VAT rules and procedures:** Similarly, certain VAT rules and procedures will change, in particular in relation to the timing of certain VAT payments on imports, the procedure for obtaining cross-border VAT refunds and MOSS (mini one-stop-shop) registrations for businesses selling digital services to EU consumers.
- **Compliance with EU/national regulations:** Businesses will need to ensure that goods (and, to a certain extent, services) comply with relevant EU and/or national regulations.
- **Supply chains:** There is potential for supply chain disruption as goods wait to clear through border/customs controls at their point of entry to, or exit from, the EU27.

POTENTIAL OPERATIONAL – QUESTIONS TO BE CONSIDERED

1. **Identify the location of major customer/supply bases:** Consider if your business is reliant on EU-wide rights/permissions to be able to operate (e.g. financial services firms relying on 'passporting' under the applicable Single Market Directives to service clients within the EU27).
2. **Consider transit routes:** Consider the transit route of goods sold by or supplied to your business which travel to, from or through the UK to other European destinations (tax, levies, etc.), and identify the supply bases of major suppliers.
3. **Review shipments and warehousing:** Consider whether advance purchase of stock (stockpiling) is a viable contingency – although there may be a financing cost to this (note that many banks were considering providing working capital facilities for businesses to be able to meet these costs before the transitional period was agreed but such financing may be more difficult to obtain post Covid-19).
4. **Review finance measures:** In order to mitigate some of the most disruptive anticipated effects of a Hard Brexit on the provision of financial services, the UK and the EU have implemented a range of measures that would take effect in a no-deal scenario. The EU's primary measures are limited to providing EU entities with access to UK core financial market infrastructure (i.e. CCPs and CSDs). The UK measures are broader, not only recognising a broader range of EU financial market infrastructure (trade repositories, credit rating agencies and data repository in addition to CCPs and CSDs) but also allowing EU entities that are currently authorised to provide financial services in the UK to continue to provide those financial services to UK customers post-Brexit. Many of these measures are time-limited.
5. **Review contingency plans:** Consider engaging with suppliers to assess their Brexit contingency plans, and how that might affect your own contingency plans.
6. **Review financial and accounting processes:** Consider financial and accounting processes or system changes required as a result of the application of customs and excise duties, and VAT on exports and imports between the EU and the UK (for example, if any customs declarations or import or export licences are required, or if UK Economic Operator Registration and Identification ("EORI") number needs to be obtained).
7. **Review compliance procedures:** Consider appointing an agent to deal with customs and excise duties, declarations and other compliance. It may be necessary to have a fiscal representative for VAT compliance or to register for MOSS in an EU Member State. Investigate whether you are eligible for any simplified import procedures beyond the CFSP – EIDR.
8. **Review contracts:** See the Contracts section below in relation to how delays, increased costs, etc., may be relevant to contracts which your business may have entered into and, to the extent possible, include provisions dealing with potential additional customs duties or changes to the VAT position.
9. **Claim VAT refunds:** If your business has outstanding VAT refund claims, ensure these are made before the end of the Transitional Period. After this time, the paper-based non-EU process will be used rather than the digital EU portal, which is likely to result in delays.



FINANCING

- **Review position of withholding tax on interest:** The possibility of withholding tax on interest paid to the UK from an EU entity should be reviewed and any new potential gross-up risk evaluated and allocated appropriately.
- **Review double tax treaties:** The EU Interest and Royalties Directive removes withholding tax on interest paid between associated parties in different EU Member States. With the loss of this Directive, UK payees in group and joint venture situations could now suffer a withholding tax leakage on interest received. UK payees previously making use of this Directive should now check the relevant double tax treaty to determine if withholding tax is eliminated altogether or merely reduced. Most treaties between the UK and EU Member States provide for zero withholding on interest but not all. The UK-Italy treaty, for example, allows a 10% rate of withholding.
- **Interest payments from UK to EU not affected:** The UK legislation which provides an exemption from UK withholding tax equivalent to that in the Interest and Royalties Directive remains in place, so interest payments from the UK to the EU should not be affected.

POTENTIAL OPERATIONAL IMPACTS – QUESTIONS TO BE CONSIDERED

1. **Future funding under existing deals:** If a facility/product is provided by a UK based lender and you are an EU27 borrower, check what your lender has done to ensure it can continue to honour its obligation to lend/ provide the relevant product from 1 January 2021.
2. **Review your lenders' contingency planning:** Your lender should be able to explain the contingency planning it has undertaken – perhaps by transferring its participations to an EU27- based affiliate. If it cannot provide comfort – seek fall-back alternatives or watch out for local law initiatives to solve the problem. The LMA has developed 'Designated Entity' drafting to permit lending obligations to be discharged by affiliates of UK lenders resident in EU27 jurisdictions. Such provisions may assist – depending on the Affiliate network of the particular lender(s).
3. **Monitor financial covenants etc:** Monitor financial covenants, provision of margin obligations and material adverse effect default provisions etc. if business operations are likely to suffer material EBITDA hits or other adverse financial consequences following a Hard Brexit.
4. **EU references:** Consider instigating amendments to references to EU countries in financing covenants where they relate to (say) making permitted acquisitions of businesses or entering into permitted joint ventures “in the EU” If permission is required across all EU jurisdictions including the UK, the provision will need amending to also specifically include the UK given that the UK will no longer be an EU jurisdiction.
5. **New issuance programming:** Consider the timing of launching new issuances into the capital markets, particularly in relation to debt markets (including the depth and breadth of market required to achieve successful issuance).
6. **Grandfathering regarding clearing and margining obligations:** The EU will preserve the existing regulatory treatment of transactions novated to EU entities solely because of Brexit with respect to clearing and margining obligations. So such novations should be expressed only to take effect on implementation period completion date.
7. **Increased costs audit:** Check for any unusually wide / non-LMA standard increased cost provisions in financing agreements.



IMPLICATIONS FOR CASH REPATRIATION TO UK HOLDING COMPANIES/ EU CORPORATE GROUPS

- **Review payments of interest:** As discussed in the financing section, corporate groups will no longer be able to rely on the Interest and Royalties Directive to remove withholding tax on payments of interest intra-group from other group companies located in EU jurisdictions and accordingly withholding tax may arise depending on the provisions of the relevant double tax treaty.
- **Review impact on dividends:** From a dividends perspective, the loss of the Parent/Subsidiary Directive may impact on the tax efficiency of repatriating cash from subsidiaries to the parent company.
- **Review impact of withholding tax:** The Parent/Subsidiary Directive exempts intra-EU dividends between related parties from withholding tax. The UK does not have a domestic withholding on dividends but a number of EU Member States do, and many of these are not reduced to zero under the applicable double tax treaty with the UK. For example, dividend payments from a German subsidiary to its UK parent would be subject to a 5% withholding. Furthermore, some EU Member States have domestic rules taxing inbound dividends received from outside the EU, for example Ireland.



INTELLECTUAL PROPERTY

- **Copyright:** The current rules on copyright and related rights derive in part from international treaties to which the UK is party in its own right so the scope of protection of copyright works is expected to remain largely unchanged.
- **Patents:** Like copyright, patents are protected under an international law treaty which will not be affected by Brexit.
- **Trademarks:** EU trade marks granted by the EU Intellectual Property Office will continue to be valid in the remaining EU member states, assuming that the EU trademark continues to be used within the EU after Brexit. (A firm which has an EU trademark but which only uses that trademark in the UK may find that its protection in the EU is compromised as a result). To ensure that the EU trademark continues to be protected and enforceable in the UK, the Government intends to grant new equivalent trademarks, registered in the UK, in force from 1 January 2021. Going forward, new applications will need to be filed in both the UK for a UK registered trade mark or design and the EU Intellectual Property Office for protection in the EU.

POTENTIAL OPERATIONAL IMPACTS – QUESTIONS TO BE CONSIDERED

1. **Monitor use of EU trademarks going forward:** Must ensure continued use to be able to benefit from trademark protection.



CONTRACTS: GENERAL

- **Force Majeure, frustration and material adverse change:** Brexit of itself is unlikely to:
 - (i) frustrate a contract;
 - (ii) be an event which gives rise to “force majeure” termination rights; or
 - (iii) give rise to “material adverse change” (or similar) termination rights, etc. (though the specific drafting of the relevant provisions will need to be reviewed to ensure that this assumption is correct).
- **Review contractual terms:** But contractual terms may well need adjusting. For example:
 - ◇ Geographical restrictions based on the EU, references to EU institutions, etc., as they may no longer be relevant/applicable. Or may not give the protections/rights which the parties had intended.
 - ◇ “Change control” provisions or service levels, as there may be changes (whether in law or otherwise, for example, FX exposure, currency fluctuations, etc.). Long-term commercial contracts frequently include provisions which allocate the risks/costs between the parties (and note the comments in Access to EU Single Market section above in relation to the potential time and cost implications of transporting goods between the UK and the EU27 if a “hard” Brexit occurs).

Commercial counterparty contracts: In the case of contracts between commercial counterparties (rather than consumers):

- **Governing law clauses:** The validity and effectiveness of contractual choice of law will be unaffected by Brexit. The UK has passed legislation that will implement both the Rome I and II Regulations (together, the “Rome Regulations”) with minor modifications into UK law and EU counterparties will remain subject to the Rome Regulations in any event.
- **Exclusive jurisdiction clauses:** Currently, the Brussels Regulation applies to ensure that EU/UK courts give effect to the parties’ choice that disputes are heard exclusively by a specified EU/UK court (known as an “exclusive jurisdiction clause”). Even in a “no deal” situation, that position will remain largely unchanged for exclusive jurisdiction clauses entered into after 1 January 2021. This is because, while the Brussels Regulation will no longer apply in the UK, the UK has acceded to the Hague Convention (to which the EU is already a party on behalf of all its member states) with effect (indisputably) from 1 January 2021. Insofar as giving effect to an exclusive jurisdiction clause is concerned, this Convention has broadly the same effect as the Brussels Regulation – meaning that the parties’ choice of an exclusive jurisdiction clause after 1 January 2021 will be given effect to in generally the same way as it is now. Giving effect to exclusive jurisdiction clauses entered into before this date, however, may be more problematic because of a potential timing issue with the Hague Convention (see further below).

In addition, the Lugano Convention, which applies between the UK and the EFTA States (excluding Liechtenstein) and is similar in effect to the Brussels Regulation, will cease to apply on a no-deal Brexit. As none of the EFTA states have yet acceded to the Hague Convention, enforcing exclusive jurisdiction clauses in those states may also be more problematic.

- **Non-exclusive jurisdiction clauses:** In the case of a “non-exclusive jurisdiction clause” (a clause that expressly provides for disputes to be heard in a specified court but without prejudice to the right of the parties to take a dispute to another court), the Brussels Regulation and the Lugano Convention give priority to the Member State court that is first “seised” of the proceedings, i.e. the court in which the proceedings are first instituted. However, on a “no deal” Brexit, UK courts would lose this priority and EU/EFTA courts will not have to stay their proceedings pending the determination of UK courts, as they would now, even where UK courts are first seised. This gives rise to a risk of parallel proceedings. Bear in mind also that the Hague Convention does not apply to non-exclusive or, arguably, to “asymmetric” jurisdiction clauses (clauses that require one party to sue in a specified jurisdiction, but allow the other party to sue in any jurisdiction).

- **Enforcement of judgments:** The Brussels Regulation and Lugano Convention also deal with enforcement of judgments and as they will no longer apply, the automatic right to enforce UK judgments throughout the EU/EFTA States and vice versa will be lost. The effect of this is:
 - ◇ It should not be problematic to enforce an EU court judgment to which the Hague Convention applies in the UK, noting however the Convention's relatively narrow ambit.
 - ◇ There is uncertainty, however, as to how EU courts will apply the Hague Convention in relation to UK cases. It may be that the Convention is applied in relation to all qualifying agreements entered into after 1 October 2015 (when the Convention entered into force in the EU, including in the UK as a member state), or only to agreements entered into on or after 1 January 2021, when the UK's accession to the Convention in its own right indisputably becomes effective. If the latter, then jurisdiction clauses in, or judgments given in disputes relating to, agreements entered into before 1 January 2021 will not be enforceable under the Hague Convention in the EU.
- **In cases to which the Hague Convention does not apply:**
 - ◇ In the UK, the common law will apply to the enforcement of EU/EFTA judgments. The process to enforce a judgment is relatively straightforward, but there may be difficulties where the judgment is for non-monetary relief;
 - ◇ A party seeking to enforce a UK judgment in the EU/EFTA States will have to navigate the relevant local laws in the country in which it wishes to enforce its judgment, in the same way as it does now when seeking to enforce a judgment in a non-EU/EFTA country, like the US.

Note that arbitration is unaffected by "no deal" Brexit as it is subject to international rules of arbitration under the New York Convention. As a result of the above, parties may wish to consider using arbitration agreements (rather than court based dispute resolution mechanisms) in their contracts.

- **Service of legal proceedings:** From 1 January 2021, the EU Service Regulation, which currently regulates the service of judicial and extrajudicial documents between EU member states, will no longer apply.

POTENTIAL OPERATIONAL IMPACTS – QUESTIONS TO BE CONSIDERED

1. **Impact of English jurisdiction clauses:** Whilst there is likely to be limited risk impact for parties accepting English jurisdiction clauses, it is possible that contracting parties from within the EU may become less willing to accept English jurisdiction and corresponding English governing law clauses post-Brexit.
2. **Jurisdiction provisions:** Consider the jurisdiction provisions in your contracts:
 - ◇ enforcement of those contracts which provide for asymmetric or non-exclusive jurisdiction is very likely to be more complicated after a "no deal" Brexit; and
 - ◇ enforcement of contracts which provide for exclusive jurisdiction may also be more difficult, depending on the EU's position on the implementation of the Hague Convention.
 - ◇ When entering into new contracts:
 - ◇ consider including provisions which allow you to amend or restate the jurisdiction provisions post 1 January 2021 to ensure that the Hague Convention will apply to those contracts or consider arbitration; and
 - ◇ where the English courts are the forum for disputes, and any counterparty resides outside England & Wales, include an agent or address for service of legal proceedings in your contracts, if such a provision is not already standard.



DATA PROTECTION

When the Brexit transition period ends, the UK will adopt the General Data Protection Regulation 2016/679 (“**GDPR**”) into domestic UK law (the “**UK GDPR**”). As such, UK-based controllers and processors that fall under the territorial scope of the EU’s GDPR¹ will have to comply with both the UK GDPR and the EU’s GDPR.

Top 5 actions:

1. **Map data flows.** Organisations should map their international flows of data (including transfers between the EEA to the UK) in order to assess what actions they need to take.
2. **International transfers.** Organisations that transfer personal data from the EEA to the UK will need to implement appropriate safeguards, such as standard contractual clauses (**SCCs**), and should undertake a transfer risk assessment in line with the recent Schrems II decision².
3. **Appoint EU representative.** UK-based organisations that do not have an establishment in the EEA but either offer goods and/ or services to - or monitor the behaviour of - individuals in the EEA will need to appoint a European representative in one of the member states that they operate in³.
4. **Identify lead EU supervisory authority.** Organisations that currently have the ICO as their lead supervisory authority and will both maintain an EEA establishment and engage in cross-border processing after 31 December 2020 should identify the EU supervisory authority that is likely to be their lead supervisory authority once the transition period ends.
5. **Update documentation.** Organisations should update privacy notices and other data subject-facing documents (such as standard terms and conditions) in order to provide details of EU representatives, refer to the UK as a third country, and make reference to either the UK GDPR or the EU’s GDPR, as appropriate. In addition, organisations should review and update internal policies, procedures and records such as data breach notification procedures and DPIAs to reflect changes to international transfers and supervisory authority notification requirements.

In detail: International personal data transfers

- If the European Commission (“**EC**”) does not pass an adequacy decision in respect of the UK’s data protection laws prior to the transition period ending, the UK will be a third country under the GDPR and transfers from the EEA to the UK will require additional safeguards.
 - ◇ **Transfers from the UK to the EEA:** At the time of this guidance, the UK government has stated that transfers of personal data from the UK to the EEA will not require any additional safeguards.
 - ◇ **Transfers from the EEA to the UK:** The EC has not yet passed an adequacy decision in respect of the UK. Therefore, transfers of personal data from the EEA to the UK (being a third country) will require additional safeguards, such as SCCs. In addition, organisations transferring personal data from the EEA to the UK will also have to comply with further requirements imposed by the recent Schrems II decision (see below).
 - ◇ **Schrems II:** The 16 July 2020 European Court of Justice decision in the Schrems II case requires organisations that transfer personal data to third countries not subject to an adequacy decision to carry out case-by-case risk assessments of whether the importing jurisdiction offers a level of personal data protection that is essentially equivalent to that provided in the EU. This obligation will apply to transfers from the EEA to the UK once the transition period ends.

1 Article 3(1) and 3(2) GDPR

2 Case C-311/18 Data Protection Commissioner v Facebook Ireland and Maximillian Schrems

3 Article 27 GDPR



ENVIRONMENTAL/HEALTH & SAFETY

Climate change and environmental law

There are few areas of UK environmental law and policy that have remained untouched by Brexit, as can be seen by the sheer number of statutory instruments created under the Withdrawal Act. Whilst the immediate impact has largely resulted in a rollover of existing EU law, there are some significant changes afoot.

- **Environment Bill:** The government's flagship Environment Bill is making its way through parliament. When enacted, it will set legally binding environmental targets and a new oversight body will hold the government to account in meeting them. Businesses who get their houses in order by measuring and improving their environmental footprint will be better placed to respond to these targets as they are implemented.
- **Regulatory divergence:** Regulatory divergence from EU environmental law has featured in trade negotiations with the EU and other future trade partners. There is ongoing uncertainty in terms of what exactly businesses need to prepare for by 1 January 2021. Regulatory divergence could increase the costs of compliance on businesses at a time when market conditions are already challenging.
- **UK to host COP26:** The UK's diplomacy on the world stage is in the spotlight as hosts of the next major climate change conference, COP26, where international leadership on climate change is both time and business critical. We can expect new policy and legislation, such as the proposed anti-deforestation due diligence law, to be announced in the lead up to the conference in the coming months.

If all that was not enough to deal with on top of recovery from the coronavirus pandemic, the government has also announced reform of the planning regime and a reorganisation of local government, both of which have a significant interface with climate change and environmental law.

New 2021 regimes

Changes to environmental law which will bite from 1 January 2021 include:

- **Carbon trading:** The government announced in June its plans to replace the EU emissions trading system (ETS) with a more ambitious UK ETS. Whilst the UK is open to linking up with the EU ETS, this is not currently on the table. Participants will need to ensure that emissions allowances are held in the right accounts before 1 January 2021 and keep a watching brief for further details.
- **Supply chains:** Changes to waste exports and product safety regulation may have compliance costs for businesses and cause potential disruption to the supply chain. The EU circular economy package is also being transposed into UK law in order to increase recycling rates, introduce further restrictions on landfill and promote waste reduction. There is huge opportunity for innovation and cost savings.
- **Chemicals:** The government intends to replace the EU REACH regime with UK REACH, which will initially mirror EU REACH. The greatest impact will be on manufacturers and importers whose EU REACH registrations will no longer be valid, and considerable work is underway to ensure that businesses are able to continue trading in the UK and EU from 1 January 2021.

To minimise disruption from these changes, businesses need to plan for the potential impact now by:

1. evaluating key risks and identifying mitigation measures
2. prioritising critical pinch points and preparing contingency plans
3. monitoring government and regulator guidance and taking action where necessary



INTERNATIONAL TRADE

Until any Future Trading Relationship between the UK and EU is agreed, the position on trade between the two is largely unclear, because (i) we do not know that there will be an agreement; and (ii) we have only limited insight as to what any agreement might contain. However, we do know that: (i) there will be a new customs and regulatory border between the UK and EU, and that moving across this border will add cost and complexity to almost all transactions; (ii) trade in services will revert to WTO trade, which is likely to be very different from the position under the Single Market, particularly taking into account the new UK immigration system. The following questions should help your business understand where other risks might arise.

1. **Assess risks:** Have you assessed the risks associated with a “no deal” Brexit and prioritised the steps that you would need to take before 1 January 2021 and those that could wait until after that date?
2. **Review changes to business processes:** Have you read the revised UK legislation that affects your business. Does it require you to make changes to your business processes? By when? Does it allow you to do what you expected? If not, reach out to trade associations to see if the industry takes the same view. Have you spoken to HMG about your concerns?
3. **Review supply chains:** Have you understood your supply chain for goods?
 - ◇ **Consider tariff rates:** What will happen to tariffs on finished goods and inputs for manufacturing in the event of a “no deal”? This issue needs to be considered for imports from the EU, and from any country with which the EU has a FTA. Traders in agricultural products will need to concentrate on this issue because of relatively high tariffs and other measures such as tariff rate quotas. Conversely, most traders in IT and pharma products will likely face no changes in tariff rates as these will remain at zero.
 - ◇ **Consider additional component costs:** Have you checked whether your UK suppliers might import components from the EU or a country with which the UK has an FTA? Are they going to charge you more as a result of “no deal” and what happens if they do?
 - ◇ **Check input costs:** If input costs are going to change, who bears them? Have you checked any long-term supply agreements for provisions on price changes? Who is responsible for import procedures, now they are relevant?
 - ◇ **Review import requirements:** Have you completed all necessary requirements to import into the UK and EU? Or are you intending to use a third party, and have you got relevant agreements in place? What about standards and product certification?
 - ◇ **Consider available custom duty reliefs:** Are any reliefs from customs duties available? What steps do you need to undertake to take benefit of them? What is the lead time? Is the difference between paying any new tariff and the relief significant? If not, have you considered simply paying the duty and not spending time on the relief?
 - ◇ **Review shipments and warehousing locations:** If you import key components from the EU or a country with which the UK has an FTA, can you move shipments away from ports that may be crowded, such as Dover to one that isn't? Have you checked with your logistics provider that they have all the necessary paperwork to operate “hassle free” imports? Should you consider stockpiling certain key inputs? Have you space to do that? Do you need additional warehousing space? Do you need to consider funding provisions with banks to stockpile?
 - ◇ **Consider provision of customs services:** Do you have staff or service providers ready to deal with new customs procedures on trade with the EU? Are they trained on new UK customs rules? If you don't have staff, or they are not trained, can you get a third party provider to provide customs services? Are they available and how much will it cost?
 - ◇ **Review export controls:** Are any of your goods or technologies subject to export controls? If so, you will need to consider how those goods can move between the UK and EU. Have you applied for UK licences for export to the EU? Have you registered under the EU system to move goods to the UK? Also remember, licences obtained from the UK do not permit export of controlled items from the EU, and licences obtained in EU Member States do not permit export from the UK.



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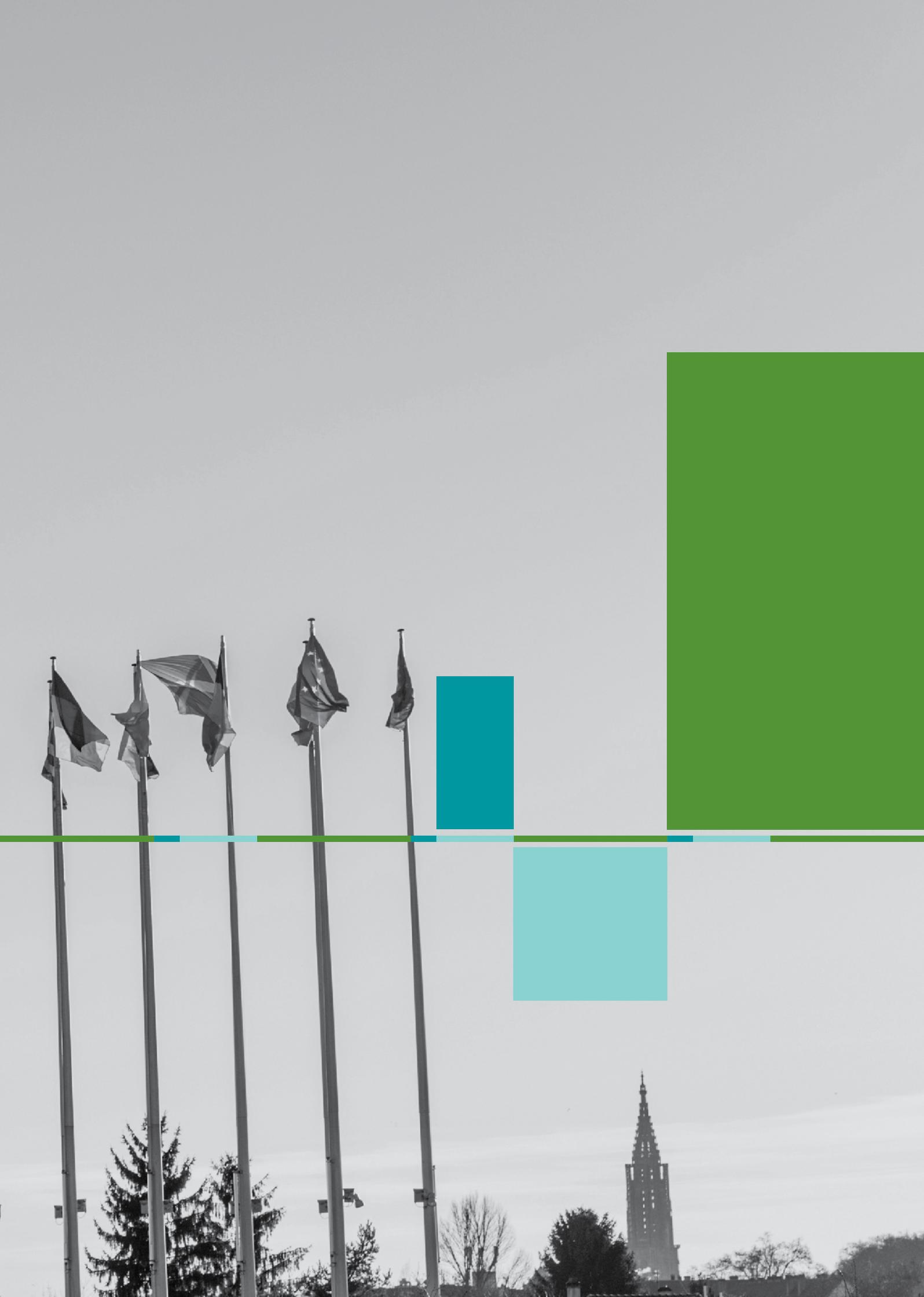
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