

Brexit: No-Deal Preparation

TISA Brexit Checklist

With the scheduled date for Brexit now only 60 days away, and the threat of a 'no-deal' Brexit uncomfortably conceivable, we have prepared a 'Brexit No-Deal Checklist' which we hope you find helpful. It contains links to some of the websites we have found particularly useful in this regard. Obviously, we cannot pretend that the checklist will be comprehensive; every business will have its own risks, and we will continue to develop the checklist as more issues emerge.

We draw your particular attention to the issue under the heading 'Data Protection' relating to the risk that firms are inhibited or prohibited from transferring persona data across the new UK/EU border. The Information Commissioner's Office (ICO) has published a helpful '*Six Steps to Take*' Guide to managing this risk, as best it can be managed: <https://ico.org.uk/media/for-organisations/documents/2553958/leaving-the-eu-six-steps-to-take.pdf>

We would be very grateful for any feedback you might have about the checklist, or advice on any issues we may have overlooked, so that we can share them with the wider TISA membership network.

TISA's Brexit No-Deal Checklist

Customers

1. Do you have contracts with, or provide an ongoing service to, any customers (including both retail and commercial customers) who are resident in the EU/EEA (rather than the UK)? Do you have legal clarity about the place of supply? Do you know what the potential Brexit impact might be on this relationship? Do you need to review the contractual arrangements with your customers to ensure they remain valid in any post-Brexit scenario? Do you understand any VAT implications?

- <https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexit-deal/vat-for-businesses-if-theres-no-brexit-deal>
2. Have you considered your commercial customers' ability or willingness to buy from a non-EU firm? (particularly important if the customer is public sector).
 - <https://www.gov.uk/guidance/public-sector-procurement-after-a-no-deal-brexit>
 3. Have you considered any implications regarding your ability to sell to, or provide an ongoing service to, customers based in the EU/EEA?
 4. Do you need to provide any pre-Brexit assurance to your customers? – either that there will be little or no impact, or that you understand the impact and have made adequate preparations on the customer's behalf? Are you ready to provide that assurance as we get closer to Brexit?
 5. Do any of your products rely for legal / compliance purposes on the legal entity behind it being based in the EU/EEA? If so, what alternative arrangements do you need to make?
 6. Have you considered your customers' right to refer any complaint to the UK Financial Ombudsman? Do you need to provide assurance in this regard?
 - https://www.financial-ombudsman.org.uk/faq/answers/complaints_a11.html
 7. Have you considered any impact in relation to your customers' right to recourse to the Financial Services Compensation Scheme? Do you need to provide assurance to your customers, or alert them to any possible changes?
 - <https://www.fscs.org.uk/about-fscs/media-centre/brexit/>
 - <https://www.efdi.eu/full-members>
 8. Do you need to warn your customers (particularly vulnerable customers) about the risk of Brexit-related scams?

- <https://www.fca.org.uk/consumers/how-brexit-could-affect-you>
- <https://www.which.co.uk/consumer-rights/advice/brexit-scams>

Data Protection

9. Do you have any third-party suppliers based in the EU/EEA who supply personal data to you, or receive personal data from you? In a Brexit scenario in which the right to send personal data across the UK/EU border cannot be assumed, do you need to take steps to obtain the relevant contractual consents? **Please see the ICO's 'Six Steps to Take' guidance which can be found here:**

- <https://ico.org.uk/about-the-ico/news-and-events/blog-data-protection-and-brexit-ico-advice-for-organisations/>
<https://www.gov.uk/government/publications/data-protection-if-theres-no-brexit-deal>

Insurances

10. Are you insured by any risk-carrier based in the EU/EEA? Do you need to review the contractual arrangements? Are there any implications regarding the risk-carrier's reinsurance arrangements?

11. Have you considered any implications relating to Directors & Officers, Professional Indemnity, Employer's Liability, Public Liability, Cybercrime?

Suppliers

12. Do you have any crucial suppliers, including outsourcers, that are based outside the UK? Do any of them rely on a third-party provider who is based outside the UK? Do you know what the possible impact of Brexit might be on this relationship? Have you considered any required changes to the contractual relationship and terms? Are any Brexit-related clauses required? How will the VAT position be affected, if at all?

- <https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexit-deal/vat-for-businesses-if-theres-no-brexit-deal>

13. Have your crucial suppliers conducted their own Brexit impact analysis? If so, have they shared that analysis with you? Is it credible, comprehensive, realistic? Does it identify any actions that need to be taken?
14. What immediate arrangements would you be forced to make if any of your EU/EEA-based suppliers were unable to provide an ongoing service, post-Brexit, for even a short period? Are you ready to implement those arrangements in sufficient time?
15. Do you have any IT software contracts with suppliers based outside the UK? Do you need to review the contractual terms of those contracts to ensure they will not be affected by Brexit? How will the VAT position change?
16. Do any of your customer relationships or products rely on asset managers, fund managers, custodians, advisers or suppliers based outside the UK? Will Brexit impact their ability to provide you or the customer with an ongoing service?

Personnel

17. Do you know the nationalities of all your employees and relevant contractors? Do you need to take any steps to ensure that they will retain the right to work in the UK? If they lose that right, what alternative arrangements will you need to have in place? Are your records in relation to RTW in the UK up to date and comprehensive?

- <https://www.gov.uk/staying-uk-eu-citizen> <https://www.gov.uk/settled-status-eu-citizens-families>

18. Are any of your personnel based outside the UK? If so, how might Brexit impact them? – consider their ongoing right to live and work in that country.

- <https://www.gov.uk/uk-nationals-living-eu>
- <https://britishineurope.org/2018/09/18/the-british-in-europe-no-deal-checklist/>
- <https://britishingermany.org/no-deal-checklist/>

19. Do any of your employees regularly travel on business in the EU/EEA? Will Brexit affect this ability?

- <https://www.gov.uk/government/publications/travelling-in-the-common-travel-area-if-theres-no-brex-it-deal>
- <https://www.gov.uk/government/publications/travelling-to-the-eu-with-a-uk-passport-if-theres-no-brex-it-deal>
- <https://www.gov.uk/government/publications/mobile-roaming-if-theres-no-brex-it-deal/mobile-roaming-if-theres-no-brex-it-deal>
- <https://www.gov.uk/government/publications/prepare-to-drive-in-the-eu-after-brex-it>

20. Do you need to provide assurance to your personnel that your firm is ready for Brexit, and will not be adversely impacted?

21. Do any of your personnel rely on their UK professional qualifications being recognised within the EU/EEA?

22. Have you considered any required changes to your personnel's travel insurance arrangements?

23. Have you considered any implications regarding any of your UK-based directors' ability or qualification to oversee firms across the UK/EU border? (Or vice versa.)

Intellectual Property

24. Have you considered any post-Brexit impacts in relation to your trademarks?

25. Have you considered any implications in relation to any of your firm's licences and any obligations in compliance with those licences (such as trade body membership, etc)?

26. Have you considered any changes that may be required to your firms' websites, in the event that they may be used by customers who are either based in the UK and no longer therefore in the EU, or based in the EU when

the website is in relation to a non-EU business? Will there be any Geo-blocking considerations?

Stakeholders

27. Is your business owned or controlled by any individual or business based outside the UK? Will their relationship, oversight or involvement in the business be impacted by Brexit, and if so, how?
28. Will Brexit force any of your stakeholders to sell or reduce their stake in the business? Have they considered this? What arrangements are they making in this regard?
29. Do you have any cross-border joint venture, partnership or licencing arrangements? Have you and they considered any impact?
30. Have you considered any implications regarding your corporate structure and governance? (if you are part of a cross-border group). How might audit and reporting arrangements be affected?

Management

31. Has the Board been briefed on the potential impacts of Brexit and received realistic assurance? Have they allocated sufficient resource and budget to prepare for Brexit?
32. Do you need to review your group structure in the light of Brexit threats and opportunities? If so, do you have a realistic project plan and timetable?
33. If your Brexit plan will require the transfer of activities or personal to a legal entity outside the UK, have you drawn up a Project Plan to manage this transfer? Is that entity ready with all the necessary resources, contracts, licences, authorities, capital, etc?
34. Do you need to set aside a contingency fund for unanticipated costs in relation to Brexit?

35. Has Internal Audit or a competent external adviser reviewed your impact analysis? Would this be appropriate?

36. Has management considered any potential opportunities that may be opened up by Brexit?

Other Useful Links:

There is a great deal of resource available on the internet and the material is growing daily. We include below links to some of the most helpful websites found so far:

- <https://www.fca.org.uk/firms/preparing-for-brexit>
- <https://www.gov.uk/government/publications/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal>
- <https://www.fca.org.uk/consumers/how-brexit-could-affect-you>
- <https://www.britishchambers.org.uk/media/get/Business%20Brexit%20Checklist.pdf>
- <https://www.fca.org.uk/publications/consultation-papers/cp19-2-brexit-and-contractual-continuity>
- <https://assets.kpmg/content/dam/kpmg/uk/pdf/2017/06/insurers-six-point-plan-for-brexit.pdf>
- <https://assets.kpmg/content/dam/kpmg/uk/pdf/2018/02/feb-update-eea-firms-passporting-into-uk.pdf>
- <https://www.macfarlanes.com/what-we-think/in-depth/2018/a-brexit-no-deal-checklist/>
- [https://www.ey.com/Publication/vwLUAssets/EY-Brexit-for-insurance/\\$FILE/EY-Brexit-for-insurance.pdf](https://www.ey.com/Publication/vwLUAssets/EY-Brexit-for-insurance/$FILE/EY-Brexit-for-insurance.pdf)
- <https://money.stackexchange.com/questions/94124/what-effect-will-brexit-have-on-eu-wide-deposit-guarantee-schemes-e-g-fscs>
- <https://www.icaew.com/technical/economy/brexit/brexit-checklist>
- <https://www.macfarlanes.com/what-we-think/in-depth/2018/a-brexit-no-deal-checklist/>
- <https://www.gov.uk/government/publications/workplace-rights-if-theres-no-brexit-deal/workplace-rights-if-theres-no-brexit-deal>

- <https://www.gov.uk/government/publications/merger-review-and-anti-competitive-activity-if-theres-no-brexit-deal>
- <https://www.ft.com/content/a9204df0-da84-11e7-a039-c64b1c09b482>
- <https://www.managers.org.uk/insights/news/2018/november/this-is-how-senior-business-leaders-are-preparing-for-brexit>
- <https://www.bloomberg.com/graphics/brexit-impact-tracker/>
- <https://www.pwc.co.uk/the-eu-referendum.html>

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