



# **Brexit Business Toolkit**

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# Brexit Business Toolkit

We have updated our Brexit preparation checklist to reflect the end of the post-Brexit transition period and the new trading relationship with the EU from 1st January 2021 under the UK-EU Trade and Cooperation Agreement agreed on 24 December 2020.

This is intended to be a high level summary of the key considerations for trading internationally going forward. We will be happy to provide specific advice and training for your business. You may be eligible for a government grant towards the costs of such – see our [Brexit grants article](#).

As the end of the Brexit transition period saw the UK's exit from the EU's single market and customs union, we have focussed on the UK's new relationship with the EU. Many of the considerations highlighted nonetheless apply to trading with countries other than the EU Member States.

For an explanation of the role of World Trade Organisation rules in international trade, both with the EU following the agreement of the UK-EU Trade and Cooperation Agreement and more widely, please read our article on [the Role of WTO Rules Post-Brexit](#) and our related article on [the legal status of the agreement](#).

Although the UK chose not to delay approval, the agreement reached with EU on 24 December 2020 was provisional pending EU member scrutiny which concluded on 28 April 2021.

If you have any Brexit queries you'd like to speak to us about, contact Neil Amner.



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To visit a particular section of our toolkit whilst viewing online, simply click the heading you wish to view and you'll be directed to the appropriate page. To return to the contents, click the link at the bottom of each page.

Our toolkit can also be used to check off matters you've addressed by ticking the boxes next to the points listed.

## People

If you currently employ non-UK nationals or are likely to seek to recruit non-UK nationals in the foreseeable future:

Familiarise yourself with the UK's new immigration regime and visa requirements, including limitations on what visitors can do while in the UK.

Tell existing EU, EEA and Swiss citizens in your staff about the **30 June 2021 deadline** for applying to the EU Settlement Scheme.

Register as a licensed immigration sponsor.

Ensure that posts you may fill with a recruit from abroad are at the required **skill level** (A-level or equivalent), that the **salary** on offer is above the minimum required level and that the selected candidate **speaks English** to the required standard.

Comply with record keeping requirements.

Check self-isolation and Covid test requirements applicable to both inbound and outbound journeys of visitor / new recruits, and intended visitor activities whilst here (remembering the rules within the four UK nations can differ).

Our article on [how the Brexit deal will affect immigration](#) provides further information.

## Business Travel

If you or your staff regularly travel to the EU or other European Free Trade Area countries (Switzerland, Lichtenstein, Norway and Iceland) on business:

Familiarise yourself with the post-Brexit limitations on business travel to the country you'll visit.

Check the **visa, work permit and activity specific requirements** of the country you intend travelling to on business.

Check the national regulations regarding recognition of professional and other **qualifications** of the country you're going to operate.

Check **passports** will have at least 6 months validity left and be under 10 years old on the date of travel and for the duration of the trip.

Check your cumulative total of days for purposes of the **90 days in any 180 days** limitation on visa-free visits to the EU.

Arrange suitable travel **insurance**, including health cover. Check the expiry date of your EHIC card.

Check quarantine / self-isolation and Covid test requirements applicable to both outbound and inbound journeys, and your intended activities whilst abroad.

Check mobile phone / laptop contract for **data roaming charges**.

## Data

The UK has issued an **'adequacy decision'** which is a mechanism permitting the flow of personal data from the UK to the EEA. For transfers from the EEA to the UK, there is a temporary 'grace period' in place at the moment pending a fuller 'adequacy decision' from the EU Commission, which if granted will allow the transfer of personal data back from the EEA to the UK. In the meantime you should:

- map out data flows with your EU/EEA based partners or processes and put alternative transfer mechanisms in place such as **'standard contractual clauses'** or other appropriate safeguards; and
- seek advice on the use of applicable derogations.

From 1 January 2021, you are no longer eligible to hold or register a .EU domain name if you are a UK organisation, not a resident of an EU member state, or a UK resident who isn't an EU citizen. If your current website has a **.EU domain** and you do not fulfil these criteria, it may stop working. To retain your .EU domain name you will have to provide EURid, the registry which is responsible for the day-to-day running of the EU domains, evidence that you pass the eligibility criteria i.e. that have your registered office, central administration, or principal place of business within the EU/EEA, are established within the EU/EEA, or are a natural person resident in the EU/EEA. If you are concerned that you do not pass these eligibility criteria, you may be able to avail yourself of the services of a domain name service provider located in the EU/EEA.

If you provide online services to EEA countries and fall within the scope of the **eCommerce Directive**, check you are complying with the requirements of each country you operate in.

If you are based in the UK but don't have a presence in the EU (such as an office or branch), the **EU GDPR** may still continue to apply to you if you are processing the personal data of individuals (including sole traders but not companies) in the EU/EEA by:

- Offering goods or services to individuals in the EU/EEA – for example through an e-commerce platform; or
- Monitoring the behaviour of individuals in the EU/EEA – e.g. using CCTV, health analytics services, cookies that track user behaviour etc.

In such circumstances you may need to appoint an **EU Representative** authorising them to act on your behalf relating to your EU GDPR compliance and dealing with any regulators or data subject (individuals) seeking to exercise their data protection rights.

Our article on [UK data protection law after Brexit](#) provides further information.

## Placing goods on the market

Check which regulations apply to your products and follow the corresponding guidance.

**CE marked** goods placed on the UK or EU market before 1 January 2021 require no action.

Most CE marked goods can still be placed on the UK market until 1 January 2022 (longer in some cases (e.g. medical devices) – check your sector specific guidance). Thereafter, the **UKCA mark** should be used for the GB market. In most cases, the UKCA mark can be on the product or an accompanying document until 1 January 2023.

There is no grace period for placing goods on the EU market.

The UK-EU Trade and Cooperation Agreement includes specific provisions regarding **technical standards** for motor vehicles and on the regulation of medicinal are standalone regulations for cars and medicines for example.

## Contracts and supply chain

Consider how Brexit has or may yet impact on your or your suppliers' ability to timeously meet contractual obligations. Do so across your supply chain and customer base, as even transactions wholly between UK based entities could be impacted by supply chain disruption or additional costs.

Be clear about your and your supplier's / customers' respective contractual and other legal duties.

Seek to agree contractual adjustments, mitigation measures and / or contingency plans where it would be prudent to do so.

If importing or exporting, familiarise yourself with the various forms of Incoterms® to understand your contractual duties in relation to the customs treatment of the transaction as well as matters such as delivery, carriage, insurance, transfer of risk and allocation of costs.

Remember, to be effective, express reference to the **Incoterms®** chosen to apply must be expressly incorporated by reference into your contract.

## Trading: Customs etc.

Ensure you have your GB **Economic Operator Registration and Identification** (EORI) number, required by all businesses moving goods into or out of GB. See [www.gov.uk/eori](http://www.gov.uk/eori). You will need an EU EORI number if importing into the EU.

Decide who will attend to your **customs declarations** and information compliance – in-house or via a customs intermediary?

Correctly identify the **customs classification** of each of the products you trade in – the commodity code under the Harmonised System treaty.

Check the customs duty **tariff** (if any, it could be 0%) payable on products you import into the UK under the UK Global Tariff Schedule, or the destination country / block tariff schedule for imports there.

Check for any trade **preferences** or negotiated trade agreement terms applicable to your goods being imported.

Check whether the goods you are importing qualify under the **'origin'** rules applicable to the preferential treatment you will seek to benefit from. See our article [Percy Pig and post-Brexit rules of origin](#).

Where duty will be payable, determine the **valuation** basis. The price actually paid / payable when sold for export to the country of importation, subject to certain adjustments, is the most frequently used valuation method, although there are other methods.

Although the EU imposed full customs controls from 1 January 2021 on imports from the UK, the UK has opted for a

phased introduction of controls at the GB border. Familiarise yourself with the **Border Operating Model** and the key dates under it (the second phase now delayed from 1 April 2021 to 1 October 2021; the third and final phase now delayed from 1 July 2021 to 1 January 2022).

Check if your GB imports are **'controlled goods'** or **'excise goods'**, for which customs declarations have been required for import from the EU since 1 January 2021.

Check if you are importing goods which constitute **products of animal origin**, relevant **animal by-products**, **high risk food not of animal origin** or are **regulated plants and plant products**, for which pre-notification and relevant health documentation will now be required from 1 October 2021.

Decide if you wish to opt for **deferred customs declarations** in relation to your non-controlled goods imports to the UK (six months maximum from date of import, available until 1 January 2022). Ensure you keep sufficient records.

Decide how you will account for **import VAT**.

If importing goods regularly, consider applying to HMRC for a **duty deferment account (DDA)**. This enables customs charges including customs duty, excise duty and import VAT to be paid once a month through Direct Debit instead of being paid on individual consignments.

## Trading: ability to trade

Review the **packaging and labelling** requirements for your products.

Check you understand what **rules of origin** apply to your exports.

Check if you need to appoint a new **authorised representative** for EU / UK establishment purposes.

Apply for and obtain an **export licence** for controlled and dual-use items you trade in.

Check if you deal with goods or materials (e.g. plants, timber, GM food or animal products) the movement of which from outside into the EU is subject to restriction.

Check if you need to register for the UK's Import of Products, Animals, Foods and Feed System or register for the Export Health Certificate online system.

Ensure you are aware of the new processes for import and export of plants and plant products, in addition to the need for phytosanitary certificates.

If importing or exporting timber, check you meet the due diligence rules on source and legality of the timber.

Ensure you are aware of the need for prior regulatory approvals for despatch, receipt and transit regulators under the EU Waste Shipment Regulations.

If selling chemicals, check you will be able to comply with UK REACH and EU REACH rules respectively for sales in the UK and the EU.

Check if you need to register a chemical to be sold on the UK market with the Health & Safety Executive.

If trading drug precursor chemicals, check if you need an import or export licence.

## Intellectual property / brand protection

If you own EU-registered trademarks and designs then parallel, UK specific rights, will be granted by the UK Intellectual Property Office to sit alongside these for use in the UK, but you may wish to consider also applying for new UK trademarks and designs due to subtle differences between the rights.

Have you considered whether you may need to submit additional trade mark or design filings in the EEA to secure protection?

Have you reviewed the territorial scope of your IP Licences and future assignments of rights?



## Transport: own goods / hauliers

Register for the **Goods Vehicle Movement Service** (GVMS) and get a valid **Goods Movement Reference** for the goods in every vehicle making a crossing on a GVMS route – see <https://www.gov.uk/guidance/get-a-goods-movement-reference>

Obtain an **International Driver Permit** for each of your drivers and check they have at least six months' validity on their **passports**.

Register **trailers** used in international (except Ireland) road haulage (see <https://www.gov.uk/guidance/trailer-registration>) display the registration plate and carry the registration certificate.

Ensure **pallets** (and any wood used for packing purposes) for transport to the EU (or Northern Ireland) conforms to ISPM 15 - see <https://www.gov.uk/wood-packaging-import-export>

## Regulatory framework

Check the regulatory regimes which govern your business in the UK and separately in the EU.

Check whether your products need new regulatory approval or third party validation from 1 January 2021.

## Northern Ireland

The **Northern Ireland Protocol** to the UK Withdrawal Agreement came into effect on 1 January 2021. It creates special provisions which apply only in Northern Ireland while the protocol is in force.

Under the Protocol, movements of goods:

- From Northern Ireland to the rest of the UK remain on the pre-existing basis;
- Between Northern Ireland and the Irish Republic will be unaffected, with there being no new customs infrastructure on the border; but
- To Northern Ireland from Great Britain are now subject to new administrative processes – notably digital import declarations and digital safety and security information.

For further information on GB:NI trade can be found through the UK **Government's free Trader Support Service** (TSS): <https://www.gov.uk/guidance/trader-support-service>



If you would like to speak to one of our Brexit experts about your business plans please call **Neil Amner** our Brexit Lead on 0141 242 7984 or fill in our **enquiry form**.

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