

Preparing for a Hard Brexit

Summary of Developments

Since our last update in July, Brexit discussions have centred on the consequences of the UK leaving the EU without a deal. Eurosceptics in Parliament have put pressure on the government to demonstrate that the UK is willing and able to walk away from a Brexit deal if it is not in the interest of the country. In response, the government has promised a series of papers (technical notes) that explain what a no-deal situation would mean and how to prepare for it.

The first tranche of those technical notes has now been published, covering 24 areas likely to be impacted. Before the end of September, the government plans to issue 84 such notes, covering every aspect of the UK's relationship with the EU. Each note emphasises that a no-deal situation is neither likely nor desirable, but that any responsible government must plan for all eventualities, however unlikely they may be.

This update summarises those technical notes in so far as they are relevant to retail. A further update will cover any other relevant technical notes subsequently published.

Before considering the individual notes, two general points are worth highlighting.

Firstly, the notes reveal that government agencies are at very different levels of preparedness for a no-deal outcome. At one end of the spectrum (unprepared) are the customs arrangements for managing the Irish land border in the event of a no-deal situation. The technical notes all acknowledge that the terms of the Belfast Agreement must be respected, and these require no border infrastructure or checks between Northern Ireland and the Republic of Ireland. However, the notes offer no suggestions as to how this will be achieved when the UK becomes a separate customs entity from the EU. At the other end of the spectrum, preparations for a UK Trade Remedies Authority to oversee UK trade defence (anti-dumping) cases are well advanced, and the Department for International Trade has already published a comprehensive list of the EU's existing trade defence measures it is minded to keep and those it is likely to scrap when the UK leaves the EU.

Secondly, after Brexit, the Competition and Markets Authority (CMA) will become a super-regulator. The CMA already has widespread powers to ensure competitive markets for the benefit of consumers, including merger investigations, conducting market studies and ensuring the enforcement of consumer protection legislation. After Brexit, these responsibilities will be extended further, as the CMA will become the competent authority for the UK's state aids regime, giving it widespread power to decide how public money can be used to support private business.



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Individual technical notes:

Trading With the EU

This [note](#) makes clear that when the UK leaves the EU, trade between the two will be entirely different. At the moment, as the UK is a member of the EU's Single Market and Customs Union, all trade between the UK and the rest of the EU is in "free circulation". Sales between the UK and the EU are not classed as imports or exports. No customs documentation is required and companies do not have to be registered as importers/exporters in order to buy and sell in Europe.

If the UK leaves without a deal, the basis of trading with the EU will change:

- Any company shipping to or sourcing from the EU will need to register as an importer/exporter
- Customs documentation will be required for each transaction
- VAT rules will apply to imports from the EU in the same way as to imports from any other country
- Trade will be subject to standard (MFN) duty rates

Customs Arrangements

This [note](#) covers very technical and routine customs issues, such as arrangements for notifying businesses of UK tariff rates and requirements, customs valuation and customs classification.

However, the note also contains a reference that may signal a significant shift in UK policy. Hitherto, the government has been consistent in saying that when the UK leaves the EU, it will adopt the EU's MFN tariff rates. However, the language in the technical note is very different. In relation to the UK's MFN tariffs, the note says, "the government will determine and publish these new duty rates before we leave the EU. They may be different from the rates in the EU."

The words chosen may simply reflect the fact that the government will have the power to set its MFN rates at the level it wishes once the UK leaves the EU. However, there is no reference in the note to mirroring EU rates and this may indicate that the government is actively considering changing at least some MFN tariff rates when the UK leaves the EU. As World Trade Organization (WTO) rules make it difficult for countries to raise MFN tariff rates but easy to lower them, the reference in the customs technical note may be a signal that at least some MFN duty rates may reduce when the UK leaves the EU.

Trade Remedies

This [note](#) includes arrangements for a new Trade Remedies Authority, which will represent the UK in trade disputes and undertake trade defence investigations in the UK.

The note is largely unexceptional. That said, it contains a link to another document that contains the Department of Trade's provisional assessment of which EU trade defence measures the UK would keep when it leaves the EU. Of particular interest to retailers is the decision to maintain anti-dumping duties on ceramic tiles and tableware from China but scrap the long-standing additional tariffs on bicycles and electric bicycles from China and elsewhere.

VAT for Businesses

There was little surprising in this [note](#). The main highlight was that in a no-deal scenario, UK VAT-registered businesses importing goods to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT when (or soon after) the goods arrive at the UK border. Slightly unexpectedly, the government has said that this new position will apply not just to goods arriving from the EU27, but also to goods arriving from anywhere in the world. This would provide a minor cashflow advantage to a number of retail businesses, although it is likely to result in a need to update systems and could increase the risk of VAT fraud.

In a no-deal scenario, the government also intends to abolish Low Value Consignment Relief, again not only for imports from the EU27, but also worldwide. It has announced a "technology-based solution" under which overseas businesses will be required (in practice, politely requested) to register for, charge and pay UK VAT on supplies of parcels made to UK-based customers with a value up to and including £135. This would necessitate a change in IT systems and a significant amount of additional paperwork for overseas businesses who supply to a UK-based customer. Overseas businesses are implicitly encouraged to prepare for this outcome now, even if, in the event of the UK proceeding to a transitional period in March 2019, it is presumed that Low Value Consignment Relief will not be abolished.

In relation to the Irish border, there are no answers.

The wider question is what the UK VAT system will look like on 1 January 2021 should a no-deal Brexit be averted and the UK enters transition. The government still has not made its desired position clear. It may ultimately be substantially similar, if not identical, to the position set out in the guidance.

Workplace Rights

This [note](#) confirms that workers in the UK will continue to be entitled to EU-derived employment rights. A further note on the rights of EU citizens in the event of no deal is conspicuous by its absence.

In relation to workplace rights, some technical amendments to existing legislation will be necessary (e.g. removing EU references that are no longer appropriate), but these changes should not affect workers' substantive rights. It should, therefore, be business as usual so far as employment law is concerned.

There may be implications for UK businesses in relation to European Works Councils (EWCs). The statutory framework that applies to EWCs would require a reciprocal agreement from the EU for them to continue to function in their present form within the UK. In the event of no deal, there would be no such framework. Any businesses operating across Europe that have put in place EWCs are, therefore, advised to review their existing agreements.

UK employees working outside of the UK in an EU country may also lose their ability to bring claims under the relevant national guarantee fund if their employer goes insolvent.