

Legal Update

We've voted to leave the EU. What happens now?

Yesterday the UK public voted 52% to 48% to leave the European Union.

The immediate consequence of the "leave" vote is the start of a two-year negotiation with the EU, under Article 50 of the Treaty on European Union. It is expected that the Government will shortly trigger the start of this period by notification to the European Council.

If we have not agreed the terms on which we will leave the EU at the end of two years, the EU will impose such terms on us.


Such is the task of negotiating the terms of our exit, we should not be surprised if this process extends well beyond the two years permitted by the Treaty. It will however be open to any EU member state to veto any proposal to extend this period.

What will the renegotiation involve?

Most commentators appear to agree that, if Brexit is to make any sense for the UK economy, we will need to replace EU membership with one of the following arrangements (in decreasing order of integration with the EU):

- UK joins the European Free Trade Association (EFTA) and the European Economic Area (EEA), thereby retaining access to the common market on the same basis as Norway, Iceland and Liechtenstein. Under this option:
 - we will remain subject to the vast majority of EU regulations and directives in areas such as financial services, employment rights and quality and labelling standards for goods and services. We will, of course, no longer have any say in the scope or extent of these standards
 - we'll need to repeal domestic EU-derived legislation relating to such areas as criminal justice, agriculture and fisheries and the policies on transport and energy
 - EU regulations, which are directly applicable without the need for UK legislation, would terminate automatically on withdrawal after two years; or
- UK negotiates a customs union with the EU, as Turkey has. Goods and services that we export to the EU would still need to maintain EU standards. Again, we'd have no say in the scope and extent of these standards; or
- UK negotiates its own free trade agreement(s) with the EU. Switzerland, for example, has negotiated with the EU multiple free trade agreements along sectoral lines.

A failure to make any such arrangements will result in our trading relationships with the EU and other trading blocs being governed by World Trade Organisation (WTO) agreements.



What will happen to our laws?

To extricate ourselves from the influence of EU legislation will be a huge and time-consuming task.

We will not attempt here to provide details, not least because we cannot predict the course that this exercise will take. We will provide further bulletins as and when details emerge, and will of course be available to assist with any specific queries that you may have.

It is however worth considering here the basic principles.

The extent to which our laws will have to harmonise with EU laws will depend on the type of relationship that we assume with the EU, as explained above.

Most of our current legislation derives from three sources:

- EU treaties and regulations, which have “direct effect” and required no separate implementation in the UK;
- EU directives: which have been implemented by UK legislation to take effect here; and
- UK legislation: governing those areas where we have retained sovereignty.

If we pass no new legislation, to this extent there will be a legislative vacuum where we are no longer subject to directly effective laws derived from EU treaties and regulations. Where law-making has been devolved within the UK, each of the UK’s national assemblies will have to adopt its own legislation to fill this gap. In meeting this burden, the assemblies may yet choose to be guided by EU law.

It will fall to the UK courts rather than the European Court of Justice (ECJ) to determine disputes on interpretation of our legislation (although it is conceivable that the UK courts will still look to previous ECJ decisions for guidance).

What will happen to contracts that you have made?

Contracts by which UK residents are currently bound should be scrutinised: if the operation of any part of a contract depends upon the existence of a European law, the parties will need to consider what will happen under the contract if that law is repealed.

Similarly, parties will need to make sure that any new contract excludes language that references a European law, or only permits such language if it anticipates a range of possible UK/EU future relationships. Parties will also need to ensure that performance of the contract will not be frustrated by the disappearance of legislation.

The problem will not, of course, affect short-term contracts, to the extent that these will be fully performed within two years – the UK will remain in the EU at least until June 2018. The timing of performance of a contract cannot, however, always be guaranteed. To the extent that a new or existing contract may run beyond this date, you should decide if and how the contract should be amended to deal with Brexit.

Questions?

If you have any questions, please feel free to call your usual Weightmans contact to discuss.

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