

We need to talk about Brexit

Here we answer all the questions our viewers asked before and during our webinar on 14 October.

Do we yet know the impact of Brexit on European Works Councils (EWC)? Will they continue to encompass the UK?

A: Michael Stokes

There will not be a problem if companies based in the EU want to continue to operate a Works Council that includes (on a voluntary basis) UK-based employees. To have a fully effective EWC which is bound by EU law after 31 December 2020, the administration of that EWC will have to be in an EU country. Employees based in the UK will not form part of the EU-wide organisation for EWC purposes after the transition has come to an end, which might affect the legal status of EWCs based in EU jurisdictions. It is still unclear what individual rights relating to membership of and participation in EWCs in the UK will remain, other than that, whatever individual rights do survive (as part of the general retention of current EU employment law), will only be enforceable in UK courts and tribunals.

My data is held in the EU; do I need to change anything after Brexit?

A: Georgia Shriane

If the data is personal data about individuals located in the UK and this is intended to be held, stored or processed in the EU after 1 January 2021, you do not have to change anything – the UK government have given assurances that this may continue in the same way as now (this is correct at the time of writing, 14.10.20).

How likely is it that the UK will get an adequacy decision on GDPR before 31 December and where should UK businesses be looking to find a representative in the EU if they process the personal data of EU nationals but have no establishment there?

A: Georgia Shriane

I do not think that the EU Commission will give the adequacy decision before the transition period expires on the 31 December 2021. If nothing changes and there are no big policy changes announced for the very near future regarding data protection and policy in the UK, then I expect the EU Commission to grant an adequacy decision based on the Data Protection Act 2018 and its very close resemblance to the GDPR.

An adequacy decision will not affect the need for UK based businesses to comply with the territorial provision in article 3 of the GDPR or the representative provision set out in article 27 of the GDPR. If a UK business does not have (and does not intend to have) an establishment based in the EEA post-31 December 2020, then it should look to appoint an article 27 representative – there are a number of service providers online (but you should pay close attention to the fees and services provided, as these vary).

What can I do now to ensure that I don't get caught out by small changes in safety law as I focus on getting my business back on track post-Covid and don't have time to monitor changes in the regulation?

A: Kamal Chauhan

First of all, undertake a review of your current health and safety policies and procedures and check that they are up-to-date.

Secondly, either sign up to an 'alert' service that informs you when legislation changes, or retain specialist advisors, such as HCR, to undertake a bespoke updating service.

The advantage of the latter is that you will be able to concentrate on getting your business back up to full capacity and you can rely on the specialists to provide a bespoke commercial service.

I need to make up lost EU sales and am thinking of looking at the US - where is a good place to start and what do I need to be aware of from a legal point of view?

A: Nicolas Groffman

It sounds as if you haven't done market research yet. If you have, ignore this bit. Otherwise, start by asking the DIT ([gov.uk](https://www.gov.uk)) for a chat so they can help you identify the market. This is effectively free market research. However, don't listen to them when they start offering free help with contracts and due diligence as they always get this wrong and clients then come to me to repair the damage, which is more expensive than if they'd used proper lawyers in the first place.

You then have a choice of either finding a distributor in the US to buy your products and then sell them on, in which case the distributor takes most of the legal and financial risk. Or you could set up in the US by incorporating a subsidiary there.

Note each US state has different laws so you'd need help comparing the various regimes.

Answered by:

Michael Stokes, Head of Employment and Immigration Team

M: 07807 747 455

E: mstokes@hcrlaw.com

Georgia Shriane, Senior Associate, Commercial

M: 07436 197 061

E: gshriane@hcrlaw.com

Kamal Chauhan, Partner, Licensing, Regulatory & Tax

M: 07703 824 202

E: kchauhan@hcrlaw.com

Nicolas Groffman, Head of International Team

M: 0 7816 592 934

E: ngroffman@hcrlaw.com