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Brexit.

Preparing your business
for a no-deal exit from the
European Union

Welcome

With the UK's exit from the European Union set in law for October 31 2019, and the nature of the UK's future relationship still unclear, it is understandable that many publishers are concerned about the prospects of a "no-deal" departure.

While we await clarity on the UK's legal position post-Brexit, there are a number of things publishers, and their suppliers can do to prepare for a "no-deal" scenario.

In this guide, we consider five of the most significant areas for potential change for publishers: immigration, intellectual property, data, employment and company law; aiming to equip you with the information you need to make the transition to the post-Brexit landscape.

I know that many of you have invested in preparing for Brexit, with activities such as setting up EU subsidiaries, increasing paper stocks, holding higher cash reserves, and relocating print/production to the UK. However, our PPA member survey earlier in the year indicated that many were awaiting political clarity before deciding how to act.

We have tried, where possible, to give practical advice in this guide and answer the most frequently asked questions. Further information about preparing for Brexit can be found at www.gov.uk/Brexit and if you have additional questions please do not hesitate to contact the PPA team, who will be pleased to direct you towards appropriate resources, or connect you with PPA Associate Members and other advisers who can help.

The Prime Minister has made clear that he is still seeking a deal, but he intends for the UK to leave the EU on 31 October even if one cannot be agreed. Whatever the outcome I hope this guide will help prepare you.

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About **The PPA**

The Professional Publishers Association (PPA) has been synonymous with magazine and business media for over 100 years. Today our membership is made up of modern, multi-platform media businesses carving out a future defined by trusted, quality content.

We represent, champion and support around 250 companies, ranging from consumer magazine publishers to business-to-business data and information providers, customer magazine publishers and smaller independents.

Whether on the page, online, or face-to-face, our members create professional, inspirational and influential media content that engages and entertains audiences.

As the voice of professional publishers for over 100 years, the PPA is committed to ensuring our members have the tools to evolve into dynamic, multi-platform media companies.

Our work today is built around core four pillars – championing content, sharing knowledge, celebrating success, and reducing risk to support the broad spectrum of companies within the vibrant UK's publishing sector.

Any company or association with the common commitment of working towards a prosperous multi-platform media industry should join us. We bring our members together to unlock valuable connections that foster creativity and commercial successes. We also welcome suppliers to the industry as Associate Members.

For more details please visit ppa.co.uk

01 Immigration

WHAT COULD PUBLISHERS DO NOW TO PREPARE FOR A NO-DEAL SCENARIO?

Remind employees to apply under the EU Settlement Scheme

Only EEA citizens who are already resident in the UK on 31 October 2019 will be eligible to apply under the EU Settlement Scheme. They and their family members who are resident in the UK by the date of exit will need to apply under the scheme by 31 December 2020 to protect their lawful immigration status in the UK. This is six months earlier than the deadline that would apply in a deal situation.

EEA citizens and their family members who've lived in the UK for five years or more at the date of application can apply for 'settled status'.[1] Those who have not been living in the UK for five years will be granted 'pre-settled status' until they have reached the five-year threshold (when they will be granted settled status). Irish citizens are not required to apply under the scheme due to the common travel area arrangements but may do so if they wish. Non-EEA family members of Irish citizens should consider applying under the scheme as its provisions are much less onerous and significantly less expensive than applying under domestic immigration laws.

EEA citizens and their family members who hold British citizenship or Indefinite Leave to Remain do not have to do anything to protect their rights after Brexit. However, those with Indefinite Leave to Remain may wish to apply under the EU Settlement Scheme as this would mean their status would only lapse after a continuous absence of five years from the UK, instead of two. Those with documents issued under the EEA Regulations must swap their entitlement directly for status under the EU Settlement Scheme by the relevant deadline.

Bring forward start dates where possible

Given the uncertainty over the post-Brexit immigration position, try to manage the recruitment pipeline where possible to ensure that proposed new employees who are non-Irish EEA citizens enter the UK before 31 October 2019.

Provide support for British citizens

The European Commission has asked all member states to provide residence permits to British citizens living in their countries at the date Brexit occurs, but long-term arrangements will vary from country to country. The Commission has published a summary[2] of the position in each country. In many cases, arrangements have not yet been finalised or may be subject to change, so developments will need to be monitored.

1 https://www.lewissilkin.com/en/news/home-office-confirms-details-of-the-full-eu-settlement-scheme-roll-out

2 ec.europa.eu/info/brexit/brexit-preparedness/citizens-rights_en

WHAT HAPPENS AFTER NO-DEAL?

What will happen to freedom of movement?

The Home Office has confirmed that freedom of movement would continue from the date of a no-deal Brexit until 31 December 2020, with EEA citizens being able to voluntarily apply for European Temporary Leave to Remain (Euro TLR) during this period. Euro TLR would be valid for 36 months from the date of grant. The advantage of holding Euro TLR is that time spent with this type of leave would count towards the qualifying period for settlement under an eligible post-Brexit immigration category.

European Temporary Leave to Remain will allow EEA citizens to stay in the UK for up to 36 months with no restrictions on their stay, meaning that they can visit, work and study here during this time without the need for further approval. But this will not lead to Indefinite Leave to Remain or status under the Settlement Scheme: any EEA citizen who wants to stay in the UK for more than 36 months will need to apply under the post-Brexit immigration system which is due to be implemented from January 2021. The government are being very clear that European Temporary Leave to Remain does not give any rights or promises under the new system as its parameters have not yet been set.

The current government has indicated an intention to depart from the proposals originally put forward for the new system in the immigration white paper,[3] for example by incorporating some new Australian-style points-based categories[4]. The Migration Advisory Committee is currently calling for evidence[5] on what salary thresholds should be put in place for skilled workers under the post-Brexit immigration system.

What about bringing family members to the UK?

Family members who have a relationship with the EEA citizen by 31 October 2019 but are not living in the UK at that date, as well as children born abroad after exit, will need to apply under the EU Settlement Scheme by 29 March 2022. They must continue to have the relationship with the EEA citizen at the date they apply.

Family members who establish a relationship after 31 October 2019 with an EEA citizen who has status under the scheme will be eligible to make an application for pre-settled status until 31 December 2020.

3 https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system
4 https://www.freemovement.org.uk/uk-politicians-australian-style-immigration-system
5 https://www.lewissilkin.com/en/insights/migration-advisory-committee-publishes-call-for-evidence-on-salary-thresholds

02 Intellectual Property

HOW WILL COPYRIGHT CHANGE IN THE EVENT OF A NO-DEAL BREXIT?

Copyright is a national right, but much of UK copyright law is derived from the EU framework. There are references in UK law to EU cross-border copyright arrangements that provide reciprocal protections between EU Member States. The Government has introduced regulations which will remove or correct references to the EU, EEA or Member States in our copyright law.

Despite a no-deal Brexit, the international European treaties on copyright which require all signatory countries to protect works originating in any other treaty country to a minimum standard will still apply. The UK's participation in such treaties as the Berne Convention and the TRIPS Agreement is not contingent on membership of the EU.

There are certain aspects of copyright law that will change with a no-deal Brexit as the UK will no longer be a party to EU wide harmonising copyright laws. For example, there are European rules in place in relation to orphan works – copyright works where the right holder is unknown or untraceable – which allow cultural heritage institutions (think libraries, museums, archives etc.) to digitise and make such works available online across EEA Member States without the permission of the rights holder. That rule will no longer apply in the UK, meaning a risk of claims of copyright infringement if they continue to upload, or don't take down, orphan works from their online collections. There is a separate UK orphan works licensing scheme, but that will only apply to users in the UK.

Expect changes too to the way on-demand services work. The EU Portability Regulation currently ensures viewers across the EEA have unrestricted access to paid subscribed online content services, like on-demand streaming services such as Netflix or Spotify, when they travel temporarily to another EEA state, in the same way they would if they were at home. After Brexit, this won't apply in the UK or for UK consumers travelling within the EEA anymore. That does not mean that service providers cannot offer cross-border portability if they want to, but the provider will need permission from the owners of the content they provide.

If a UK publisher is showing video content on its website which is embedded from, for example, Youtube, it will be largely ancillary e.g. by way of illustration, and therefore the publisher is unlikely to come under the definition of an 'online content services provider', even if access to the website is limited to paid subscribers.

If that content originates from the EEA, the content owner may decide to restrict access in

the UK, and therefore it may be necessary to obtain additional permission from the content owners to ensure the content is still available in the UK. However, in reality, if that EEA content owner has already permitted its content to be shown on the UK publisher's website, it is unlikely it will remove that permission following Brexit.

Further, in a no-deal Brexit, without changes to UK legislation, broadcasters and video on-demand services that provide services akin to a television schedule would no longer be afforded the freedom of reception throughout the EU without requiring the authorisation for each country of destination it wishes to transmit services, subject to variations of national laws.

Brexit will also mean changes to sui generis database rights, which give database owners the right to stop unauthorised copying or extraction of data from their databases. After Brexit, British businesses may find their rights are unenforceable in the EEA. That might mean turning to other ways of protecting databases that have involved significant time or financial effort to produce – potentially in the form of licensing agreements instead.

WHAT'S NEXT FOR TRADE MARKS AND DESIGNS POST BREXIT?

The UK Government has issued Guidelines that were most recently updated on 20 September 2019, on what will happen to European Union Intellectual Property Rights in a "No-deal Brexit" scenario, and in February 2019 draft Statutory Instruments were published. The Statutory Instruments will come into force at the end of 31 October 2019 ("exit day").

What will happen to EU Trade Mark and Community Design Registrations?

Any existing EU Trade Mark Registration or Community Design Registration will continue to be protected in the UK by the automatic creation of an equivalent UK Registration on exit day. Owners of existing registrations will be notified of the creation of the equivalent Right and it will be possible to opt-out if you do not want an equivalent UK Registration. The existing EU/ Community Registration will continue to be in force in the remaining member states of the European Union.

Granted EU designations of International Registrations under the Madrid Protocol (Trade Marks) or the Hague Convention (Designs) will be converted automatically into UK Registrations and not UK designations. Subsequently, owners of EU Trade Mark Registrations and Community Design Registrations and the newly created equivalent UK Trade Mark Registrations and UK

02
Intellectual Property

Design Registrations will have to pay separate renewal fees for the existing EU/Community Registrations as well as the newly created equivalent UK Registrations. The UK renewal fees will be payable if the renewal date falls after exit day, even if the renewal fee for the corresponding EU / Community Registration was paid before the exit day.

What will happen to our pending EU Trade Mark and Community Design Applications?

Applicants for pending EU Trade Mark Applications, pending Community Design Applications or pending designations of International Registrations will have to reapply in the UK within nine months of the exit date in order for their EU / Community Application / International designation to be converted into an equivalent UK Application which will keep all the filing, priority and seniority dates of the original Application. **Applicants will not be notified of the need to reapply.**

EU designations of International Registrations will be converted into UK national applications and not UK designations of the International Registration.

Applicants will have to pay UK filing fees as part of the process of creating an equivalent pending UK Application from the EU / Community Application or International Registration.

What protection will there be for Unregistered Design Rights?

The Guidelines state that Unregistered Community Design Rights will continue to have protection in the UK for the remaining period of protection of the Right after the UK leaves the EU. Additionally, it is intended to create an equivalent UK Unregistered Design Right that mirrors the characteristics of the current Unregistered Community Design Right for designs disclosed after the leave date.

The existing UK Unregistered Design Right, for designs first disclosed in the UK, will continue to be protected. The Rights will be created automatically and so no additional action is required by the rights holder.

What will happen to pending UK court proceedings based on an EU Registered Trade Mark, Community Design or Community Unregistered Design Right?

Provision has been made so that any proceedings based on an EU Registered Trade Mark or Registered Community Design or International registration designating the EU or Community Unregistered Design Right that are pending on exit day may continue as if the UK were still a Member State of the European Union and under the provisions of the European Regulations governing those rights.

Counterclaims for invalidation or revocation of the EU Trade Mark on which any pending case is based may have to be transferred to an EU court. The UK court may still issue a declaration of invalidity against or revoke the equivalent UK registration created on exit day.

The management of ongoing legal disputes based on an EU Trade Mark / Community Design Registration right will depend on the particular details of each case. You will need to take advice on how the new provisions affect any specific case.

Exhaustion of rights

Anything which was, immediately before exit day, an enforceable EU right relating to the exhaustion of rights of the owner of an intellectual property right will continue to have the same effect in the UK after exit day as if the UK were still a member of the European Union – so any right that was or would have been deemed "exhausted" prior to exit day will not be enforceable after exit day.

Subsequently, exhaustion of rights will only apply to goods or services put on the market in the UK after exit day.

Representation before the UK IPO

The Guidelines state that there will be no immediate change to the UK address for service or privilege rules.

Trade marks and Community designs in the EU IPO

Any opposition, invalidation or revocation action against an EU trade mark or Community design that is based solely on a UK right that is pending before the EU IPO on exit day will be refused automatically on the basis that the UK right is no longer a valid ground of objection.

03 Data

A no-deal Brexit would pose a number of challenges for data protection issues – particularly in relation to data transfers. These challenges are not insurmountable, but publishers that transfer personal data into the UK from the EU will need to put mechanisms in place to ensure data flows are not interrupted.

WHAT WILL BE THE SITUATION FOR DATA TRANSFERS IN THE EVENT OF A NO-DEAL?

There has been much discussion about the impact of Brexit on a company's personal data flows in and out of the European Union post-Brexit. Even a so-called "no-deal" Brexit, will not be an insurmountable issue.

Five steps to prepare

The European Data Protection Board ("EDPB") released an information note[6] on the implications of a no-deal Brexit for data transfers from the EEA to the UK. It explains that should the UK leave the EEA without an agreement in place, it would become a third country. As a result, data transfers to the UK would need to be based on one of the permitted data-transfer instruments, and organisations should prepare accordingly. The EDPB sets out five steps that organisations transferring data to the UK should take in preparation for a no-deal Brexit.

- Identify what processing activities will imply a personal data transfer to the UK.
- Determine the appropriate data-transfer instrument for your situation.
- Implement the chosen instrument to be ready for Brexit day.
- Indicate in internal documentation that transfers will be made to the UK.

6 https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-02-12-infonote-nodeal-brexit_en.pdf

- Update your privacy notice accordingly to inform individuals.

The permitted data-transfer instruments are EU-approved model clauses; binding corporate rules; a code of conduct or certification mechanism; or derogations which may allow data transfers under certain conditions.

The EDPB notes the UK Government's indication that it will continue to permit personal data to flow freely from the UK to the EEA and advises organisations to consult its website and the ICO's website regularly.

Intra-group transfers?

As part of their GDPR compliance actions, data controllers should **already be aware** of their data flows around the EU and the world, including EU>UK data flows.

Many of these controllers will also already have sophisticated intra-group transfer mechanisms in place covering both intra-and extra-EU data flows. These companies have already mapped their data flows, so adding the post-Brexit UK in a different capacity into their intra group agreements should be a relatively straightforward task. For example, if you already send data to Australia from France via an intra-group standard contractual clauses ("SCC") mechanism, broadly you need to do the same for your UK entities or simply add these UK entities to an existing agreement.

For those entities that have not yet mapped their data flows intra-group, then a first step (and really one that should have taken place already regardless of Brexit) is to map flows of data from the EU>UK.

Third-party processors? (And third-party controllers?)

In terms of controller to processor relationships, many UK processors do receive personal data from the EU. Again, they should already know which of their clients send them data from the EU, and it is likely that controller to processor terms reflect this – so if a "no-deal" Brexit happens then the parties will put in place adequate safeguards for EU>UK transfers as necessary. It is then not a particularly onerous task to put in place SCCs, although commercially the other party may take the opportunity to renegotiate other terms.

From a controller to controller perspective, it may be necessary (as with "intra-group" transfers) to put in place model clauses where previously they were not required.

03 Data

What about UK to EU transfers?

The UK Government has taken a pragmatic approach to this issue, setting out in their "no-deal" paper on data protection that:

"You would continue to be able to send personal data from the UK to the EU. In recognition of the unprecedented degree of alignment between the UK and EU's data protection regimes, the UK would at the point of exit continue to allow the free flow of personal data from the UK to the EU. The UK would keep this under review."

The ICO has published guidance[7] on transfers **from** the UK **to** other countries (including to the EEA). For data transfers **to the EEA** the ICO states:

"The UK government has stated that, on the UK's exit from the EU, transfers of data from the UK to the EEA will be permitted. It says it will keep this under review."

So in essence, for now at least, no action really needs to be taken with regards to data flows to the EEA. But even for transfers within an adequacy "bubble", our strong advice is still that a data-sharing agreement is put in place – although we understand that many companies across the EEA still choose not to document formally intra-EEA or adequacy decision country transfers.

Further, arguably, privacy notices should also be updated to explain that data is transferred from the UK to the EEA under a UK "adequacy decision" (in addition to describing any transfers to other countries – as should already be described).

Future developments: A note of caution...

On a more negative note, Max Schrems's challenge to SCCs was heard by the Court of Justice of the European Union in July and a decision is expected in December. The Court might strike down SCCs as a valid transfer mechanism.

Further, the SCCs themselves have not been updated for GDPR compliance. New versions should be released by the European Commission ("EC") in the near future (but "near" could easily mean 12-24 months).

This means that use of the current SCC model could result in future changes being required, either as a result of the Schrems decision or when the EC change them (although one assumes grandfathering provisions will apply). **But if this happens, it will not just be UK companies that are concerned but many 100,000s of global companies as well.** The EU will essentially be

7 https://ico.org.uk/for-organisations/data-protection-and-brexit/data-protection-if-there-s-no-brexit-deal

closing its borders to data and the main victim will be consumers with regards to their access to, for instance, US providers – as such it seems unlikely this will happen.

An exploitable chink?

The ICO's paper on extra-EU transfers[8] also contains an idea that data transfer restrictions under the GDPR **do not apply** where the recipient of personal data is directly bound by the GDPR. If this is correct, then both a "no-deal" or "orderly" Brexit are irrelevant – as the majority of processing by UK companies will be covered by the GDPR (either under Article 3(1) or 3(2) or even, arguably, just by virtue of the fact that the UK has incorporated GDPR into its domestic law) then no transfer mechanisms will need to be put in place.

The ICO guidance states that:

"The European Data Protection Board (EDPB) are still finalising detailed guidance on this area and we advise ***that you take a broad interpretation of a restricted transfer,*** *which is that you are receiving a restricted transfer if you are a controller or processor located in the UK and an EEA located controller or processor sends you personal data."*

8 https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/international-transfers/

Will adequacy be granted to the UK?

Even in the event of a "no-deal", the UK will still seek an adequacy decision from the EC (as envisaged by the Future Relationship document). A successful adequacy decision would mean the UK was deemed to have an adequate level of data protection and data could flow from the UK to the EU without any further safeguards.

This will, of course, take time, meaning some of the "no-deal" actions set out above may have to be put in place. Further, there is **no guarantee** that the UK will be adjudged as having adequate data protection standards. The main worry discussed by some commentators is over the width of the Investigatory Powers Act – i.e. can security and police forces look too easily at our personal data in the UK?

In the meantime, if there is no-deal, EU data flows into the UK will need to be subject to additional safeguards. All businesses transferring personal data from the EU to the UK will have to ensure there is a compliant data-sharing mechanism or derogation in place. The Department for Business, Energy and Industrial Strategy ("BEIS") published guidance in February on using personal data after Brexit, which was based on a potential no-deal scenario at the end of March. BEIS recommends referring to the six-step guidance on this topic published by the Information Commissioner's Office ("ICO").

03 Data

What decisions will the UK make about the adequacy of other countries?

In the future, the Government will potentially make adequacy decisions about other third countries. An adequacy decision confirms that a particular country or territory (or a specified sector in a country or territory) or international organisation, has an adequate data protection regime. This could be good news for many former commonwealth countries with advanced data protection regimes (e.g. Australia and Singapore).

Crucially the new guidance further confirms that:

"The UK government intends to recognise the EU adequacy decisions which have been made by the European Commission prior to the exit date."

This will allow UK transfers to Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Jersey, New Zealand, Switzerland, and Uruguay.

EU-Korean and EU-Japanese talks are ongoing but it is likely that either the Government will just recognise Korea and or Japan's data protection regimes itself or, once the EC does confirm adequacy, the Government will recognise those decisions.

In relation to EU-US Privacy Shield (which is a form of adequacy decision) the ICO states:

"The only exception is in relation to the EU adequacy decision for the EU/US Privacy Shield, as this is an EU/US specific arrangement. The UK government intends to make arrangements for its continued application to restricted transfers from the UK to the USA."

One hopes that this would take place before Brexit – indeed, it would need to do so as many UK companies rely on Privacy Shield to transfer personal data to the US. The UK could simply follow the Swiss model in just mirroring the EU-US Privacy Shield arrangements as an initial stop-gap.

Other appropriate safeguards – standard contractual clauses

The ICO states that: "If there is no adequacy decision which covers your restricted transfer, you should consider putting in place one of a list of appropriate safeguards to cover the restricted transfer. For most businesses, a convenient appropriate safeguard is the use of standard contractual clauses. The UK government intends to recognise European Commission-approved standard contractual clauses as providing an appropriate safeguard for restricted transfers from the UK".

The government's technical note says that provision will be made so that the use of Standard Contractual Clauses (SCCs) that have

previously been issued by the European Commission will continue to be an effective basis for international transfers in a no-deal scenario. Existing SCCs will be valid and the Government will have the power to issue new clauses after Britain leaves.

This is good news and again we would expect that if and when the EC changes the standard contractual clauses that the Government will recognise them too.

The ICO also discusses the other standard safeguards and most crucially states that: "The UK government will recognise binding corporate rules authorised under the EU process before the exit date as ensuring appropriate safeguards for transfers from the UK." This is confirmed by the technical note and further confirms that the ICO will continue to be able to authorise new BCRs following Britain's exit (and at some point in the future the EC might of course also recognise the power of the ICO to authorise EEA-wide BCRS).

European Representatives (and UK Representatives?)

The ICO also recommends that if you are a UK based controller or processor **without** any offices, branches or other establishment in the EEA and you offer goods or services or monitor the behaviour of individuals in the EEA, you need to consider your Article 27 obligations to appoint an EU Representative (i.e. a contact point for EU data subjects). This representative will need to be set up in an EU or EEA state where some of the individuals whose personal data you are processing in this way are located. Privacy notices will need to be updated.

The technical note states that the government intends to replicate the provisions of Article 27 of the GDPR to require controllers based outside the UK to appoint a representative within the UK. There are multiple companies offering to be representatives across the EEA and the UK.

Summary

The ICO guidance recommends (1) taking stock, (2) focusing on EEA to UK transfers and (3) if necessary ensuring adequate safeguards are in place.

Our advice would be: don't panic, review your EU/UK data flows and hope for the best in terms of a deal. But if the worst happens, rest assured the issues are not insurmountable – EU/UK model clauses are not excessively complex to put in place or to amend to reflect the UK's new position as a third country post Brexit.

04 Employment

WHAT COULD PUBLISHERS DO NOW AS THEY PREPARE FOR A NO-DEAL SCENARIO?

Check your European Works Councils arrangements

Be sure to have pre-designated your new representative agent if your EWC is currently located in the UK. If your EWC is (or will become) located in another EU country, you will need to decide what to do about your existing UK representatives after Brexit (see here[9] for the EU Commission's latest position). If you are currently negotiating an EWC agreement, or if you have a EWC operating under the default 'subsidiary' requirements, consider relocating your arrangements now if you've not already done so.

Follow the legal requirements if you are considering restructuring or relocation

The key points are, firstly, that you may need to consult on the business case for closure before any decision to close a business is taken. And, secondly, employees should be offered the opportunity to move with the business if it is relocating.

FOLLOWING A NO-DEAL BREXIT – WHAT WOULD IT MEAN?

How will employment law change?

In the event of a no-deal Brexit, the European Union (Withdrawal) Act 2018 (the "Withdrawal Act"), will convert all pre-Brexit EU employment law into UK law. The Employment Rights (Amendment) (EU Exit) Regulations 2019 will make some small technical changes and introduce new provisions intended to preserve UK-located EWCs. Employment law will otherwise remain the same.

Business travel to the EEA and Switzerland

The rules for British citizens travelling to Ireland will not change and they will be allowed to undertake any activity without restriction. After Brexit, British citizens travelling to the other EEA countries or Switzerland[10] will be exempt from visa requirements for up to 90 days in a 180 day period. This is for visits only, including attending business meetings. However, British citizens will be unable to undertake paid work, so you'll need to understand the scope of the proposed activities on each trip and obtain any required work permissions if these go beyond the activities allowed for visitors.

9 https://www.lewissilkin.com/en/insights/eu-commission-confirms-its-views-on-ewcs-and-a-no-deal-brexit

10 https://www.gov.uk/guidance/passport-rules-for-travel-to-europe-after-brexit

It will also be important to calculate the time spent in the Schengen Area on a rolling basis[11] to ensure the 90-day maximum stay is not exceeded. British citizens will also need to have a passport which is valid for at least six months from the time they enter the EU. Note that some British passports are issued for more than 10 years in total but only the first 10 years of validity can be counted towards this six-month requirement.

Business travel to the UK

Irish nationals will continue to be able to undertake business travel to the UK without restriction indefinitely. Other EEA/Swiss citizens will also be able to undertake business travel to the UK without restriction in the same way as they do now until 31 December 2020. From 1 January 2021, they would need to meet the requirements for non-visa national visitors under the post-Brexit immigration system.

11 https://ec.europa.eu/assets/home/visa-calculator/calculator.htm

Employment case law

Under the Withdrawal Act, pre-Brexit decisions of the European Court of Justice will remain binding on most UK tribunals and courts, but need not be followed by the Supreme Court. New ECJ decisions will not be binding on any court or tribunal, although could be taken into account if relevant. On the whole, however, UK courts are likely to continue to respect most ECJ rulings, as long as UK and EU legislation remains the same.

No new Directives

The UK would not be required to adopt the Transparent and Predictable Working Conditions Directive[12], the Work Life Balance Directive[13], the Whistleblower Directive[14] or any future EU directives. The UK, however, has already committed to implementing some aspects of the Transparent and Predictable Working Conditions Directive, is one of the few EU countries to already have whistleblower protection and already provides some of the rights established under the new Work Life Balance Directive.

12 https://www.lewissilkin.com/en/insights/the-eu-gets-transparent-and-predictable
13 https://www.lewissilkin.com/en/insights/the-eu-adopts-a-work-life-balance-directive
14 https://theword.iuslaboris.com/hrlaw/whats-new/uk-the-new-whistleblower-directive-and-treatment-of-whistleblowers-in-eight-european-countries

04 Employment

So, whilst differences in employment law could open up relatively soon, they will be quite small.

Longer-term changes to employment law

Bigger gaps will open up if the UK government takes the opportunity to dismantle EU-derived employment laws after Brexit. Theresa May was emphatic that her government would look to enhance workers' rights after Brexit, not reduce them. But if Boris Johnson remains Prime Minister then we can reasonably expect the scrapping of EU rules on working time limits and record-keeping requirements. However, rights to paid holiday are unlikely to be scrapped altogether.

In the longer term, if a Conservative government remains in power, we might also expect to see collective redundancy consultation being abolished or made less onerous and the restrictions on changing terms after a TUPE transfer (a regulated transfer of employees to a new employer) being lifted (although we are unlikely to scrap TUPE). Previous governments have explored whether discrimination awards could be capped (for example at one or two years' pay) but this was problematic under EU law. Capping discrimination awards is unlikely in the short term, not least because of the #metoo movement, but it could come back on the table at a later date.

In its final days of government, Theresa May's administration published a flurry of proposals and ideas for reforming employment law. These included proposals to regulate Non-Disclosure Agreements (NDAs)[15] and to extend redundancy protection to maternity returners[16], along with a series of consultations[17] about other potential reforms, from a shake-up of parental leave entitlements to new rights to request workplace adjustments. Some of the proposals have been a long time in the making and seem likely to proceed under any stable administration. However, it remains to be seen whether our current or any future government will take forward all of the ideas currently open for consultation.

Ultimately, the UK faces the same challenges as any other modern economy: how to regulate the increasing volume of platform and contingent working and respond to the impact of demographic and technological change on the workplace. The UK's withdrawal from the EU will mean that the UK will need to find its own regulatory solutions to these challenges.

15 https://www.lewissilkin.com/en/insights/response-published-to-consultation-on-misuse-of-confidentiality-clauses
16 https://www.lewissilkin.com/en/insights/redeployment-rights-for-pregnant-employees-and-maternity-returners-announced
17 https://www.lewissilkin.com/en/insights/consultation-season-is-upon-us

Discrimination rights

Finally, remember that UK law prohibits workplace discrimination on grounds of nationality and national origin. In the (hopefully unlikely) event of any EU citizen experiencing abuse or harassment in your workplace, you would need to be ready to respond under your anti-harassment policies. You may want to check that they already cover nationality as well as race.

Interestingly, UK equality legislation goes further than EU minimum requirements in explicitly preventing nationality discrimination in the workplace. This is one of a number of instances where UK law provides more rights than the EU minimum and illustrates that, although the UK may dismantle some EU-derived employment rights following a no-deal Brexit, there are still likely to be areas of employment law where the UK goes further than the EU.

05 Company

There will be mercifully few changes in company law for private or overseas companies on Brexit day under current legislation. The changes outlined here are relevant to all publishers that are private companies incorporated in England and Wales or overseas companies incorporated in the EEA (EEA overseas company). There are similar provisions for LLPs.

What changes will there be to company administration?

- EEA overseas companies will see the removal of reduced requirements as to information filings, and disclosures in business communications and websites and names (as compared with a non-EEA overseas company). Such companies will have three months to address the changes.
- For an EEA company that is a director or secretary of a UK company, there will also be the removal of reduced filing requirements (as compared with a non-EEA corporate officer). There will be three months to supply the additional information.
- In relation to political parties and expenditure, there will need to be a removal of references to the EU, so the requirements for shareholder authorisation will only apply to UK elections and referendums.
- There will be no more EU cross-border mergers involving a UK company as a result of the revocation of the EU cross-border mergers regime.

What changes should publishers expect to company accounts?

- For EEA overseas companies Brexit will mean the removal of the reduced requirements (as compared with other overseas companies) as to the production, audit and filing of their accounts.
- Expect also reduced scope of these exemptions from producing accounts. They will only be available to UK subsidiaries of certain UK parents:
  - accounts for a dormant UK subsidiary of an EEA parent;
  - group accounts for an intermediate UK parent company with an immediate EEA parent.

These accounting changes apply for financial years beginning on or after 31 October 2019.

- Another change will be the reduced scope of the exemption from audit for a UK subsidiary of an EEA parent. This will only be available to a UK subsidiary of a UK parent.

What action should publishers take?

Companies incorporated in the UK and EEA overseas companies will need to address the above-noted changes, where relevant to them.

A UK company should also seek local law advice as to the effect of its connections with any of the remaining EU Member States (EU-27); for example, if the company has an established place of business in any of the EU-27.

UK LLPs would have similar work to do.

06 PRACTICAL TAKEAWAYS/ ACTION POINTS

1

Have conversations with your European employees about their future in the UK:

make sure your colleagues are aware of the EU Settlement Scheme and how to apply. If you have employees who are British citizens working elsewhere in Europe, discuss their status with them and make any necessary arrangements.

2

Think about additional protections for copyright works:

read our advice on how copyright law is changing, and in the absence of some reciprocal European arrangements, consider other methods of protecting your work.

5

Review your EU/UK data flows:

and if no-deal happens, don't panic. EU/UK model clauses are not excessively complex to put in place or to amend to reflect the UK's new position as a third country post Brexit.

6

Update your privacy notices:

your privacy notice will need to be changed post-Brexit in line with the changes to data processing. New privacy notices should explain that data is processed from the UK to the EEA under a UK "adequacy decision".

3

Now is the time to audit your trade mark and design portfolios:

be prepared for the creation of equivalent UK Registrations for your existing EU Trade Mark and Community Design Registrations. Two Registrations will mean two sets of renewal fees will need to be paid. You may want to opt-out of the creation of the equivalent UK Right if you already have an existing UK Registration.

4

Prepare to re-file pending applications:

be ready to re-file for any EU Trade mark Applications and Community Design Applications which are still pending on the exit day. A request to create an equivalent UK Application must be filed and the UK Application fees must be paid by **within nine months of the date the UK leaves the EU**. It may not be needed if you already have a suitable Registration in the UK.

7

Keep within the law if you want to relocate your business:

there are specific employment rights you need to consider before restructuring or relocating your business as a result of Brexit – you will need to consult with employees and offer them the chance to relocate with the business.

8

Keep an eye on the length and nature of business trips:

a no-deal Brexit would mean a limit on the number of days British citizens can spend in the EEA without a visa, and on the activities, you can undertake on a business trip.

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