



The Government has launched what is claimed to be the largest ever public information campaign, aimed at preparing Britain for leaving the EU, urging businesses to check what they need to do to prepare for a no-deal exit. Although a Brexit deal has been agreed, it needs to be ratified.

UKWA has prepared a series of fact sheets on key issues surrounding a no-deal Brexit, but for more detail, you should visit:
www.gov.uk/get-ready-brexit-check

The UK could still leave with no deal on 31 October 2019 if the UK and EU do not approve and sign the withdrawal agreement.



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Brexit & Commercial Contracts

The Brexit impact on commercial supply chain contracts is hopefully to some degree predictable, and its consequences largely manageable, thanks to a wealth of industry and government “Get Ready for Brexit” advice. The key to managing Brexit contract risks is to make use of that advice, study your own supply chain exposures, and be proactive in reviewing present and prospective contracts, with a view to applying mitigation strategies.

‘No deal’ Brexit won’t automatically invalidate commercial contracts, but it will change the operational stage for UK businesses (e.g. new licences, increased costs of production, exchange rate volatility, new tariffs, transportation delays, new customs procedures etc.).

Current and future contracts - considerations

- **Flexibility** - How flexible is the contract?
- **Supply Chain** - Consider performance and costs of subcontractors and suppliers.
- **Tariffs** - Who pays tariffs?
- **Territory** - Does the agreement contain references to ‘the EU’ and how is it defined?
- **Currency** - Currency for payments, risk of exchange rate fluctuations.
- **Customs Clearance** - who is responsible for customs clearance? Who covers the cost?
- **Service Provision** - Location - Will the provision of services be restricted by location?
- **Resource - Labour** - Risk of labour shortages leading to delays/difficulties.
- **Data Protection** - Are there data transfers between EU/UK, UK/EU and/or other countries?
- **Tax** - Changes to tax on payments under the contract? Who will be responsible for this?



Brexit & Commercial Contracts continued

Contract audit and supply chain mapping

- Try to identify points of exposure, including possible impact on subcontractors affecting performance delivery.
- Audit and mapping will mitigate the risk of incoming contractual damages/SLA breach/termination claims, and to seek continued operation for profit.
- Consider your own and customer's T&Cs, PO terms, framework commitments.
- Future contracts should be negotiated with Brexit impact in mind.
- Options are leave as is, amend or (if permitted and in the extreme) terminate.

Existing contracts

- Can operational exposures be mitigated?
- Is the UK within the 'territorial area' for the services/supply?
- Is the price fixed or can it be adjusted for currency or inflationary pressures?
- Is there a right of termination for convenience if the contract is now more onerous?
- Are other rights of termination/suspension?
- Neither the force majeure clause, nor the concept of frustration is likely to be a 'get out of jail free card.'

Future contracts

- "Brexit Clauses" potentially safeguard suppliers but could also give the customer reason to terminate/renegotiate.
- Define the trigger event: is it Brexit, or something else, e.g. tariff or exchange rate changes?
- Clarify the laws applicable to the contract, UK will not apply new EU law post Brexit (though under the European Union (Withdrawal) Act 2018 EU regulations already incorporated will for the time being be part of English law.)
- References to EU should include the UK, and references to EU law should include legislation succeeding that law in the UK.
- Include a clause for increased costs to be shared/re-pricing if the contract is not viable.
- Include a clause dealing with potential labour shortage of staff used to fulfil a contract.
- Include a flexible law and jurisdiction clause for disputes- a post Brexit EU court may no longer recognise English judgments.

Considerations for Brexit clauses:

- Define the degree of causal connection with Brexit- sole or direct cause only?
- Is a general or precise nature of the consequence better?
- A time limit for invoking the provision.
- Could it be invoked pre-Brexit?

Having no Brexit clause may be an option if you are confident that performance and costs will not be affected by Brexit, or that your contract already caters for possible effects. Contact Mike with a specific request for advice or support at enquiries@ukwa.org.uk For any further information, visit www.gov.uk/get-ready-brexit-check or call the government's Brexit helpline on **0300 3301 331**.