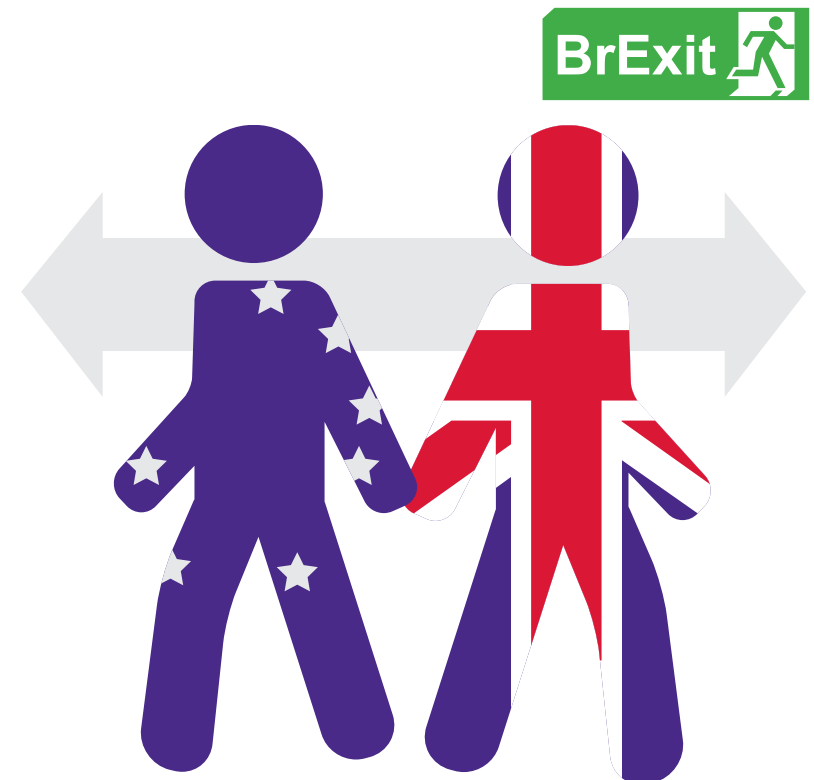


# BREXIT – Next Steps

## What HR and Payroll Professionals Will Need to Do Now That the UK Has Voted to Leave the EU

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# BREXIT – Next Steps

Now that the UK has decided to leave the EU we have put together this paper which lays out as clearly as possible what HR and payroll professionals need to do. This is important, because business leaders everywhere are asking HR what “Brexit” now means in terms of outcomes and timescales. This paper seeks to give a general outline of what to do next.

This guide has two readers in mind:

- The “summary” reader – we have a short summary at the start of this paper, setting the key points.
- The “details” reader – for those who need to be able to make and present contingency plans as a result of the referendum.



# BREXIT in brief – an Executive Summary

## Changes in Legislation

As a result of the In/Out Referendum EU the government now has the task of examining the legislation in place to determine what laws could change.



HM Government



# Now that BREXIT is a reality

## The Big Picture

- As a result of the UK voting for “Brexit” the United Kingdom may well feel like a very different place, but remember little will change immediately. Once article 50 of the Lisbon Treaty is triggered, the UK government has up to two years to negotiate a new set of rules for its relationship with the EU. What is clear, however, is that the UK will continue to push for continuing access to the EU single market.
- Many more businesses today than in the past have some kind of international exposure, and as a result of the vote HR and payroll professionals need to consider the impact in two major areas of their responsibilities:-
  - **The workforce** – and how it will be affected by “Brexit”; and
  - **The law** – which laws could change and which would be unaffected.



# Now that BREXIT is a reality



## The Workforce

- With the UK leaving the EU citizens of other member states could no longer enjoy an automatic right travel to work in the UK and vice-versa, thereby restricting free movement of people between the UK and the EU.
- Most experts believe that anyone who arrived in the UK before the Brexit vote would be allowed to stay in the UK legally, should they want to. Transitional arrangements would form part of any negotiation, and some nationals who may have acquired rights under UK legislation will be permitted to stay in return for similar arrangements for UK citizens working in other EU countries. Any impact on new migrants is much harder to predict.
- There is no guarantee that the EU will agree to restrictions on movement to the UK as part of any negotiations for access to the single market. There is no precedent for a country to be given full access to the block single market without accepting free movement of labour.



## The Law

- The vote for Brexit will now give the UK power to repeal or reshape employment legislation that many businesses dislike. However, a wholesale abolition of EU-based workplace law is unlikely for a combination of political and legal reasons.
- The most likely legal changes now we have the Brexit vote will probably come around Working Time Regulations and the Agency Workers Directive, while more modest changes are likely to affect union power and TUPE, bonus payments legislation and data protection laws. Discrimination laws and family-friendly working legislation seem far less likely to be affected.

# The Big Picture in brief

## **BREXIT – What Happens Next?**

Following the Brexit vote the United Kingdom may well feel like a very different place, but little will change immediately. A pause for reflection will be needed – and with good reason. For the first time since the 1970s, a member state has decided to leave the European Union, and for that there is no precedent. Forty years of integration between the two will take a lot of unravelling.

Article 50 of the Lisbon Treaty is the way in which any country can leave the EU through a negotiated settlement. The UK government now has up to two years (and more, if both sides agree to an extension) to negotiate a new set of rules for its relationship with the EU.

What is clear, however, is that the UK will continue to push for continuing access to the EU single market. Official trade statistics show the European Union is the destination for about half of all UK exports. The percentage is bigger if we include those countries who also have a free-trade agreement with the European Union - about 63% of Britain's exports are linked to European Union membership in this way. In return for UK access, the EU would require in return, the UK to abide by EU rules, including the free movement of people, in return for granting that access.

A trade agreement is likely, as there are advantages to both sides in continuing a close commercial trading relationship. How fast that happens depends on how well the negotiations go. There are different potential models, including the UK becoming a member of the European Economic Area (EEA), with “free” access to the single market, to looser models in which the UK trades with the EU on less favourable terms, but is at least allowed to broker its own trade deals with non-European Union countries. All of these options would require prolonged negotiation.



# The Big Picture in brief

## What Does All This Mean for UK Employers?

The development of the single market, alongside the relative ease of online technologies, means that many more businesses today than in the past will have some kind of international exposure. With the UK on the path to leave the EU, HR and payroll professionals need to consider the impact in two major areas of their responsibilities:



**The Workforce**

**How it will be affected by “Brexit”**

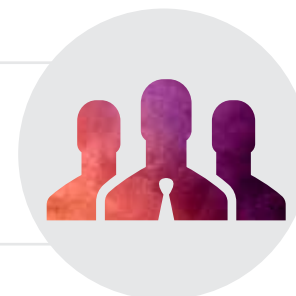


**The Law**

**Which laws could change and which could be unaffected**

And these factors form the basis of the rest of this paper.

# The Workforce



The right of EU citizens to freely work and live across the EU, clearly affects the supply of labour and recruitment and retention practices. With the UK leaving, citizens of other member states could no longer enjoy an automatic right travel to work in the UK and vice-versa, thereby restricting free movement of people between the UK and the EU.

Should UK/EU negotiations over single market access fail following the Brexit vote, the movement of people could perhaps be replaced by a points-based system that currently applies to non-EU nationals. And in the absence of any other agreement, EU countries would be free to impose their own restrictions on UK citizens.

One approach could see new legislation allowing EU citizens to remain in the UK for a specified period of time, after which they would need to obtain a visa or residence on the same basis as people from outside the EU. The major uncertainty from the Brexit vote is for migrant employees who've been here fewer than four years and are ineligible for permanent residency.

Most experts believe that anyone who arrived in the UK before the Brexit vote would be allowed to stay in the UK legally should they want to. Transitional arrangements would form part of any negotiation and some nationals who may have acquired rights under UK legislation will be permitted to stay in return for similar arrangements for UK citizens working in other EU countries. Any impact on new migrants is much harder to predict. The UK could try to negotiate a deal that allows free movement for some groups and the right to impose quotas on others.

There is no guarantee that the EU would agree to this as part of any negotiations for access to the single market. And there is no precedent for a country to be given full access to the block single market without accepting free movement of labour.

## Some facts on how the free movement of EU citizens affects the UK

1

Low unemployment rates make the UK a relatively attractive place to seek employment. Only Germany and the Czech Republic have lower unemployment rates than the UK. The employment rate of those aged 16 to 64 is at a record level and the labour market does not appear to be struggling to absorb workers from other EU countries.

2

UK wages are relatively high. Comparisons depend on exchange rate movements, but the UK minimum wage for full-time employees was the third highest in the EU in January, even before a minimum wage of £7.20 an hour was introduced in the UK in April 2016.

3

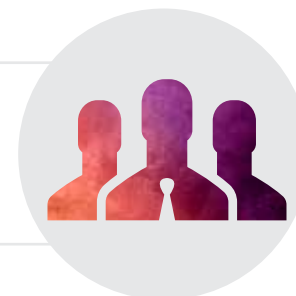
The UK is attracting both high and low skilled labour from within the EU. Generally speaking, economic migrants from Western Europe contain a higher proportion of university graduates, while in general, workers from Eastern Europe are more likely to hold more vocational skills.

4

While fewer people are now arriving from outside the EU than in the past, those coming from within the single market are running close to record levels - 257,000 EU nationals moved to the UK over the last 12 recorded months. National Insurance registrations suggest that the numbers who applied to work in the country in 2015, including short-term stints, may be at least twice as high. Even so, Britain is only in the middle of the EU rankings when it comes to migration relative to population size, with about 1 in 8 of the workforce, about the same proportion as Spain and Germany.



# The Workforce



## Brexit – What Does This Mean for The Workforce?

EU citizens have the right to work in the UK, but new migrants could conceivably see this right withdrawn. CV-library, the UK job site, reported a record number of EU workers who searched for jobs in the UK as a result of the referendum date. CV-library recorded the number of web visits of EU workers has risen by 13% on a year earlier. Looking specifically at the week following the referendum announcement, compared to the week before the announcement, the data reveals big spikes in traffic in many European countries, Belgium for example registered a 109% increase in searches, with Croatia at 70% and Greece at 68%.

It's important, to remember that nothing will change overnight. Currently immigration from the EU supports the UK's economy's ability to grow without pushing up wage growth and inflation. It's unlikely the government will pursue an overnight change to encourage an exodus of this migrant population. However, in the longer term, Brexit will be a catalyst for a shift in UK immigration policy.

### Sectoral Snapshot

There is little prospect of London being dislodged as Europe's leading international financial centre in the short term. This will be sustained by advantages, including a large network of financial and professional services expertise that is hard to reproduce easily. However, EU regulations currently in force will make it much harder for the UK financial services businesses to serve European markets, including euro trading. Some businesses could therefore be moved to the Eurozone and away from the UK. Financial services, could also have much to lose in the longer term because the UK would slowly lose influence over single market rules.

Most economic studies have concluded that the Brexit vote could be far more likely to restrict the number of low skilled workers entering the country and shift instead towards attracting more highly skilled workers. This could be a potential headache for low wage sectors heavily dependent on migrant labour, **such as agriculture**, but could benefit other areas with the shortage of highly skilled labour, such as **technologically driven sectors**.

Many businesses, including those involved in **transport and logistics** may no longer be able to take advantage of the "freedom of establishment" rules to "set up" bases within Europe with lower wages. For example, a low-cost UK airline which set up in Latvia and recruits staff by paying low local salaries.

# The Law



On the face of it, Brexit will give UK power to repeal or reshape employment legislation that many UK businesses dislike. The government, may now try to repeal certain aspects of EU law, with the likely targets being Working Time Regulations (WTR), Agency Workers Regulations and CRD IV (which relates to bankers bonuses). However, a wholesale abolition of EU-based workplace law is very unlikely.

## Why will more laws not change?

1

Repealing some workplace law would be politically difficult domestically. Many current UK employment laws originate from the EU and it seems inconceivable that the UK will do away with those aspects of EU-based laws, that have become socially accepted and ingrained within the UK, particularly those relating to discrimination or family-friendly legislation.

2

Following the Brexit vote, international political pressure will also inhibit the repeal of some rules. Now that the UK has decided to leave the EU, it will try and retain a good economic relationship through access to the single market. However the EU is not likely to allow the UK to benefit from single market access whilst operating employment laws that “undercut” the other EU member states. Norway, for example, has chosen not to join the EU. It is instead part of the EEA, but in order to benefit from economic ties with the EU it is subject to many EU directives.

3

The way in which judges interpret laws following the UK's Brexit vote will change only slowly. UK courts are currently bound to follow EU Court rulings. Brexit now means that such decisions could no longer be binding in UK courts. Even so, UK courts have already built up a substantial body of UK case law shaped by EU court rulings. It is likely that the existing decisions of EU courts would indeed exert a strong influence although; now that we have a Brexit decision, differences in interpretation could grow over time.

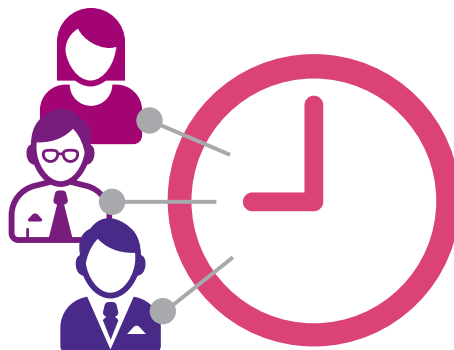
# The Law



## Laws That Could Change

### Working Time Regulations

Businesses often see the EU Working Time Regulations (WTR) as undermining labour flexibility and increasing costs of hiring staff. The WTR governs areas such as employee working hours and holiday rest breaks. These will come under greater scrutiny. While the UK government is unlikely to seek to remove the legal right to paid holidays, other aspects of the WTR could be amended to reduce the administrative burden on employers, particularly in relation to breaks, rest periods and record-keeping.



The Government may, for example, scrap the 48-hour average weekly working time limit. UK Governments have fought hard against this restriction, along with requirements to record hours to show that this maximum is not exceeded over a 17-week period. Attempts to reduce this obligation would be popular among many businesses.

Now that Brexit is a reality the UK will have more freedom to decide how statutory holiday pay should be calculated following recent EU rulings. New rules could specifically exclude fluctuating payments such as commission or overtime.

### Agency Workers Regulations

The Agency Workers Regulations (AWR) as a UK law is also seen by many employers as a problem. The government could remove the requirement for agency workers to be paid the same rate for a job as permanent staff after 12 weeks. Also provisions requiring employers to notify employee representatives of information they have about agency workers could change. Repealing the Agency Workers Regulations (AWR) could reduce business costs and record-keeping requirements and could be seen as a quick win by the government.



# The Law



## HRA, Unions and TUPE

There are potential employment law implications from a possible repeal of the Human Rights Act (HRA). The Government has already suggested it could water down or remove the Human Rights Act and in the process make it tougher for trade unions to commence strike action.

The Transfer of Undertakings (Protection of Employment) Regulations - or TUPE - gives businesses certainty around business transfers and we are not likely to see its demise now that Brexit is a reality, however we may see smaller changes.



The previous UK government looked at this area in 2014 and declared its intention to remove what it saw as “gold plating” of the minimum requirements under the EU’s acquired rights directive. As part of that review the government made it easier for employers to make changes to terms and conditions after a transfer of ownership had taken place. The government could relax these rules further now that that we have a Brexit decision.

This would not give employers the right to make whatever changes it wanted, because they would still be bound instead by UK definitions of what “fairness” means and in proving “good business” reasons to make changes.

## Financial services – bonus payments

The UK government has said that it supports ways to recover or prevent payments of bonuses in the event of misconduct or mismanagement, but the 4th Capital Requirements Directive (CRD IV) can be challenged. The bonus cap rules have been in operation since the start of 2015. These restrict senior staff bonuses to 100% of fixed remuneration in any given year, or 200% if shareholders give their consent. To relax or take away the bonus cap, however, would be politically controversial.



## Data protection

This is an area in which modest changes could be introduced to reduce the burden on employers. The UK government would probably seek to reduce public or consumer protection outlined in data protection laws. And it could be more willing to accept that the existing data rules place too big a burden on employers.



# The Law



## Laws That Could Be Too Difficult to Change

### Discrimination

Although leaving the EU will in theory give more scope for the UK Government to look again at this area, changes in social attitudes in recent years make this a politically unattractive area. Protection against discrimination is not only one of the foundations of EU law, but the need to prohibit discrimination on race, sex and disability was in force in the UK before it was required by EU directives. More recently anti-discrimination legislation based around religion and belief, sexual orientation and age has been added via The Equality Act of 2010.

There may, however, be scope to introduce changes to the compensation that could be awarded in discrimination claims, perhaps around maximum claims for unfair dismissal. Such a move would have been incompatible with the EU could now be possible. Other subtle changes could include putting the burden of proof back on to the employee from the employer.

Most modern employers see the importance of showing that they are engaged with their workforces. Therefore there is unlikely to be much demand for the removal of the information consultation regulations. Similarly equal pay laws and other protections against discrimination are unlikely to be removed by any UK government.

### Family Friendly policies

Not much is likely to change here either. The extension family-friendly rights, reinforced by a more flexible workplace makes them difficult to reverse. Shared parental leave, for example, was supported by both by the coalition government and the Labour opposition.

The same applies to the extension of the right to request flexible working, introduced in July last year. Rights such as those provided for new and expectant mothers are sometimes criticised as examples of business unfriendly EU legislation. However even though UK maternity leave rights already exceed the minimum required under EU law, this would be politically difficult to change.

It is doubtful whether larger employers would press to abandon existing family friendly policies anyway given their stated significance as a recruitment and retention tool. However, it is possible that exemptions could around these could be introduced for smaller employers.



# What should HR and Payroll professionals do?

## 1 Take time NOW to understand the bigger picture

With the decision made, the UK will be embarking on an unprecedented period of public debate. Whilst the politicians are actively working through the details, UK employers can get busy by using this guide to assess what steps are required now that the Brexit vote is a reality. Business and leaders need to minimise disruption to their workforce, while ensuring that all their practices remain legal. HR teams need to think how they can protect their organisation from the disruption following the Brexit vote and that begins with good planning and excellent communication strategies.

Finally, HR needs to remember that although the vote has happened, many things will remain strategically important. Businesses still need to face major challenges of engagement, productivity, skill shortages and the impact of disruptive technologies on their organisations. These important challenges can never be downgraded by any business at any time.

## 2 Drill down to the likely impact on workforce skills needs

When it comes to managing the workforce, HR would be well advised to consider the types of skills currently in the workforce, particularly around recruitment, talent management and succession planning issues. HR departments would be encouraged to open up communication, if they haven't already done so, with their non-UK EU workers, to ensure mutual clarity on their status now that the UK has voted to leave the EU.

Any policy-level shift away from nationality based eligibility to those based around skills and professions. For those sectors relying heavily on low-skills labour, such as agriculture and construction, the changes will be business critical. Alternative sources of labour will need to be explored and HR will need to ensure employers avoid non-compliance and new immigration reporting duties.

Consider also the impact on staff around employee engagement and motivation amongst those who might be impacted long-term by the Brexit vote. For example, review the clarity of employment contracts for those who will be working internationally.

## 3 Consider the legal landscape and which laws will impact your business most

It's important for HR to think about which laws could affect their operating environment.

The Brexit vote has given the UK power to repeal or reshape employment legislation that many businesses dislike. However, a wholesale abolition of EU-based workplace law is unlikely for a combination of political and legal reasons.

The most likely legal changes will probably come around Working Time Regulations and the Agency Workers Directive, while more modest changes are likely to come for union power and TUPE, bonus payments legislation and data protection laws. Discrimination laws and family friendly working legislation seem far less likely to be affected.



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