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Brexit snapshot: Food & Beverage

Do you have a UK-based food business? Do you manufacture organic products? Are your manufacturing activities, suppliers, customers or contracting parties located in the UK?

Brexit will affect you. What should you do now?

What is the latest on Brexit?

The UK is scheduled to leave the EU on 29 March 2019.

Currently, the UK is still part of the EU and EU law still applies in the UK. On leaving, the UK will become a “third country”.

EU law will be transposed into UK law.

The UK's European Union (Withdrawal) Act will transpose all EU law directly into UK law. Assuming that happens on day one after Brexit, the law in the UK will still be the same as it is currently and the same as in the EU. Post-Brexit, the UK Government can then decide whether it wishes to make changes to that UK legislation.

But it's not that simple in practice.

Transposing over 40 years of legislation is not straightforward. There are numerous references in EU law to a company or person being present within the EU, or the involvement of an EU institution or agency, or access to an EU system or database, which cannot simply be transposed. The UK cannot unilaterally legislate to continue participating in those EU bodies and systems. Depending on the outcome of negotiations with the EU, the UK may need to set up new bodies and systems to enable parts of UK legislation to operate post-Brexit.

The UK and EU have negotiated the withdrawal terms...

The EU27 and UK have negotiated draft terms on which the UK will leave the EU, known as the Withdrawal Agreement. This sets out what will happen to existing products and regulatory requirements in the UK and EU27 on withdrawal. It also provides for a “transition” period after the UK leaves to give businesses time before the new arrangements apply, which would run from 30 March 2019 to 31 December 2020.

...and an outline of the future trading relationship.

The EU operates as a single market with common regulatory standards and a customs union with no tariffs on imports between Member States and a common tariff for imports from “third countries”. The UK and EU have also negotiated a political declaration containing a high level outline of the future UK and EU relationship based on a free trade area with zero tariffs and quotas, a new customs arrangement and co-operation on goods. However, there is still much uncertainty as to the details of the future relationship at this stage.

The UK Parliament has rejected the withdrawal terms and outline.

While EU leaders have approved the terms of the Withdrawal Agreement and the political declaration on the future trading relationship, the UK Parliament has voted to reject them. Both the UK and the EU27 have been explicit that nothing is agreed until everything is agreed, which means that without approval of the Withdrawal Agreement and political declaration, the UK risks “crashing out” with no transition arrangements in place.

The likelihood of a “no deal” Brexit has increased

The default legal position is that the UK will leave the EU automatically at 11pm on 29 March 2019 with no “deal” in place, unless something else is agreed. The current political deadlock in the UK is unprecedented so it is difficult to predict what will happen next. The possibilities include trying to amend the existing draft Withdrawal Agreement, negotiating an alternative deal, “no deal”, a second referendum or a general election. Many of these options will take time and would likely require the date of Brexit to be delayed. Businesses need to prepare for the real possibility that the UK might leave the EU with no withdrawal terms in place.



To keep up to date with new developments, visit our Brexit hub and subscribe to our Brexit bulletin: hoganlovells.com/brexit

The impact of Brexit on food & beverage products

The key areas affected are *trade, people, regulation and supply chain contracts*



Ensuring the continued supply and safety of food & beverage products is vital

While some issues are common across industries, the limited shelf-lives, comprehensive regulatory framework and cross-border supply chains means that the impact of Brexit is particularly far-reaching for food & beverage products.



Key trade risks

The UK is not self-sufficient in food. Food and drink products regularly cross borders during the supply chain. Raw materials and ingredients are sourced from different countries and production stages of manufacture, packaging and labelling are often performed in different locations.

It is reported that 61% of the UK's food and drink exports go to the EU, while 70% of what the UK imports comes from the EU, all currently on a zero tariff basis. In the event of a no-deal Brexit, the UK will revert to trading with the EU on World Trade Organization rules unless a separate trade agreement is agreed. The average WTO tariff for food products is 22%. Any increase in tariffs or non-tariff barriers is likely to increase costs and introduce delays due to additional checks, formalities and processing at customs which could significantly disrupt food and drink supply chains.



Key people risks

The food & beverage industry is almost uniquely reliant on labour and talent from the EU. Brexit could impact the ability for businesses to source workers for the UK.



There is a risk of regulatory divergence

Much of the UK's current regulatory framework for food and beverages stems from EU law and involves EU bodies and organisations, such as the European Food Safety Authority (EFSA).

Unless mutually agreed by the EU27 and the UK, the UK will no longer have access to these EU structures and the EU will not automatically recognize UK regulatory decisions.

The UK Government and industry are seeking close co-operation, regulatory alignment and minimal disruption for food and drink products post-Brexit.



Key regulatory risks

Depending on the final agreement reached between the EU and UK, the regulatory implications include:

Risk assessment and authorisations: A large proportion of food safety risk assessment is carried out by the EFSA, including pre-market approval and authorisations for food additives, enzymes, flavourings, genetically modified foods, 'novel foods' and assessments of health claims. Unless an agreement is reached with the EU27, post-Brexit, the UK will need to assume responsibility for these functions in respect of products on the UK market.

Labelling changes: Changes may be required to product labels to reflect the fact that the UK will no longer be part of the EU. Products that are sold in the EU and the UK will also require both an EU and UK address on the label, which may require UK producers to set up an EU hub or work with an EU importer.

Organic products: UK producers may need to be re-certified by an EU organic control body to export organic products to the EU27 and will not be able to use the EU organic logo. UK control bodies will be unable to apply for recognition by the EU until the UK becomes a third country. This could result in the UK being unable to export organic products to the EU for nearly one year after Brexit unless an equivalency arrangement is agreed with the EU.

Products protected by geographical indication (PGIs):

UK PGIs reportedly make up 25% of the value of all UK food and drink exports. Post-Brexit, existing UK PGIs will be protected under a new UK PGI scheme. However, UK producers may need to re-apply to the EU Commission for their PGIs to continue to be protected in the EU.



Key supply chain contract risks

Contracts with suppliers and customers may no longer function as intended after Brexit and may result in additional cost and risk. Key issues to consider include:

Territory: Will contracts continue to cover the UK post-Brexit? Have any pan-European supply or distribution agreements been entered into?

References to applicable laws/specific regulations: Are there any implications due to changes in legislation? Will equivalent UK laws be caught by current references and definitions?

Force majeure / Material Adverse Change: Will Brexit trigger a possible price change and/or termination event?

Payments: Is there a mechanism to deal with any currency fluctuations? Who is responsible for payment of additional taxes and duties?

What should you do now to prepare?

For detailed advice on how to identify areas of legal and commercial business risk created by Brexit and contingency planning, visit our Brexit toolkit: hoganlovellsbrexit.com/brexit-toolkit

Much about Brexit remains unclear so deciding what changes to make and when is challenging. However what is clear is that you should make sure you have identified potential impacts and have a contingency plan in place so you are in a position to move quickly.

Specifically, manufacturers of food and beverage products should be:



Reviewing any **regulatory arrangements and supply chain operations** that involve the UK, including manufacturing activities, distribution and import sites, certifications and authorisations, and personal data processing.



Conducting a **gap analysis of any contracts** involving the UK to identify any risk and opportunities created by Brexit and ensure they are aligned with any regulatory driven changes.



Considering the **wider business impact** of any changes as a result of regulatory requirements For example any tax or transfer pricing implications or significant IT systems and business process changes of relocating assets or activities to a company in the EU27.



Monitoring Brexit developments and **engaging with government and industry associations in the UK, Brussels and the EU27** to optimize the landscape for your business.

How can we help you?

We can:

Carry out a gap analysis to identify and prioritise the steps that you should be taking to prepare for Brexit based on a tailored application of our Brexit toolkit.

Advise you on which **operations you might need to move** and which EU27 countries you might consider moving them to.

Implement changes to your business ranging from relocating entities, activities or people to IT and other operational changes.

Analyse your contracts to identify and mitigate Brexit related risks in both existing contracts and template agreements to minimise future Brexit risks.

Develop an **effective strategy to engage** with policy makers to support your business priorities.

Train your key stakeholders on the risks and opportunities of Brexit for your business.

Why work with us?

Expertise

The only firm ranked Band 1 by Chambers for Product Liability: Food and by Legal 500 for our Brexit advisory work and commercial contracts.

Brexit focus

A dedicated taskforce analysing and alerting businesses to Brexit related issues. Our Brexit Hub covers latest developments and industry specific regulatory analysis.

Policy engagement

Our Chambers Band 1 ranked practice is experienced in developing strategies to influence business-critical Brexit policy issues.

International integration

Our integrated cross-border team is experienced in developing practical solutions to pan-European issues.

Experience

We are advising a number of our food & beverage clients on their preparations for Brexit.

Key contacts



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Where can you find out more? Visit hoganlovells.com/brexit