

# FAQ: Is your business BREXIT ready?



At our recent Road Transport Conference in November 2018, we held a lively Brexit-based panel discussion to assist the businesses present to identify any contingency areas that need addressing before 29 March 2019.

The phrase most associated with Brexit remains true; “nothing is agreed until everything is agreed”. However, the aim of this discussion was to get businesses thinking about what they need to consider within their own organisations and to try to provide some tips for what kind of contingency plans could be put in place in advance.

We have summarised the discussions which took place, and detailed them below so that further road transport businesses can also look at their contingency plans ahead of a potentially uncertain time.

As we confirmed at the conference, the answers provided below are our best opinion made with information available in late 2018, and given that there remains no certainty about the BREXIT deal, if any, or what the United Kingdom’s departure from the European Union will look like. These are by no means definitive answers and are subject to change as we receive further guidance from the government.

## **Question**

What impact could BREXIT have on my business?

## **Answer**

The impact will be different for each business, but one common theme will be profitability. There may be new tariffs, additional customs checks, additional regulations and higher costs due to exchange rate changes which could mean parties to contracts may want to terminate.

Notwithstanding that, the availability of drivers could be further compromised. Equally, your business may want to terminate a contract early or renegotiate if your costs were to increase.

Business will need to look at their contracts to identify any ‘EU references’ and those terms would need to be reviewed as their meaning may change. It may also be more difficult to enforce judgments by English courts in some EU Member States.

### Question

What can we do as a business to prepare and best protect ourselves?

### Answer

There is no 'one-size fits all' answer and it would be sensible for businesses to conduct an internal audit considering how Brexit may affect business generally.

You will need to consider your location, locality of customers, key commercial relationships and long term commitments. Having identified your key commercial relationships, conduct a contract assessment to identify the key contracts governing those arrangements and assess if they provide sufficient protection against Brexit or, at the very least, be clear whether there may be any implications.

Consider whether you may need to renegotiate, amend or terminate any contracts but take care in your discussions with third parties as statements about what will happen could lead to arguments that the contract has been varied. Timing will be key because if the contract expires before March 2019 or December 2020 (in the event that the Withdrawal Agreement is agreed by Parliament) you may not need any changes or the expiry will provide for a good renegotiation opportunity.

### Question

What kind of provisions can we include in our contracts to future-proof against Brexit?

### Answer

Consider if a 'Brexit clause' would be appropriate inclusion in your contracts to allow parties to come back to the negotiating table if certain events occur, e.g. tariffs / exchange rates / customs procedures / strikes / labour shortages.

Check if an arbitration option is available in your contracts or whether it should be included, as it may be a better option in certain cases rather than seeking to enforce English court decisions in EU Member States.

### Question

Is there anything that we need to put in place in the event of a 'no deal'?

### Answer

The government has published a set of notes to advise individuals and business of the likely scenario should there be a 'no deal' BREXIT. These can be found here: <https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>.

You will need to consider any regulatory changes for drivers and hauliers operating within the EU or as a recipient of EU goods further up the supply chain including any change to driving licences, vehicle insurance, community licences, ECMT permits, the CPC scheme, borders and traffic management.

Delegates were provided with a handout summarising the regulatory considerations in the event of a 'no deal' BREXIT alongside practical considerations and actions points. If this handout would be of interest to you, please let us know at [transport@woodfines.co.uk](mailto:transport@woodfines.co.uk) and we would be happy to send it to you.

At the Conference in November, we also reminded operators that their drivers must record the reasons for any non-compliance with driver's hours rules in order to rely on emergency exemptions should they face emergency delays. We provided notepads which can be used to note down the required elements of recording such delays, and again, would be happy to send further notepads to you for driver usage if required.

We will continue to keep an eye out for further guidance issued by the Government to ensure our continued support for those we work with in the transport and logistics industry.

In light of the current uncertainty, we are in the process of strategising with clients to ensure that their business and transport operations are best protected in reviewing Terms and Conditions, contracts including those with third parties, driver handbooks and contracts of employment. If you would like to book a face-to-face meeting to discuss the options available for your business, please get in touch and we will be happy to advise.