



Brexit – The Essential Labour Law Guide

By **Paul Quain**, **Darren Isaacs** and **Dónall Breen** - 29 January 2020

After a dramatic election, the stage is set for the UK to leave the EU on 31 January 2020. Taking you through everything you need to know, we have scheduled a webinar just as we are about to hit the first day of "new" Europe – sign up [here](#).

If you can't wait for the webinar, below we have distilled the essential information every HR practitioner and labour lawyer should know.

How did we get here?

First, for those who need a quick reminder, the timeline looks broadly like this:

- 23 June 2016 - UK votes to leave the European Union
- 29 March 2017 - Article 50 evoked, which starts a two-year exit timeline
- 19 June 2017 - UK/EU talks start
- 29 March 2019 - Brexit Day #1 - EU agrees to extend Article 50 timeline
- 12 April 2019 - Brexit Day #2 - After a further parliamentary defeat for the government, Brexit is again delayed
- 17 October 2019 - UK/EU agree deal. This deal is roundly rejected by UK parliament
- 31 October 2019 - Brexit Day #3 - EU agrees to extend Article 50 timeline
- 31 January 2020 - Brexit Day #4 - After passing modified EU/UK deal in parliament, UK expected to leave the EU. 'Transition Period' begins immediately in which the future EU/UK relationship will be formalised
- 31 December 2020 - End of transition period

As the Conservative party now has a large majority in parliament, it is almost certain that the UK will leave on 31 January as expected and negotiations with the EU will begin in earnest.

There is some debate about whether a deal by 31 December is possible (the EU certainly doesn't think so), but the working assumption is that the transition period will end then.

What will change on 1 February 2020?

In short, not so much.

Some new 50p coins will go into circulation to commemorate the momentous occasion, but for most people and businesses they will see almost no difference as they wake up on Saturday morning.

Due to the passing of the Withdrawal Agreement Bill, existing EU laws and rules are being incorporated into UK domestic law (the good, the bad and the ugly). Over time, the UK's laws may deviate from those in the EU but we expect this will take a long time and is likely to be marginal, not dramatic.

The political landscape will shift as the UK will cease to be an EU member, so we will no longer have a seat at the table (literally and metaphorically). However, for the transition period the trading relationship will remain the same and it will continue to follow the EU's rules - such as accepting rulings from the European Court of Justice. The transition also means the UK will continue to contribute to the EU's budget for some time.

So labour law won't change?

Not exactly.

The theory is that there will be little change but there are some problem areas for UK labour law. The main issues are:

- European Works Councils
- Data Protection
- Immigration

European Works Councils

After 31 January 2020, European Works Councils (EWC) will continue as normal under the terms of the Withdrawal Agreement Bill.

However, after the end of the transition period, things become a little more complicated. UK employees may continue to participate in existing EWCs provided the company's EWC documentation allows it - but this is not required by law.

Further, all EWC agreements must be governed by the law of an EU country (normally where the central management is located). After the end of the transition period, the UK will no longer be able to be the location of central management or the governing law. Therefore, we expect that most companies that have their EWC based in the UK will need to move it elsewhere after the transition period ends.

Data protection

Data protection issues follow a similar path. Immediately there will be no change due to the transition period maintaining the status quo. Thereafter, there are two possibilities.

- An 'adequacy decision' is granted which means, for data protection purposes, the UK will be treated like an EU country and the data floodgates remain open. This is a similar position that Switzerland or Guernsey are in right now.
- No adequacy decision is made. Thereafter the UK will be a 'third country' for data protection purposes and companies will need to find paths around the dam if they want data flows with the EU to continue. This is similar to the US position, and companies may need to put in place binding corporate rules or standard terms.

Proper and lawful data flows are often essential to HR practices with offices spread out across Europe, and therefore this issue should not be inadvertently overlooked.

Unfortunately, data protection is becoming an increasingly politicised issue. There is no real reason why the UK shouldn't get an adequacy decision seeing as we are currently fully GDPR compliant and there is no indication that will change. However, the EU may use an adequacy decision as a bargaining chip in order to extract concessions from the UK.

Immigration



Brexit only impacts:

- EU citizens working/living in the UK
- UK citizens working/living in the EU
- EU citizens visiting the UK
- UK citizens visiting other EU countries

Non-EU citizens are not impacted because they are outside the current EU rules in any event. Further, Irish citizens have special rights to live/work/visit the UK so they will not be affected.

However, for those employees that are impacted some planning is required. During the transition period it will be business as usual (although EU citizens in the UK should register to stay beyond the transition period). After the transition period outbound UK citizens and inbound EU citizens (not Irish) will need a visa (or apply for a visa waiver). This is the same as when UK/EU citizens visit other countries like the USA, Australia.

What this visa system will look like is not entirely clear, and something will discuss in more detail on the webinar.

What to do next

If you have responsibilities for people management in your business, there are a number of preparatory steps you can take:

- Immigration - assist employees clarify their 'right to work' status
- Data transfers - contingency plan for no 'adequacy decision'
- Employee relations - calm fears and manage flight risk of key individuals
- Labour requirements - prepare for workforce disruptions due to migration disturbance
- Geographically fluid workers - plan for their post-Brexit movement in and out of the UK

For further discussion on this and more, [join our webinar](#) at 3:00 pm GMT, Thursday 30 January.