Legal Guide to post-Brexit Britain

Introduction

The UK has now entered a new era of trade and relations with the EU following Brexit, which has left businesses and individuals facing many new rules and changes to existing laws and regulations.

The nation's withdrawal from the EU covers many different areas of everyday life and the legislation associated with it, such as:

- Trade with the EU
- Employment
- Work in the EU
- Personal data
- Disputes
- Corporate matters
- The impact on UK cross-border insolvency
- Family and relationships

Our team at Ardens Solicitors has given careful consideration to each of these topics and prepared a helpful guide which covers some of the points that businesses and individuals need to consider post-Brexit.

This guide is detailed, but not comprehensive and it is strongly advised that you seek legal advice in relation to any of the topics covered within this document. The information was correct at time of publishing: January 2021.

Trade with the EU

Since 1 January 2021, the process for importing and exporting goods has changed and businesses must now make export and UK exit Safety and Security declarations for all goods leaving the UK and entering the EU. Businesses that import and export must undertake certain steps under these new customs arrangements.

To help businesses adapt, HMRC will introduce the new border and customs controls via a new Core Model which will be delivered in three stages up until 1 July 2021 to help businesses with the requirements of importing goods to the UK.

Stage 1

In the first stage, from 1 January 2021, customs declarations are needed for controlled goods and excise goods, such as alcohol and tobacco products.

There will also be physical checks at the point of destination or other approved premises on all high-risk live animals and plants, and a requirement to pre-notify for certain movements of goods. Importantly though, goods will not be required to enter Great Britain and be checked at a Border Control Post.

Stage 2

The second stage, which takes place from 1 April 2021, will require pre-notification and the relevant health documentation on all products of animal origin, for example, meat, honey, milk or egg products and all regulated plants and plant products. At this stage, all physical checks will continue to be conducted at the point of destination.

Stage 3

The third and final stage takes place from 1 July 2021, when there will be full controls in place for all goods that are imported. Goods businesses will have to make full customs declarations at the point of importation.

Full Safety and Security declarations will also be required, while for commodities subject to sanitary and phytosanitary controls, these will have to be presented to Border Control Posts and there will be an increase in physical checks at the UK border as well.

Although this staged approach ensures that businesses importing non-controlled goods can opt to delay customs declarations for up to six months, they must make sure they keep sufficient records of imported goods in this period.

Be aware

There is no "mutual recognition of conformity assessment" in the agreement, which means checks on product standards is going to be more difficult.

If you want to sell your product in both the UK and the EU, you may have to get it checked twice, to get it certified.

On other border issues, there is also no agreement on recognising safety standards for exporting food of animal origin, which means potentially, costly checks for products going into the EU single market.

There will, however, be some measures which cut technical trade barriers, and the mutual recognition of trusted trader schemes stay in place, which will make it easier for large companies to operate across borders.

Steps to take now

At this stage though, it is important that businesses:

- Acquire a GB EORI number if you intend to import or export from the EU. If your business makes declarations or gets customs decisions in an EU country, you'll need to get an EU EORI from the customs authority in the EU country where you submit your first declaration as well
- Prepare to pay or account for VAT on imported goods
- Consider commercial arrangements and terms of trade
- Determine the customs value of goods
- Confirm rules of origin
- Consider how customs declarations to HMRC systems will be made and the use of a customs intermediary.

Businesses in certain industries may also need to check:

- What export licences or certificates they require
- The marking, labelling and marketing standards for food, plant seeds and manufactured goods
- The rules for exporting or importing alcohol, tobacco and certain oils.

If you move goods into Northern Ireland or via it into the EU, then you can sign up for the Government's free Trader Support Service and you should acquire an 'XI' EORI number.

This free-to-use Trader Support Service is available to businesses of any size moving goods into Northern Ireland, providing guidance, training, a digital declaration support service and support from customs experts.

The Rules of Origin

Tariff-free trade with the EU is based around the concept of the Rules of Origin. Under the EU-UK free trade agreement, tariffs will not be charged where a business can demonstrate that goods meet these rules and are predominantly of UK origin.

The simplest way to think about the rules of origin is to give goods being imported and exported an 'economic nationality'. This determines where they have been produced or manufactured, not just where they have been shipped or bought from.

There are two different types of Rules of Origin, preferential and non-preferential. Under the free trade agreement (FTA) the former applies meaning that the UK and the EU have agreed to remove tariffs for each other's goods. This grants a preference not provided to other nations with such a deal.

UK goods seeking to enter the EU under this preference have to prove that they are from the UK under particular rules agreed in the FTA. This prevents a country without a trade deal from accessing the EU market through the UK and vice versa.

Generally speaking, the free trade agreement says that goods must be locally sourced, or must have had sufficient work carried out on them in the UK.

However, already we have seen some conflict with items such as Marks and Spencer's famous Percy Pig sweets, which have seen tariffs placed upon them because despite being packaged and developed in the UK the products themselves are produced in Germany.

This matter is in fact far more complicated than this. How it applies to each sector or to each individual item exported and imported between the EU and UK varies and this only becomes more complicated when you consider more complex manufactured items.

The complexity of supply chains can mean that proof of origin can be difficult for traders to supply and hard for authorities to assess.

Assessing rules of origin

The first step for a business is to determine what good is being traded. The World Customs Organization has a list classifying every product traded under tariff headings. Each product has a unique code which is grouped into broader categories.

Once the good is classified, the next step is to establish its 'economic nationality' as opposed to simply the country it came from. This involves determining the good's value and where the contributions were made in adding value to the final product.

If all materials were obtained and processed in one state, it would be 'wholly obtained' in that country. That would apply, for example, to agricultural produce, raw materials and natural resources.

But consider for a moment a car. It may be made up of thousands of individual components down to individual bolts and bulbs, each of which comes from a different supplier from around the world.

With multiple components adding value, it can be very difficult to determine origin for some products. In this case, the final product is determined by the location of the "last substantial transformation."

For preferential origin such as the EU-UK relies on, substantial transformation is defined through one or a combination of three main criteria:

- **Change of tariff classification:** When the work undertaken within a country results in a change of classification. For example, the unique code for car parts, 8708, is different to the code for a finished car, 8703. If a country assembles car parts into a finished car, it would qualify as a change of tariff classification.

- **Sufficient value-added:** The originating state must contribute a minimum percentage of the value of a product. Each component will add a certain amount of value, calculated as the percentage of the ex-works price of the final good (i.e. the total price of the inputs to the good exempting transportation and insurance costs).

- **Specific processing:** Finished products can qualify when particular specific working or processing activities are carried out. For example, a rule may require clothing products to be manufactured from yarn.

The precise rules are very detailed and can change for each product depending on what is agreed in the FTA. Typically, for preferential origin such as is found in the new FTA, more than 50 per cent of value has to be added to claim origin, but it differs for each classification of goods.

From 1 January 2021, in order for businesses to benefit from preferential tariffs when importing into the UK or EU, they must claim preference on their customs declaration and declare they hold proof that the goods meet the rules of origin.

This can take the form of a statement of origin completed by the exporter on a commercial document, or knowledge obtained and held by the importer that the goods are originating in the UK.

The UK and EU have agreed to a 12-month grace period. This means that until 31 December 2021, businesses do not need supplier's declarations from business suppliers in place when the goods are exported but they must be confident that the goods do meet the preferential Rules of Origin. Businesses may be asked to retrospectively provide a supplier's declaration after this date.

The new rules regarding trade between the UK and EU are complex and could have a significant effect on your existing relationships with clients and suppliers in the EU.

Employment

Much of UK employment law is derived from EU laws and directives, including the Transfer of Undertakings (Protection of Employment Regulations 2006) (TUPE)) and Working Time Regulations (WTR).

These were granted by the European Communities Act 1972 and work alongside primary UK legislation, such as the Equality Act 2010, which contains laws on equal pay, race and disability discrimination.

Whilst no existing EU law has been automatically converted into domestic law under the Withdrawal Act, many laws have been redefined as 'retained EU law' and these laws are to be interpreted in consideration of relevant EU case law.

The Supreme Court and the Court of Appeal has no authority to depart from retained EU case law, as long as it applies the same tests, case law and decisions. This approach ensures that where laws are revoked or amended post-Brexit, the decision-making process remains consistent and fair.

Therefore, the rights workers enjoyed under EU law will remain applicable, until and unless the Supreme Court or the Court of Appeal deemed it fair and reasonable to depart from such law.

Discrimination

The UK's discrimination laws, as mentioned, are contained within the Equality Act 2010 and will, therefore, remain in force regardless of the nation's decision to leave the EU and the European Communities Act 1972.

There have been concerns that the UK Government could repeal the Equality Act, however, at this time there is little indication that it intends to do so, given the controversy it would face.

Any changes to the existing laws of direct discrimination, indirect discrimination and harassment are also unlikely to occur. However, there is currently no statutory cap on the potential discrimination award for compensation and this could be imposed in future.

Working Time Regulations

Much of the legislation under Working Time Regulations, including the right to statutory paid holiday, the right to rest periods, the limit to a 48-hour average working week form key health and safety legislation for many employees and workers in the UK.

Working Time Regulations are predominantly derived from EU Law and like the rules regarding discrimination, there are concerns that a future Government could repeal them. It is understood that at this time the Government has requested a review of the regulations, but has said that it intends to maintain the high standards of workers' rights.

Amendments could be made in the name of increasing flexibility and lowering the cost of employment, including reversing some of the decisions of the EU on the calculation of holiday pay and right to holiday during periods of sickness absence, which have been problematic for some UK employers.

TUPE and Redundancy

Trade Union and Labour (Consolidation) Act 1992 contains much of the UK's laws on collective redundancy consultations, which impose onerous obligations on employers who are proposing to dismiss more than 20 employees in one establishment.

The collective redundancy consultations are found in the Trade Union and Labour (Consolidation) Act 1992 and impose some onerous obligations on employers. There are also similar obligations to consult with employees in a TUPE transfer.

The removal of these obligations will face resistance from the trade unions. However, the UK may now look to water down these obligations post-Brexit.

At this time, it seems unlikely that UK employment law will change drastically as a result of the UK's departure from the EU. In the post-Brexit era, much of the EU-derived employment legislation will remain applicable in the UK, while longer-term the Government may attempt to tweak some of the legislation in an attempt to make it more employer-friendly.

Workers from outside the UK

The end of the transition period also signifies the end of the free movement agreement between the EU and the UK. This means that steps need to be taken to retain existing talent or recruit new talent where the employee is an EU citizen.

Employers should check whether existing employees from EU member states need to apply to the settlement scheme.

A person is eligible for settled status if:

- they started living in the UK by 31 December 2020; and
- have lived in the UK for a continuous five-year period.

Five years' continuous residence means that for five years in a row they have been in the UK, the Channel Islands or the Isle of Man for at least six months in any 12-month period.

If they do not have five years' continuous residence when they apply, they'll usually get pre-settled status. To get this they must have started living in the UK by 31 December 2020 and can stay in the UK for a further five years.

They can then apply to change this to settled status once they have five years' continuous residence.

Some EU citizens may be able to stay in the UK without applying – for example, Irish citizens or those with indefinite leave to remain.

The deadline for applying for settled status is 30 June 2021. Businesses wishing to retain EU citizens may wish to help employees to prepare the necessary application.

Frontier Workers

The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 allow European Economic Area (EEA) and Swiss Citizen 'frontier workers' to remain employed in the UK, as long as they continued in their employment up to 31 December 2020, this includes self-employed individuals.

Unless a person has exceptional circumstances for not returning to the UK, an individual is not considered to be a permanent resident in the UK when:

'They have been present in the UK for less than 180 days in a 12-month period immediately before that day, or

- They have returned to their country of residence at least:
- Once in the six-month period immediately before that day, or
- Twice in the 12-month period immediately before that day.'

If any of the above points apply, the worker is not entitled to remain in the UK and will be asked to leave, under the Immigration Act 1971 (unless the person works in public policy, public security or public health).

If the individual meets the above conditions, they have a right to remain in the UK, but they must produce a 'frontier worker permit' and a valid identity document.

Frontier work permits are valid for five years, after which period if the worker wishes to remain in the UK, they must apply for 'settlement status'.

Recruiting EU citizens

After the transition period, you can still recruit EU citizens but you will need to apply for permission and obtain the necessary visas.

To recruit workers from outside of the UK in the skilled worker category in future, you will need to demonstrate that:

- They speak English at the required level;
- They have a job offer from a Home Office licensed sponsor;
- The job offer is at the required skill level of RQF3 or above (equivalent to A level); and
- They'll be paid at least £25,600 or the 'going rate' for the job offer, whichever is higher.

If the job pays less than £25,600 (but no less than £20,480), the applicant may still be able to apply for permission by 'trading' points on specific characteristics against their salary.

This new system will not apply to EEA or Swiss citizens already employed in the UK, as they can use the EU settlement scheme.

To become a Home Office licensed sponsor, you must apply online and do the following:

- Check that your business is eligible;
- Choose the type of licence you wish to apply for, which will depend on what type of work you want to sponsor;
- Decide who will manage the sponsorship within the business; and
- Pay a fee.

You will be given a licence rating and be able to issue certificates of sponsorship if you have jobs that are suitable for sponsorship.

This will remain valid for four years as long as you check that your foreign workers have the necessary skills, qualifications or professional accreditations to do their job and keep copies of documents showing this.

You must only assign certificates of sponsorship to workers when the job is suitable for sponsorship and tell the UK Visas and Immigration (UKVI) service if your sponsored workers are not complying with the conditions of their visa.

The visa rules are not straightforward and it is strongly advised that you seek professional advice.

Impact on overseas business travel

From 1 January 2021, there are new rules to travel to the EU, or Switzerland, Norway, Iceland or Liechtenstein.

Under these new requirements, UK nationals will need a visa if they want to stay in the EU for more than 90 days in a 180-day period.

European Health Insurance Cards remain valid until their expiry date and the plan outlined in the agreement is to replace these with a UK Global Health Insurance Card.

A person does not need an International Driver's Permit to drive in the EU as a UK citizen as long as they have a valid UK licence.

Should you or any representatives of your business need to travel to the EU in future you may need to consider the following:

- Check your passport
- Get travel insurance that covers your healthcare
- Check you have the right driving documents
- Tell HMRC you'll be working in the EU
- Check whether you'll need to pay social security contributions in the country you're working in

- Check whether you need indemnity insurance for your employees
- Check you've got the right documentation to take goods to the EU.

Personal data

The Brexit trade agreement reached by the UK Government has provided good news for the future of EU-UK personal data transfers, essentially stating that personal data may flow freely between the UK and Europe after 31 December 2020.

The agreement also stresses that individuals have a right to the protection of personal data and privacy and, to quote a line in the agreement, that "high standards in this regard contribute to trust in the digital economy and to the development of trade."

The EU has agreed to a period of four months, extendable by a further two months, in which data can be exchanged in the same way it is now, as long as the UK makes no changes to its rules on data protection.

After this period ends, the data rules are likely to remain relatively unchanged, as UK businesses will need to comply with UK data protection law, which is enshrined in the Data Protection Act 2018.

Looking ahead, businesses will also need to comply with any changes to EU GDPR if they offer goods or services to monitor the behaviour of individuals in the EEA or have branches or offices in the EEA.

Businesses should still consider their current compliance documentation and whether it needs to be updated or revised to deal with changes resulting from Brexit, including a review of data protection impact assessments, records of processing activities, privacy policies and agreements relating to the transfer of personal data.

Disputes

If an individual or corporate entity is in a dispute with another party in the European Union and a case is brought it is important to understand where proceedings take place and how rulings will be enforced.

Jurisdiction

If the legal proceedings commenced before 31 December 2020 the position remains the same as before the Brexit transition period.

Generally, this means jurisdiction will be reserved to the state identified in any exclusive jurisdiction clause in the agreement. In agreements with non-exclusive jurisdiction, English common law rules will apply.

A party may typically have proceedings brought against them in the state in which they are domiciled or in the courts of the member state where the performance of the contractual obligation took place.

Where new proceedings commence from 1 January 2021, the rules may change. Prior to the end of the transition period, the Government expressed its consent for Great Britain, Northern Ireland and Gibraltar to be bound by the 2005 Hague Convention on the Choice of Court, which it acceded to on 1 January 2021.

Currently, this convention bounds all EU member states by the same rules and means that courts in Great Britain and Northern Ireland must recognise exclusive jurisdiction clauses in agreements in the event that the agreements are entered into on or after January 2021.

The position on agreements entered into between 1 October 2015 and 31 December 2020 is less straightforward, as the UK acceded to the Hague Convention as a member of the EU on 1 October 2015.

Whether EU courts will recognise the UK's membership of the Hague Convention for the period it was an EU member is not entirely clear, but guidance from the European Commission suggests that the courts of the EU should not.

Enforcement

Where a judgement was obtained in England and Wales or one of the remaining member states of the EU before 31 December 2020 then it remains enforceable as before and the process for enforcement in the EU will remain a straightforward process.

However, enforcement of judgments in the EU obtained after 31 December 2020 is less certain.

In instances where an agreement is subject to a non-exclusive or no jurisdiction clause, there is no agreement on enforcement after the transition period, and as such, enforcement of judgments from 1 January 2021 will depend on local law in the jurisdiction where enforcement is sought.

To try and clarify this process, the UK has applied to accede to the Lugano Convention, which would make enforcement broadly similar to how it is presently.

There is, however, an issue in that accession to the Lugano Convention requires the unanimous consent of existing members, and the remaining EU member states have not, to date, given that consent for the UK to join it.

In instances where an agreement is subject to an exclusive jurisdiction clause, the Hague Convention will ease the enforcement of a judgment in other jurisdictions within the EU, although the issue on the period between 1 October 2015 and 31 December 2020 still requires clarity.

Arbitration

There is growing interest in the use of international arbitration as a means of dispute resolution following Brexit, as the enforcement of arbitral awards are made under the New York Convention, which is unaffected by Brexit.

Arbitration, therefore, may offer a lower-risk option which parties may wish to consider, either when negotiating dispute resolution provisions in new contracts or where a dispute arises post-Brexit.

Corporate

Much of the UK's corporate law is derived primarily from UK legislation and is, therefore, relatively unaffected by the UK's departure from the EU and its laws and directives.

However, where a business has a cross-border relationship with the EU there may be issues that they need to consider.

Subsidiaries

It is not uncommon for overseas businesses to establish a subsidiary or business in the UK to act as a bridge to trade with other EU member states.

Now that the UK has agreed a free trade deal with Europe, this may still continue to be the case, but new rules on tariff-free trade under the Rules of Origin, Import VAT and immigration may mean that some overseas businesses choose to relocate to other EU member states.

However, before doing so it is worth considering that EEA companies with registered UK branches now need to supply additional information to Companies House and register for VAT in the UK. Furthermore, exemptions, particularly in relation to the filing of their accounts, will no longer be available.

These companies will also need to make additional trading disclosures in their correspondence and on their websites.

UK companies

From 1 January 2021, UK incorporated companies have become third-country companies, which means that their legal personality and limited liability status will no longer be recognised automatically by EU member states.

Despite this change, in many cases, a company's legal personality and limited liability may still be recognised in accordance with each member state's national law or international law treaties.

Businesses need to consider the impact of this change on a state-by-state basis and they should consider incorporating a local entity and transferring their business to a suitable EU entity through a cross-border merger or take other steps to localise their operations.

UK companies with branches in other EU members states will also no longer benefit from favourable rules applicable to branches of other EU incorporated companies and will be subject to the third country company rules.

Mergers

Under the Cross-Border Mergers Directive and associated UK domestic regulations, mergers of EEA companies were allowable, as long as the merger includes at least one UK company and at least one company from another EEA member state.

While the UK was an EU member state and during the Brexit transition period, a merger which met the jurisdictional thresholds for notification to the European Commission under the EU Merger Regulation (EUMR) also didn't face scrutiny from any EU member state national merger control authorities, whether in the UK or elsewhere in the EU.

This so-called 'one-stop-shop' was beneficial to merging companies as it avoided having to make multiple filings in different EU jurisdictions.

Since the end of the Brexit transition period, UK companies no longer benefit from the Cross-Border Mergers Directive or the EUMR and therefore, corporate groups looking to undertake a European cross-border merger must consider how this can be achieved.

For mergers announced or agreed after 31 December 2020, UK turnover will no longer be relevant when assessing whether a merger is caught by the EUMR and the EU Commission has confirmed that it is not proposing to make any changes to the EUMR thresholds.

While fewer mergers are caught by the EUMR, it is still likely that merging parties will have to seek parallel clearance in a number of different EU member states, as well as, potentially, the UK.

The impact on UK cross-border insolvency

Under the new trade framework and the prior Withdrawal Agreement, the rules under which insolvencies are managed across borders between the EU and UK, and insolvency practitioners are recognised have now changed.

Management of assets in cross-border cases

The terms of the Withdrawal Agreement ensure that the existing EU rules, contained in the EU Insolvency Regulation, will continue to apply where cross-border insolvency proceedings commenced before the end of the transition period on 31 December 2020.

In these ongoing cases, UK insolvency practitioners retain the legal authority to deal with assets located in any of the EU member states other than Denmark, without requiring further authorisation from local courts or other authorities.

This agreement also remains in place for insolvencies commenced in EU member states before the end of 2020, which will continue to be automatically recognised in the UK, allowing EU insolvency practitioners to deal with the insolvent's assets that are located in the UK.

However, for any new cases commenced from 1 January 2021 the EU Insolvency Regulation no longer apply.

The effect of this is that from this date on recognition and enforcement of UK insolvency proceedings in EU countries, and the insolvency practitioner's ability to deal with assets there will depend upon each nation's laws regarding non-EU insolvencies.

A review of the rules from different EU member states suggests that the level of assistance made available to UK insolvency practitioners now varies between each jurisdiction and in many cases insolvency practitioners may need to seek prior approval from the appropriate courts or authorities in each nation before dealing with assets.

New insolvency proceedings opened on or after 1 January 2021 in an EU member state can be recognised in the UK under the 2006 Cross-Border Insolvency Regulations and the Cross-border Insolvency Regulations (Northern Ireland).

These regulations contain the UK's implementation of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, which already applies in respect of insolvency proceedings commenced outside of the UK and EU.

However, recognition of overseas insolvency proceedings under the Cross-Border Insolvency Regulations must be done via a court application, during which a judge will consider various factors, such as where the insolvent is based to determine whether

recognition is appropriate, and to decide what assistance will be provided to overseas insolvency practitioners.

Opening new insolvency proceedings

From 1 January 2021, the opening of insolvency proceedings in the UK is no longer restricted by the EU Insolvency Regulation.

Under the previous regulations, insolvency proceedings could only be opened in the UK where the insolvent's "centre of main interests" (COMI) was in the UK.

The effect of this was that if the insolvent entity has an establishment in the UK then only secondary or territorial insolvency proceedings could be opened in some cases.

The new rules mean that insolvency proceedings can still be opened in the UK where the COMI is the UK, or if the insolvent entity has an establishment.

However, in addition, insolvency proceedings can be opened under any of the other grounds for opening insolvency proceedings that are set down in UK law. A small part of the EU Insolvency Regulation has been preserved in UK law for this purpose.

Under these rules, however, the order or other declaration opening the insolvency proceedings must specify whether those proceedings are:

- COMI proceedings (i.e. the centre of main interests is in the UK, which would previously have led to the opening of main proceedings);
- Establishment proceedings (where the COMI is outside of the UK but the insolvent has an establishment in the UK, previously resulting in secondary or territorial proceedings); or
- Proceedings to which the EU Insolvency Regulation as it has effect in the law of the United Kingdom, does not apply (and one of the UK's other grounds for the opening of insolvency proceedings has been relied upon).

Claims for redundancy payments

The Insolvent Employers Directive guarantees an employees' redundancy-related pay, should an employer become insolvent.

Where an employer has employees in multiple jurisdictions, the country responsible in relation to a given employee is usually the one in which the employee 'works or habitually works'.

Where a company that enters insolvency in an EU member state has a factory in the UK, the Insolvency Service's Redundancy Payments Service will make statutory redundancy payments to the factory employees from the National Insurance Fund, according to these rules.

The same previously applied but in reverse for EU companies that enter into insolvency in the UK, in which case the EU member state would make payments to the factory employees under its guarantee arrangements.

However, as the EU Directive no longer applies to UK insolvencies, from 1 January 2021, employees of insolvent UK companies working in EU member states may not be covered by those countries' guarantee arrangements.

Further clarity is expected on this in future and, in some cases, it may depend for example, on how the Directive has been transposed into each country's national law and any changes that are subsequently made.

Recognition of insolvency practitioner qualifications

Several EU Directives no longer apply to UK insolvency practitioners from 1 January 2021 that allowed their professional qualifications to be recognised in member states, permitting them to act in respect of insolvency proceedings opened in other countries.

Insolvency professionals who have relied on these former provisions, or wish to continue to rely on their UK qualification, may need to have that qualification officially recognised to work (even on a temporary or occasional basis) in the European Economic Area (EEA) or Switzerland.

This will need to be done via the appropriate regulator in each country where work is to be carried out.

For now, a temporary system is in place in the UK, which reduces the obligations placed on recognised professional bodies in respect of EU insolvency practitioners. This allows EU insolvency practitioners to provide services on a "temporary and occasional" basis.

Any future authorisation of EU practitioners in this way will be at the discretion of the recognised professional body and subject to the full requirements for authorisation under UK law.

With this being the case, those seeking or working on cross-border insolvency will need to think about who to instruct and their relevant recognition in each member state.

The rules related to cross-border insolvency are complex and have only become further complicated by the UK's new position and relationship with the EU.

If you need assistance with cross-border insolvency matters you should seek the support of an experienced legal team, which has existing connections with advisers overseas.

Family and relationships

From 1 January 2021, EU and English Family Law have changed, requiring cases to make reference to national laws and non-EU international law.

Divorce

Jurisdiction under the previous rules, prior to 1 January 2021, was governed by Brussels II. This has largely been replicated to fit into the new UK national law. However, a new addition is that sole domicile is now grounds on its own for the jurisdiction of divorce using the courts of England and Wales.

Under the previous rules, divorces were automatically recognised around the EU via Brussels II, therefore, if you applied for a divorce before the transition date then your divorce will continue with the same EU governed law.

However, if you apply for divorce after the transition then the new rules apply, which state that divorce will be governed by the national law of the country in which an application is made.

Another key change in divorce applies to circumstances in which there may be competing divorce proceedings between England and Wales and another EU country.

Under the previous rules, the party who lodged the divorce petition first in time secured their chosen jurisdiction. This rule now no longer applies and the chosen forum for the divorce will be based on identifying the country to which parties have the “closest connection”.

Maintenance

Where a spousal maintenance claim has been made alongside a divorce it will use the same jurisdiction used in the divorce. This is enshrined the Maintenance Regulation (EU Council Regulation No.4/2009), which deals with maintenance obligations between family members, separated/divorced spouses and those relating to child maintenance.

This ensures that a court order for maintenance made in one EU member state is recognised and enforceable in other EU member states.

These regulations will remain in place for all ongoing cases post-31 December 2020. However, new cases commencing after 1 January 2021 will now rely instead on domestic legislation and the 2007 Hague Maintenance Convention.

Those making a new application or further applications to a previous maintenance matter, twill have to do so under a different process subject to the domestic law of each state.

For child maintenance arrangements, the UK’s final departure from the EU means that parties will need to consider a reciprocal enforcement maintenance order in each state if they want it to be recognised and enforced.

Cases that have been recognised by the relevant court in an EU country before the end of the transition period should not be affected.

Children

Where an existing order in place regarding the care of children that was made prior to the 31 December 2020 this should not be affected. The same is true of proceedings in relation to children that are ongoing from before the transition date.

However, if you make a new or further application in an existing case, then new rules will apply. Private children matters will have jurisdiction based on national law and will, therefore, follow the habitual residence of the child for all future cases.

Here to help

If you require assistance with any matters related to Brexit, be it trade disputes, jurisdictional issues, enforcement of existing orders or problems related to employee, we are here to help.

We work with a wide range of clients from a variety of sectors and can assist with complex, international matters.

Our services include:

- Company Commercial
- Conveyancing (Commercial)
- Dispute Resolution
- Insolvency and Company Restorations
- Corporate Immigration
- Conveyancing (Residential)
- Employment Law
- Immigration
- Divorce, Financial Settlement, Children matters, Injunction, Pre-nuptial Agreements
- Power of Attorney, Change of Name
- Wills, Probate, and Administration of Estates

If you require assistance from our experienced team of solicitors, please **contact us.**