

MAKE UK

UK - EU CHECKLIST

INTRODUCTION

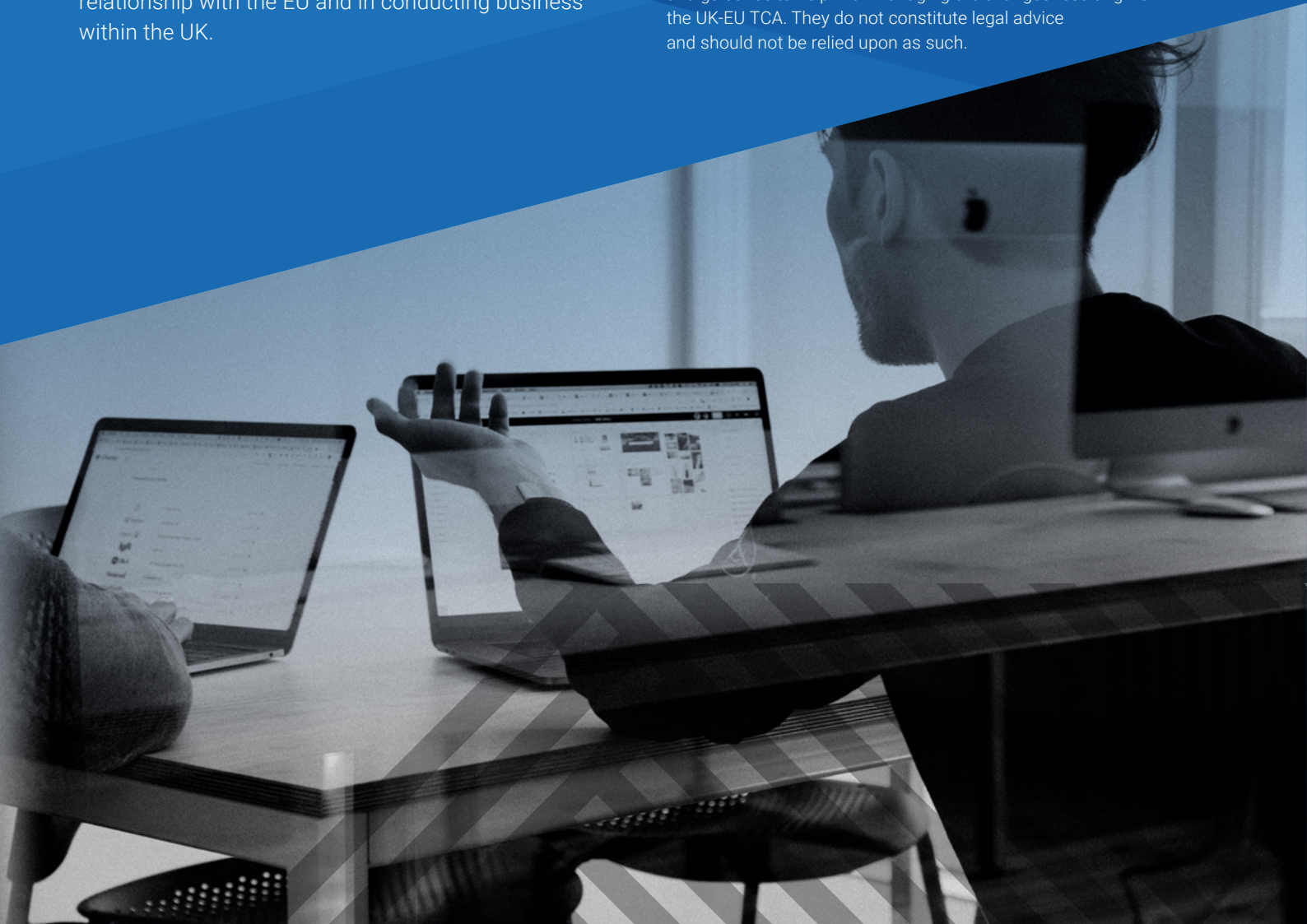
The UK and the European Union (EU) have signed a Trade & Cooperation Agreement (TCA), bringing an end to the transition period. The relationship with the EU has changed and this will affect how companies conduct business with the EU, rest of the world and also within the UK.

As a business, there are steps you need to take to manage the changes now affecting your trading relationship with the EU and in conducting business within the UK.

HOW TO USE THE CHECKLIST

This Checklist provides an overview of the main areas of change that affect UK manufacturers conducting business with the EU and between Great Britain and Northern Ireland. It should be stressed that while this Checklist aims to highlight the key changes it is not an exhaustive list of all the business change requirements that firms now need to consider.

Disclaimer: This Checklist is intended to provide information and guidance to help with managing the changes resulting from the UK-EU TCA. They do not constitute legal advice and should not be relied upon as such.



<p>Trade with the European Union (EU) and Great Britain (GB) Since 1 January 2021 there are new obligations for those trading with the EU, importing to the UK and trading in Northern Ireland.</p>	✓/✗
<p>Are you aware of the legal obligations of being an exporter/importer, if you have little or no experience in trading with non-EU countries?</p>	
<p>Are you acquainted with UK and EU customs formalities in place since 1 January 2021?</p>	
<p>Have you registered for an Economic Operator Registration and Identification (EORI) number?</p>	
<p>Are you familiar with the document, The Border with the European Union and the phases of introduction of customs formalities from January 2021?</p>	
<p>Do you know the Commodity Code(s) for your goods?</p>	
<p>Are you familiar with completing a Commercial Invoice, which needs to be completed for all exports from GB to EU? This includes details such as: the correct value of the goods, EORI number, Country of Origin, Incoterms and product description.</p>	
<p>Have you decided if your firm or a third party (e.g. freight forwarder) will make the electronic export declaration?</p>	
<p>Have you reviewed your pre-defined commercial terms (Incoterms)?</p>	
<p>Have you considered the 'Special and Simplified Procedures' on offer at HMRC?</p>	
<p>Trade - Rules of Origin & Tariffs There are new requirements for determining the origin of your goods. Tariff can be applied if goods do not meet Rules of Origin requirements or on failure to correctly determine the origin of goods.</p>	✓/✗
<p>Are you aware of the relevant rules, procedures and documents for the demonstration of the originating economic or country origin of goods?</p>	
<p>Are you familiar with the EU tariff rate for your good, if it does not meet Rules of Origin requirements?</p>	
<p>Have you adapted your supplier declarations, to allow your suppliers to confirm economic or country of origin identification?</p>	
<p>Are you familiar with the UK Global Tariff schedule and what tariffs are payable on goods entering the UK from non-EU countries.</p>	
<p>Are your accounting systems updated to apply the new UK tariff codes?</p>	
<p>People With the end of freedom of movement there are new requirements for employing EU nationals in the UK and for sending UK based employees to the EU for Business Travel purposes.</p>	✓/✗
<p>Are you aware of the UK's new immigration system which commenced on 1 January 2021 and applies to all non-UK nationals coming to work in the UK?</p>	
<p>Are you familiar with the new UK immigration rules relating to permanent movements, or as an ICT, visiting for business purposes and short-term work, and what this means for UK employers?</p>	
<p>If you intend to recruit a non-UK worker, have you already obtained a sponsorship licence from the UK Government to enable you to do so?</p>	
<p>Are you aware of the rules and requirements employers need to follow when sending workers to the EU for business meetings, and what you need to do to comply with them?</p>	
<p>If you already send workers or business visitors to the EU, are you aware of specific rules for each EU country you send to and have you been notifying the authorities before the visit takes place?</p>	
<p>If you send workers to carry out technical or engineering work to the EU, have you checked that they can continue to work in the EU with their current qualifications? Do they hold a recognised qualification or have they previously had their qualification recognised?</p>	

<p>VAT Rules on the payment of UK Value Added Tax (VAT) have changed for the importing of Goods into the UK.</p>	✓/✗
Are you aware of the change to the rules for the payment and refund of VAT for importing goods into the UK and the exporting of goods to the EU?	
<p>Certificates, authorisations, markings and labelling There are new requirements on gaining product approval for Goods sold in GB, Northern Ireland and the EU.</p>	✓/✗
Are you familiar with the process for product testing and gaining certification and approval for the EU and GB markets?	
Rules for goods requiring conformity assessment for the EU market may have changed. Have you transferred certificates and authorisations issued by UK-based body to an EU 27-based body or authority?	
New product labelling rules have been introduced for the GB market. Are you familiar with the UKCA marking requirements?	
New product labelling rules have been introduced for Northern Ireland. Are you familiar with the UK(NI) marking requirements?	
Have you checked if you need a new product certification and approval for the sale of a good in GB, Northern Ireland or the EU? Have you already begin the process?	
<p>Chemicals – EU REACH and UK REACH The UK has introduced new UK REACH obligations and there have also be changes for compliance under EU REACH.</p>	✓/✗
Are you aware of your obligations under UK REACH?	
Have you considered the changes for compliance under EU REACH?	
The appointment of an Appointed Person: have you ensured that substances are registered with a manufacturer or importer in the EU or the UK, or appointed a person in the EU or UK who is legally responsible for that import as official registrant for the substance?	
Downstream user: have you checked whether substances you use are properly registered in the UK and the EU?	
<p>Commercial Contracts Changes in the arrangements of how you trade with the EU will affect the commercial contracts you have with EU suppliers/customers.</p>	✓/✗
Have you reviewed your contracts with EU based commercial partners and checked that they are still enforceable in the same way?	
Do you need to agree changes to the contracts you hold with EU based businesses?	
Have you checked to see if your contracts include references to EU law, or regulations, and if these need to be changed?	
<p>Intellectual Property, Trade Marks and Patents Rules for protecting your intellectual property in the UK and EU have changed. Protection in the UK or EU may not ensure protection in the other.</p>	✓/✗
Have you taken the necessary steps to ensure continued protection of your intellectual property rights in the EU and the UK?	
Are you aware that there are now new requirements for representation in new applications and proceedings in both the UK and the EU?	
Have you made changes to your business addresses for service in the UK and EU?	
<p>Data Rules may change on the transfer of personal data between the EU and the UK.</p>	✓/✗
Are you comfortable you have full oversight on your exposure to international data transfers particularly information coming from the EU? Have you taken the necessary steps to ensure compliance with EU rules?	

CHECKLIST BACKGROUND

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TRADE WITH THE EU AND GB

Key questions:

- Are you aware of the legal obligations of being an exporter/ importer, if you have little or no experience in trading with non-EU countries?
- Are you acquainted with UK and EU customs formalities in place since 1 January 2021?
- Have you registered for an Economic Operator Registration and Identification (EORI) number?
- Are you familiar with the document, [The Border with the European Union](#) and the phases of introduction of customs formalities from January 2021?
- Do you know the Commodity Code(s) for your goods?
- Are you familiar with completing a Commercial Invoice, which needs to be completed for all exports from GB to EU? This includes details such as: the correct value of the goods, EORI number, Country of Origin, Incoterms and product description.
- Have you decided if your firm or a third party (e.g. freight forwarder) will make the electronic export declaration?
- Have you reviewed your pre-defined commercial terms (Incoterms)?
- Have you considered the 'Special and Simplified Procedures' on offer at HMRC?

Businesses obligations for trade with the EU have changed. Companies are required to complete documentations and submit this to the relevant authorities in both GB and the EU for goods to cross the border. It should be stressed that crossing the border will require two procedures, one outbound leaving either GB or the EU and inbound entering either market.

Despite the UK and the EU agreeing a zero tariff Trade & Cooperation Agreement (a deal), you will still be required to submit the correct declarations.

If you have chosen not to delay your declarations, or were unable to do so, you'll need to start making full import declarations from 1 January 2021. The steps you need to take are the similar to those that currently exist for trade with the rest of the world.

Declarations in the UK need to be made through HMRC's customs system. This records the declaration of goods shipped by land, air and sea. It allows importers, exporters and freight forwarders to complete customs information electronically and automatically checks it for errors. All export and import declarations made by UK businesses are recorded and processed by HMRC. Import declarations are required for all imports from the EU but they can be deferred for up to six months in certain circumstances from January

2021. Exporters of goods from GB to the EU are required to complete a UK customs export declaration. This may be deferred by up to 4 weeks if a simplified declaration is made up front. The deferment in submitting documents in this period is not an amnesty in preparing the relevant documents. As the market surveillance authority, HMRC has the statutory powers to inspect and require the submission of all relevant trade and customs declarations.

The Border Operating Model between GB-EU

January 2021 marks the first stage of the UK's new import controls on goods moving to/from GB and the EU. Stage 1 will require all traders to have; a GB EORI number, commodity codes for their goods and the customs value of goods. Traders should also consider whether they are able to, and would benefit from, using any available simplifications or facilitations, including delaying customs declarations.

Stage 2 will see no changes from Stage 1 for the majority of products, Stage 2 will commence from April 2021 and this will affect goods subject to Sanitary and Phytosanitary controls (known as SPS checks). These will have additional requirements, such as: animal products (Products of Animal Origin only), fishery products and live bivalve molluscs, high-risk food and feed not of animal origin (HRFNAO) and plants and plant products. These controls include the requirements for:

- Import pre-notification and health certification (such as an Export Health Certificate or Phytosanitary Certificate) required in stages for animals, plants and their products in January, April and July 2021, with documentary checks carried out remotely or at Border Control Points (BCPs) from July 2021
- Identity and physical checks at destination or other approved premises on certain goods, such as high-risk animals, from January to July 2021 .

July 2021

All traders moving between GB and the EU will be required submit full Customs declarations and pay any relevant duties (Note: there are special arrangements for goods moving in and out of Northern Ireland under the NI Border Model)

Economic Operator Registration and Identification (EORI) number

If you do not already have an EORI number, you need to register. HMRC uses this number to identify your business and record your exports and imports. To move goods into or out of

Great Britain you will need a GB EORI number.

(Note: you may have been auto-enrolled into the EORI system and you can check with HMRC whether you already have an EORI number.)

You'll need an EORI number that starts with GB. If you do not already have one, you can apply now, even if you do not use it. Your EORI number looks like this:

GB123456789000 (Country of registration, VAT Number plus 000)

You may also need a separate EORI number if you move goods to or from Northern Ireland; this number will start with XI not GB.

Commodity Codes for your goods

Referred to as 'classification', the Commodity Code provides a description of the goods being exported, expressed as an 8-digit number for exports and 10-digits for imports.

All exports and imports must be declared using a commodity code and as the exporter/importer you are legally responsible for providing the correct tariff classification of your goods. Classifying your goods correctly means you know whether; an export licence is required, any preferential duty rates can be applied, your goods are covered by measures such as anti-dumping duties or tariff quotas.

Despite the UK and the EU agreeing a zero tariff Trade & Cooperation Agreement (a deal), you will still be required to submit the correct declarations with the correct commodity codes.

Calculating the correct value of the goods

Each member country of the World Trade Organisation (WTO) sets out the tariff rates for goods imported into their country. The WTO provides the international framework for the conduct, regulation and dispute mechanism that supports international trade. It is vital that you understand what needs to be included for the customs tariff values and valuation. Failure to provide accurate information and relevant documentation to relevant customs authorities can lead to investigation and criminal actions.

Delivery terms (Incoterms) attached to your imports and exports

Incoterms or delivery terms in commercial contracts or agreements can determine which of the parties involved is responsible for transport, duty and declaration costs. These should be reviewed to establish whether these liabilities fall to your business.

Who will make the electronic export declaration?

Businesses can use a customs broker, agent, or freight forwarder to submit the necessary customs declarations. This can make exporting and importing simpler and faster. Alternatively, you can make self-declarations to the Customs Handling of Import and Export Freight (CHIEF) system by obtaining the necessary software and by using the National Export System (NES) for export declarations.

Special and Simplified Procedures on offer at HMRC

HMRC offer a selection of Special Procedures (Customs Warehouse, Inward Processing, Outward Processing etc.) which can help UK businesses mitigate the cost associated with importing and exporting goods and Simplified Procedures (Customs Freight Simplified Procedure, Transit) which can help speed up clearance at the border.

TRADE - RULES OF ORIGIN & TARIFFS

Key questions:

- Are you aware of the relevant rules, procedures and documents for the demonstration of the originating economic or country origin of goods?
- Are you familiar with the EU tariff rate for your good, if it does not meet Rules of Origin requirements?
- Have you adapted your supplier declarations, to allow your suppliers to confirm economic or country of origin identification?
- Are you familiar with the UK Global Tariff schedule and what tariffs are payable on goods entering the UK from non-EU countries.
- Are your accounting systems updated to apply the new UK tariff codes?

Rules of Origin

As of 1 January 2021, companies will have to demonstrate the originating status of goods traded in order for these to be entitled to preferential treatment under the Trade and Cooperation Agreement (TCA) between the UK and the EU.

Goods not meeting origin requirements, and therefore not deemed to be of UK or EU origin, will not qualify for preferential treatment and will be liable to customs duties (tariffs). In order for a business to benefit from preferential tariffs, agreed in the UK-EU TCA, importing into the UK or EU, they will need to claim preference on their customs declaration and declare they hold proof that the goods meet the rules of origin.

In the UK-EU TCA this proof can take the form of:

- a Statement on origin completed by the exporter on a commercial document, or
- knowledge obtained and held by the importer that the goods are originating.

Requirements for Importers and Exporters

If you are an importer, you must:

1. Have proof of the originating status of the product before claiming preference. This may be:
 - a. Statement on origin provided by the exporter on a commercial invoice or other commercial document that describes the goods. The text of the Statement would be included in the agreement. This is known as an invoice or origin declaration;
 - b. supporting documents and records if you are claiming preference using your "importers knowledge". If using importer knowledge, you must obtain sufficient evidence

that the goods qualify as originating. This may involve the exporter providing a range of supporting documentation. If you cannot obtain that evidence, then the exporter may be able to provide a Statement on origin.

2. Claim for preference by completing the relevant part and declaring the proof of origin on your customs import declaration.
3. If requested by the customs authorities, provide the proof of origin to the customs authorities.
4. Maintain records for at least 4 years.

If you are an exporter, you must:

1. Hold evidence that the goods meet the relevant rules of origin before issuing a Statement on origin.
2. Understand whether a declaration from your supplier needs to be obtained. **For UK-EU trade, until 31 December 2021, businesses do not need supplier's declarations from business suppliers in place when the goods are exported. Businesses may be asked to retrospectively provide a supplier's declaration after this date.**
3. Provide your customer, the importer, with one of the following:
 - a. Statement on origin on a commercial invoice or other commercial document that describes the goods. The text of the Statement would be included in the agreement. This is known as an invoice or origin declaration;
 - b. supporting documents and records if your customer is claiming preference using their "importer's knowledge".
4. Maintain records for at least 4 years.

UK Global Tariff

On 1 January 2021 the UK formally left the EU Customs Union and the EU Common External Tariffs no longer apply for UK imports. The UK has published its Global Tariff regime which has now come into effect for all eligible goods imported into the UK. These tariffs will apply to goods imported into the UK from any third country where no Free Trade Agreement has been agreed, as well as goods from the EU which do not meet Rules of Origin requirements.

You will be able to find the UK Global Tariff schedule online through the gov.uk website and be able to search using your commodity codes to find what tariffs, duty and VAT is payable and whether you are able to apply for relief.

PEOPLE

Key questions:

- Are you aware of the UK's new immigration system which commenced on 1 January 2021 and applies to all non-UK nationals coming to work in the UK?
- Are you familiar with the new UK immigration rules relating to permanent movements, or as an ICT, visiting for business purposes and short-term work, and what this means for UK employers?
- If you intend to recruit a non-UK worker, have you already obtained a sponsorship licence from the UK Government to enable you to do so?
- Are you aware of the rules and requirements employers need to follow when sending workers to the EU for business meetings, and what you need to do to comply with them?
- If you already send workers or business visitors to the EU, are you aware of specific rules for each EU country you send to and have you been notifying the authorities before the visit takes place?
- If you send workers to carry out technical or engineering work to the EU, have you checked that they can continue to work in the EU with their current qualifications? Do they hold a recognised qualification or have they previously had their qualification recognised?

Background

From 1 January 2021, and the introduction of the new UK immigration system, there are new requirements for employing non-UK nationals, non-UK nationals visiting the UK and also sending UK based employees to the EU for work and business purposes.

EU Free Movement came to an end on 31 December 2020 and your existing EU workers who were resident in the UK before this date, need to apply for a new immigration status in the UK, either pre-settled or settled status, and have until 31 June 2021 to do this.

Settled Status

The UK has implemented a new system of Permanent Settled Status for EU nationals who already resided in the UK prior to 31 December 2020. EU nationals who resided in the UK before this date will keep all the rights in the UK as citizens of the EU, for example to work, study and had access to public services. To gain this new status, EU nationals have needed to make an application, and have until the end of June 2021 to do this.

Business Travel to the EU

From 1 January 2021, there are new requirements for all travel to the EU and additional requirements for business travel.

Anyone traveling to the EU should ensure that on the day they travel their passport has 6 months or more before expiry and it must be less than 10 years old. It is essential that adequate provisions for travel and health insurance are in place.

In addition there are extra actions if traveling to the EU for business. This can include business activities such as traveling for meetings and conferences and providing services.

Check before you travel to the EU

If traveling to the EU for less than 90 days in a 180-day period, it may be possible to do some things without getting a visa or work permit, for example going to a business meeting. However local labour law will apply and companies are advised to check the local requirements in each European country before travel.

A visa, work permit or other documentation will be needed if planning to stay, or have already stayed, for longer than 90 days in a 180-day period, or if doing any of the following:

- transferring from the UK branch of a company to a branch in a different country ('intra-corporate transfer'), even for a short period of time
- carrying out contracts to provide a service to a client in another country in which your employer has no presence
- providing services in another country as a self-employed person

There are separate requirements for different countries in the EU and Make UK can provide manufacturers with specific guidance as required. For more information see Make UK's International Employment Support [here](#).

Tax and Social considerations

Where an EU individual spends days working in the UK, there will be a number of UK tax and related National Insurance obligations which may apply to both the employee and employer. This will be the case even if just one day is spent

working in the UK. Similarly, if a UK individual spends time working in an EU country, tax, social security and related reporting obligations may arise in that location. There would again be considerations for both the employee and employer and the potential for obligations to arise where just one day is spent working in the EU location concerned. The rules in this area are complex and HMRC and EU jurisdictions will ensure that employers and employees comply with the relevant requirements.

While the UK EU TCA provides for an agreement on Social Security payments, the tax and social security position of any individual who spends time working in the UK, the EU or overseas should be reviewed with professional advice sought as appropriate.

Recognition of professional qualifications

Mutual recognition of professional qualification (MRPQ) came to an end on 31 December 2020. While the UK-EU TCA provides a mechanism to recognise professional qualifications, until these agreements are in place UK-qualified professionals may not be recognised in each country where they work, even if providing temporary or occasional professional services.

UK-qualified professionals should continue following GOV.UK advice on using their qualifications in an EU member state.

New UK Immigration system

The UK's new immigration system, known as the Points-Based-System (PBS) came into force on 1 January 2021 and all non-UK citizens (EU and non-EU) wanting to permanently work and live in the UK must now go through the PBS. Old routes previously known as Tier 1 and Tier 2 have been rebranded as 'Exceptional Talent' route and 'Skilled Workers' route respectively. The Skilled workers route will predominantly affect companies as this will apply to workers needing a job offer from a sponsored employer. The Skilled Workers route also applies to Intra-Company-Transfers (ICTs), e.g. secondments. Companies will now need to find out how to obtain a sponsorship license and understand how points are assigned in order to recruit non-UK workers.

There are complexities surrounding the new salary threshold (£25,600 (correct as at Nov 2020) as in many cases, this will be too high for many of the potential non-UK workers members look to recruit. There are some possible alternatives around this and companies will need our advice for this. Alongside permanent migration, companies also recruit temporary non-UK workers to complete contracted work (our equivalent of an in-bound posting) in the UK. These workers are also subject to the new immigration rules as are in-bound business visitors to the UK.

Even those coming to the UK for training purposes will be subject to the new immigration rules. This will apply even to a 1-day business visitor.

VAT

Key questions:

- Are you aware of the change to the rules for the payment and refund of VAT for importing goods into the UK and the exporting of goods to the EU?

Background

The UK has left the EU VAT area, resulting in a significant change in how VAT is managed for goods entering the EU and Great Britain markets (Note: VAT treatment for is different for Northern Ireland).

Goods entering the EU

VAT is due at the importation in the EU, at the rate that applies to the supplies of the same goods within the EU. VAT is payable to customs authorities at the time of importation, unless the EU Member State of importation allows a business to enter import VAT in the periodical VAT return of the taxable person.

Goods entering Great Britain

Goods coming from the EU from 1 January 2021 are treated in the same way as goods coming from the rest of the world. VAT is due at the importation in the UK. VAT will be charged at the UK VAT rate that applies to the goods.

CERTIFICATES, AUTHORISATIONS, MARKINGS OR LABELLING

Key questions:

- Are you familiar with the process for product testing and gaining certification and approval for the EU and GB markets?
- Rules for goods requiring conformity assessment for the EU market may have changed. Have you transferred certificates and authorisations issued by UK-based body to an EU 27-based body or authority?
- New product labelling rules have been introduced for the GB market. Are you familiar with the UKCA marking requirements?
- New product labelling rules have been introduced for Northern Ireland. Are you familiar with the UK(NI) marking requirements?
- Have you checked if you need a new product certification and approval for the sale of a good in GB, Northern Ireland or the EU? Have you already begin the process?

EU Market

On 1 January 2021 rules affecting conformity assessment and product labeling changed. For any good to be placed on the EU market, requiring a CE mark, it will need to be approved by a Notified Body based within the EU. UK Approved Bodies will not be recognised in the EU and cannot be used to assess a good for placing on the EU market. The EU bodies are authorised by national authorities and officially 'notified' to the European Commission and listed on the NANDO (New Approach Notified and Designated Organisations) database. The UK has decided to apply the product labeling rules for goods to be placed on the GB market with gradual effect. Guidance has been provided on the rules that will apply in GB. The new rules for placing goods on the EU market requiring a CE marking, have come into effect from 1 January 2021, without any easements.

Firms will not need to change conformity assessment for exports to the EU if they self-declare the conformity of good against harmonised regulations. However manufacturers should review their obligations and understand if they require an Authorised Representative to sell products in the EU.

Great Britain Market

UKCA and UK(NI) markings have come into effect from the 1 January 2021. It has been confirmed that there will be a transition period for acceptance of CE markings until 1 January 2022 (with some exceptions) to give companies time to transfer over to the new markings. All new manufactured stock will need to apply the new mark from 1 January 2021.

It is recommended firms need to be ready to use the UKCA marking as soon as possible before 1 January 2022. The CE marking will only be valid in GB for areas where GB and EU rules remain the same. If the EU changes its rules and you CE mark your product on the basis of those new rules you will not be able to use the CE marking to sell in GB even before 31 December 2021.

Northern Ireland

The Northern Ireland Protocol came into force on 1 January 2021. For as long as it is in force, Northern Ireland will align with all relevant EU rules relating to the placing on the market of manufactured goods. You must show that your products meet those rules by using conformity markings. If this assessment is carried out by a UK based body the product will need to carry a UK(NI) mark. However if the assessment is carried out by an EU based body the product may carry a CE mark.

CHEMICALS – EU REACH AND UK REACH

Key questions:

- Are you aware of your obligations under UK REACH?
- Have you considered the changes for compliance under EU REACH?
- The appointment of an Appointed Person: have you ensured that substances are registered with a manufacturer or importer in the EU or the UK, or appointed a person in the EU or UK who is legally responsible for that import as official registrant for the substance?
- Downstream user: have you checked whether substances you use are properly registered in the UK and the EU?

New EU REACH Regulation have been brought into UK law. REACH, and related legislation, have been replicated in the UK with the necessary changes to make it operable in a domestic

context. The key principles of the EU REACH Regulation have been retained. The domestic regime, which has been in operation in the UK from 1 January 2021, will be known as UK REACH.

UK REACH and the EU REACH regulations will operate independently from each other. Companies that are supplying and purchasing substances, mixtures or articles to and from the EU/EEA/Northern Ireland and Great Britain (England, Scotland and Wales) will need to ensure that the relevant duties are met under both pieces of legislation.

Under the Northern Ireland Protocol the EU REACH Regulation will continue to apply to Northern Ireland, while UK REACH will regulate the access of substances to the GB market.

COMMERCIAL CONTRACTS

Key questions:

- Have you reviewed your contracts with EU based commercial partners and checked that they are still enforceable in the same way?
- Do you need to agree changes to the contracts you hold with EU based businesses?
- Have you checked to see if your contracts include references to EU law, or regulations, and if these need to be changed?

Background

If you have a number of commercial contracts, particularly with entities within the EU, it would be wise to perform an audit of these contracts and begin assessing the potential effect on your rights and obligations under these agreements. You should assess very similar points when you negotiate new commercial contracts, including the following:

- Increased trade barriers (including regulatory divergence)
- Movement of persons (particularly important for businesses carrying out services)
- Monitoring currency fluctuations
- Territorial scope of your agreements: Identify if any of your commercial agreements have the European Union as their territorial scope and moving forward if the UK would be included or excluded in that scope.
- Change in law: Suppliers and customers who are contemplating entering into or are already subject to long-term commercial agreements (particularly service agreements) should be mindful of the contractual impact of changes in law between the UK and the EU.

INTELLECTUAL PROPERTY, TRADE MARKS AND PATENTS

Key questions:

- Have you taken the necessary steps to ensure continued protection of your intellectual property rights in the EU and the UK?
- Are you aware that there are now new requirements for representation in new applications and proceedings in both the UK and the EU?
- Have you made changes to your business addresses for service in the UK and EU?

Background

On 1 January 2021 there were changes to UK intellectual property law resulting from the departure from EU IP systems. While many of the changes to IP rights were made automatically by the UK Intellectual Property Office, it is important for companies to understand their exposure to these changes and ensure that IP is protected in both the UK and the EU.

Use of representatives

From 1 January 2021, UK attorneys are unable to represent clients on new applications or new proceedings at the EU Intellectual Property Office (EUIPO). UK trade mark owners need to appoint an EEA attorney to represent them on new applications and proceedings before the EUIPO.

Trade Marks

From the 1 January 2021, EU trade marks (EUTMs) are no longer protected trade marks in the UK. On the 1 January 2021, the IPO created a comparable UK trade mark for all right holders with an existing EU trade mark.

Existing EUTMs will still protect trade marks in EU member states. UK businesses can still to apply the EU Intellectual Property Office for an EUTM.

Patents

You can apply for a European patent through the UK IPO or direct to the European Patent Office (EPO) to protect your patent in more than 30 countries in Europe, using the (non-EU) European Patent Convention (EPC).

As the EPO is not an EU agency, leaving the EU has not affected the current European patent system. Existing European patents covering the UK are also unaffected.

DATA

Key questions:

- Are you comfortable you have full oversight on your exposure to international data transfers particularly information coming from the EU? Have you taken the necessary steps to ensure compliance with EU rules?

Background

From 1 January 2021 the UK is considered a third country by the EU and under the UK General Data Protection Regulation (UK GDPR). In order for personal data to flow between the EU and the UK without further safeguard measures, the UK will need to be recognised by the EU as providing adequate protection.

The UK-EU TCA contains a bridging mechanism that allows the continued free flow of personal data from the EU/EEA to the UK for up to 6 months.

Following this 6 month bridging mechanism to allow for the ongoing free flow of data from the EU/EEA to the UK, the EU would need to provide an adequacy decisions for the UK. This is a unilateral process for the EU.

The European Commission has issued a draft adequacy decision, however this will still need to be approved by European Data Protection Board (EDPB) and then be ratified by all member states of the EU.

As a sensible precaution, during the bridging mechanism, a company should audit their exposure to international data transfers particularly information coming from the EU. It is recommended also that companies work with EU/ EEA organisations who transfer personal data to them to put in place alternative transfer mechanisms to safeguard against any interruption to the free flow of EU to UK personal data.

There are a number of options that companies should explore including binding corporate rules and available derogations from EU provisions as well as Standard Contractual Clauses (SCCs).

Standard Contractual Clauses (SCCs) may be the most appropriate of these for many companies. However it should be noted that the SCCs are currently being redrafted and it is therefore important for companies to review existing SCCs in contracts and ensure that future contracts/agreements are based on the most up to date recommendations.

To assist companies there is an interactive toolkit and more information on the ICO (Information Commissioner's Office) [website](#).

FURTHER GUIDANCE FROM MAKE UK

Should you find you require further assistance, please contact Make UK on Brexit@makeuk.org

Make UK can provide additional guidance and consultancy on a number of issues to help you manage the changes that now affect your trading relationship with the EU and in conducting business within the UK.

With thanks to our partners for their review:

