BREXIT TRANSITION TOOLKIT

ARE YOU PREPARED?

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FOREWORD

The UK left the EU on 31 January 2020. The terms of the Withdrawal Agreement provided for a Transition Period through to 31 December 2020 during which time the UK has remained in the Customs Union and the Single Market.

With the end of the Transition Period fast approaching, it is more important than ever that businesses plan ahead. Understanding how individual risk factors might affect their business model is critical and the degree of risk exposure will vary from business to business. Business leaders must take ownership of the situation and prepare a bespoke plan to support them through the changes that lie ahead.

Without a clear understanding of how individual risk factors might affect their business model, small and medium-sized businesses are in danger of doing nothing and facing the consequences.

It is possible that the long lead up to Brexit may have led to a lack of focus on forward planning and for many businesses, the impact of Covid-19 has provided a critical distraction, resulting in more urgent challenges. Despite the uncertainty, what is clear is that the trading relationships with European customers and suppliers will not remain the same after the end of the Transition Period. Regardless of whether a deal is agreed at the eleventh hour, SME's are bound to be impacted – it's just a question of how much!

Heading for a future outside of the EU, SME's trading in both Europe and further afield need a plan that is matched to the risk profile of their business, and they need to act now.

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THE END OF THE TRANSITION PERIOD

PREPARE FOR 1 JANUARY 2021

The Transition Period comes to an end on 31 December 2020 and after that date the UK will be outside the EU Customs Union and Single Market. This will fundamentally change the UK trading relationship with the EU and is likely in some shape or form to affect all businesses that trade with EU customers and suppliers.

At the time of writing it is still unclear whether or not the UK will have a Trade Agreement in place with the EU from 1 January 2021. If no deal is agreed, then the UK will trade with the EU on World Trade Organisation terms. Even if a comprehensive Trade Agreement is struck, it will not replicate the level and ease of market access currently enjoyed by UK businesses.

Leaving the EU Customs Union will clearly impact on those importing or exporting goods, and this has gained most of the attention. However, the new trading arrangements will also affect the service sector that accounts for a high proportion of UK exports to the EU, and these businesses will need to review the non-tariff barriers, sometimes at a country level, to understand what arrangements need to be made for life outside the Single Market.

In addition, many UK businesses currently rely on EU Trade Agreements in order to trade competitively in wider global markets. From 1 January 2021 these EU Trade Agreements will no longer apply to UK businesses, with the UK government seeking to negotiate new trade agreements to replace them. What can be agreed and the level of market access is still being negotiated with many of these other countries.

Given these changes, most UK-based SME's know that they must do something to prepare now, but the focus for much of this year has been on dealing with the impact of the Covid-19 crisis. There is also significant uncertainty as to the outcome of the trade negotiations, which means there is a lack of understanding about where to start. However, with time running out, it is crucial that all business, whether trading in goods or services, make sure that they do review the likely impact and make appropriate contingency plans.

This Transition Toolkit has been designed to highlight many of the areas that need to be addressed by businesses. Some risks will be more important to one business than another, and this will depend on the nature and sector of the business. The content will be relevant for those trading in goods and / or services, and it is designed to complement the governments transition guidance (found at www.gov.uk/transition) that can be used to generate a personalised list of actions.

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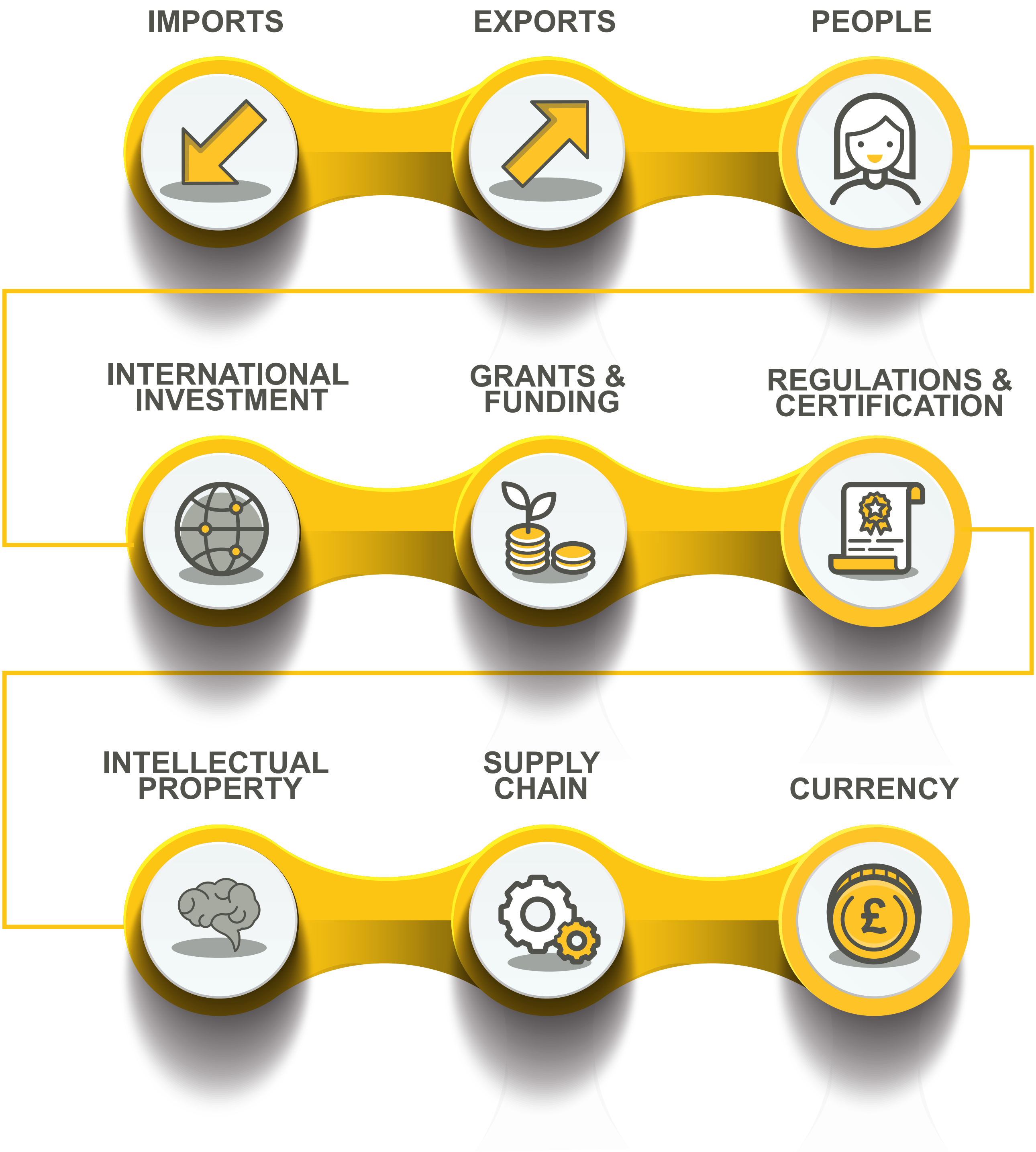
PERCENT of UK businesses have not carried out a Brexit risk assessment
Source: British Chamber of Commerce, 2019

MENZIES' TRANSITION TOOLKIT

Menzies' Transition Toolkit is designed to help businesses identify and mitigate some of the common risks that will arise from the end of the Transition Period:



IMPORTS

IMPACT

HMRC has now published its first draft of the Border Operating Model (BOM), setting out the UK's approach to the EU border from 1 January 2021. Controls on the movement of goods will be phased in over three stages until 1 July 2021, in order to recognise the disruption to business caused by the Covid-19 pandemic and giving businesses the time to prepare. The three phases will be introduced on 1 January 2021, 1 April 2021 and 1 July 2021, slowly bringing in checks on certain categories of goods and deferring completion of customs declarations and payment of tariffs through to full customs declaration submission and payment from 1 July 2021.

Customs declarations - importers and exporters will be required to complete customs declarations, with some locations requiring pre-lodgement of the declaration prior to movement of goods.

Customs duties - payment will be due as applicable under the new Global Tariff, with deferment a possibility.

VAT - import VAT will be due, although postponed import VAT accounting should be available.

Safety and Security declarations - the UK Government will collect more information on goods moving into the UK from the EU.

There are other HMRC schemes that may be applicable which defer or suspend the need to pay duty and import VAT on goods. Specifically, Import Processing, Inward Processing and Temporary Admission reliefs are valuable as they can help to manage cashflow pressures.

Consider also the benefits of the proposed introduction of Freeports. The latest Government paper on Freeports, was published on 7 October and intends to 'turbo-charge post-Brexit trade' by 'creating jobs, driving investment and regenerating communities'. There will be a bidding process for sea, air and rail ports before the year end and the first Freeports are on track to open by end of 2021.

Proposed Freeport policy will create a flexible new customs model, improving on existing customs arrangements, where imports of goods into a Freeport will be tariff free, before processing, followed by local sale, or tariff free export. The proposed package of tax reliefs intends to help drive jobs, growth and innovation.

ACTIONS

- Ensure you have a UK EORI number
- Review exposure to import tariffs and import VAT
- Consider how customs import declarations will be submitted
- Understand what commodity codes will be required for customs declarations
- Consider whether to apply for a duty deferment account and Customs Freight
- simplified procedures
- Consider whether you can apply for Inward Processing relief, Outward Processing relief or Temporary Admission relief
- Consider alternative sourcing strategies – e.g. partnering with other manufacturers, if using the same products or based in the same location to minimise the cost impact of stock holding
- Consider having an overseas investment base to minimise the number of times goods cross borders

- Consider the impact of potential delays as a result of border checks
- Consider the use of bonded warehousing to delay VAT payments
- With import customs declarations, consider if you will do these yourself, or whether it is more efficient to hire a Customs Agent
- Review contracts and incoterms (International Commercial Terms)
- Consider the Freeports proposal
- If you import live animals, plant or food products, review whether inspection fees may be payable.

EXPORTS

IMPACT

In order to continue exporting goods to the EU market in a ‘no deal’ scenario, you must ensure that your company holds a UK EORI number and that the receiving importer has an EU EORI number – even if this is within the same organisation. Export declarations will be required for all goods from 1 January 2021.

Consider what the delivery terms will be in the EU Member State of destination and who is importer of record there. It is likely that distance selling from the UK will go and there will also be changes to Low Value Consignment Relief, meaning payment of import VAT and duty on most deliveries.

Where B2C sales are made, should import VAT and duty be factored into the advertised price and consider using a freight forwarder to clear the goods and pay all charges on behalf of the customer.

Supply chains should be reviewed to assess whether an EU presence might be of benefit, so that, rather than exporting from the UK, could direct import into another EU Member State, for onward delivery, be preferable. Local EU Member State rules should be checked to see whether this can be done, if not established in the EU. Where a local VAT registration, EORI, warehouse or local entity would be required, should fiscal representation also be considered.

You may be able to use the Common Transit Convention (CTC) if you are transporting goods across borders in the EU. As customs declarations would not be required at each border crossing, it will speed up the movement of the goods. In addition, duties only become payable once the goods arrive at their final destination. The New Computerised Transit System (NCTS) will allow for transit declarations to be made electronically and away from the border, simplifying procedures. The Goods Vehicle Movement Service (GVMS), which is the new border IT platform to allow trucks to declare goods ahead of reaching the border, will be introduced from January for transit movements only.

In the event that we do not reach a deal with the EU, an inspection fee may need to be paid for certain goods on entry to an EU country, together with regulatory changes to labelling and marketing of certain products. The export of live animals, plant or food products are particularly affected.

ACTIONS

- Ensure that your company has a UK EORI number and that your importer has an EU EORI number
- Consider establishing a presence in an EU Member State
- Consider whether to register for the CTC and NCTS. If so, a guarantee will be required to cover the customs and import VAT duties whilst the goods are in transit
- Consider how customs export declarations will be submitted
- Consider importer of record into the destination Member State and incoterms
- If you export live animals, plant or food products, review whether inspection fees may be payable. Also, ensure you are following the labelling and marketing standards of exporting food and animal products. With potential increases in costs, consider whether these increases can be passed on to customers
- Consider reducing cross-border movements and plot goods movements
- Consider outsourcing processes or the potential to acquire or set up a facility in continental Europe.

PEOPLE

IMPACT

The end of free movement puts half a billion Europeans subject to immigration controls and makes British nationals Third Country Nationals, who no longer have an automatic right to live and work in other member states (excluding Ireland).

The UK government reached agreements to protect the rights of EU, EEA and Swiss citizens already living in the UK, enabling them to claim settled or pre-settled status with similar rules applying to those UK citizens living in the EU, EEA or Switzerland by virtue of the Withdrawal Agreement. Those affected will need to apply prior to 30 June 2021. They will receive either pre-settled or settled status and will be given the ability to set up an online right to work record that employers can use to establish their right to work online. Employers are not allowed to provide immigration advice, but there is information available from GOV.UK that they can use to communicate the need for staff to consider the EU Settlement Scheme and regularise their status.

If employers have already undertaken a valid right to work check for an EU national whose employment will continue after 31 December, they are not expected to do a new check to ensure that settled/pre-settled status has been obtained, provided that the employment does not end and then restart.

The primary route for bringing in workers from 1 January 2021 is likely to be the overhauled points-based system, previously referred to as Tier 2 (General) but now called the ‘Skilled Worker’ route. Some of the criteria for this scheme have been relaxed e.g. suspension of the numbers cap (i.e. no monthly allocation for the time being), lowering of the minimum skill level from Graduate to A Level, slight lowering of the minimum pay threshold to just over £25k and the ceasing of the ‘resident labour market test’. There is a limited ability to ‘trade’ points between certain categories. This route does require the applicant to have an offer of a job from a licenced sponsor.

To become a sponsor, an employer needs to apply to the home office and prove they are a genuine UK employer with adequate personnel and systems in place (particularly HR) to be entrusted with the 'privilege' of having demand driven access to migrant workers. Costs apply to both the application process and for every sponsored visa.

Frontier Workers are a creation of EU law and will be a new visa category, outside of the points based system, for EU workers who have been travelling in and out of the UK to work, but for whom UK is not their principal place of residence. Those who continue to do this beyond 31 December will be able to apply for a frontier worker visa which can apply for so long as they continue to act as such. It will not however be available for anyone who starts working in this manner from 1 January 2021.

To protect the UK's knowledge economy and ensure continued ability to attract scientists and researchers, the UK has introduced a Global Talent Visa scheme which supports those that work in academia or research if you are a leader within the fields of science, medicine or engineering.

There are a number of other more 'niche' visa types that will also need to be considered, potentially, for EU citizens coming to work in the UK. This includes Intra Company Transfer, extended post-study work visas and other temporary 'Tier 5' visas such as the Youth Mobility Scheme.

Following the end of the transition period, businesses will also need to consider whether work permits or visas are required for UK employees to operate in the EU. Arrangements in individual countries will need to be investigated as necessary.

ACTIONS

- If you are actively considering hiring EU workers – try as far as possible to bring them in before 11pm on 31 December 2020, when the rules all change
- Review employment records to identify and confirm that relevant groups of employees have applied for settled or re-settled status (either in the UK or EU) including any who are on a Tier 1 (Exceptional Talent) visa – Those that have not applied may indicate future staffing requirements
- Support relevant employees with their applications for settled status https://www.gov.uk/eusettledstatus
- Consider whether to apply for a Sponsor Licence to utilise the new Skilled Worker route under the Tier 2 Points Based Visa system and monitor Shortage Occupation Lists, whereby criteria should be more flexible.
- Review whether other Visa types may also be relevant for your business.
- Look to manage risk by investing in UK talent development and consider beneficial schemes such as Kickstarter, Apprenticeships and Knowledge Transfer Partnerships
- Continue to review recruitment strategy and people risks.

INTERNATIONAL INVESTMENT

IMPACT

From 1 January 2021, the EU Trade Agreements that provide favourable terms for trading with other countries around the world will no longer be effective for UK companies. Businesses should assess their reliance on these agreements, and compare them with the agreements that have been negotiated by the UK to replace them (if they exist), to assess the likely impact of trading with these other countries in the future.

It is important to keep abreast of who the UK are negotiating trade deals with and how advanced these discussions are. Currently, post-Brexit we only have trade agreements with Japan, with a further 20 countries expected to take effect when existing EU trade agreements no longer apply to the UK, from 1 January 2021.

Upon leaving the EU, we will no longer be within the remit of the EU tax directives and this could result in local dividend withholding tax which will reduce the value of funds received by a parent company in the UK. In addition, the cessation of the EU Interest and Royalties Directive will impact cross-border interest and royalties paid to or from a UK company.

ACTIONS

- Consider whether dividends and other cross-border payments should be made by 31 December 2020
- Review Royalty and loan agreements and ensure exposure to withholding tax is understood and factored into cashflow modelling and pricing structures
- Gain an understanding as to what level and when tax will be withheld through dividend payments
- Keep abreast of negotiations on the EU Trade Agreements and understand possibilities for maintaining equivalent market access
- Keep abreast of Trade Agreements between the UK and other non-EU countries and identify opportunities
- Review existing EU business and consider the benefits of setting up a local presence to protect it
- Assess the opportunity in target territories by:
  - Weighing up the costs and risks linked to these markets
  - Considering admin, expertise and resourcing costs
  - Seek support, guidance and advice from those who have made the move overseas
- Seek overseas support and guidance from the local members of the HLB
- international network
  Evaluate the end-to-end supply chain and assess the benefit of alternative models on service, cost and operational capabilities.

GRANTS AND FUNDING

IMPACT

There are various scenarios in relation to Brexit and the UK's future relationship with the EU from a funding and investment perspective. Much of the current funding available to businesses is approved and regulated by the European Commission. The UK government has already acted to reassure companies regarding the short term availability of funding and while we await further guidance post Brexit the indications are that the government remain committed to providing funding, especially around innovative projects as highlighted below.

- The Horizon 2020 programme was established by the European Union (EU) as a collaborative financial instrument that would help secure Europe's global competitiveness in research and innovation. UK businesses can continue to participate in Horizon 2020 programmes and receive EU grant funding for the lifetime of individual projects, this includes projects finishing after 1 January 2021

- The SME R&D tax relief scheme is classified as 'Notified State Aid'; a form of public financial assistance that is approved and regulated by the European Commission, in line with state aid rules. These rules allow the EC to limit how much financial aid each country gives domestic businesses, ensuring a level playing field across the union. From 1 January 2021, the UK may be less restricted by EU state aid rules, however the current feeling is that the UK government have no plans to significantly change SME R&D tax reliefs.

As a consequence of Covid-19, many companies have used this as an opportunity to further automate processes, particularly where social distancing is not possible. The cost of investing in robotics, AI and machinery is expensive, however, there is a current enhancement to the Annual Investment Allowance to £1m until 31 December 2020, which can result in significant corporation tax savings and cashflow benefits.

ACTIONS

- Review other areas of potential post Brexit support for investment including grants from Innovate UK and access to Catapult Centres to help develop new products https://www.gov.uk/government/organisations/innovate-uk https://catapult.org.uk/about-us/about-catapult/
- Review current funding arrangements - if you are a current Horizon 2020 grant holder, you can contact EUGrantsFunding@ukri.org if you have any queries and obtain guidance in relation to eligibility here: https://www.gov.uk/business-finance-support/horizon-2020-business-grants-uk#additional-information
- Structural funds: review the actions you will need to take if you receive EU funding
- Review Business Support Finder to identify other funding sources
- Consider advancing capex investment before 31 December 2020 to take advantage of the £1m Annual Investment Allowance before it reduces to £200k from 1 January 2021
- Consider R&D tax relief claims, ability to claim, and impact on existing claims
- Review and apply for grants to assist with the impact of Brexit including investment in IT and training associated with improving Customs export declarations: https://www.gov.uk/guidance/grants-for-businesses-that-complete-customs-declarations#history

REGULATIONS & CERTIFICATION

IMPACT

Personal Data

The UK Government has confirmed that after the transition period, businesses can still send personal data from the UK to the EU without additional formalities, but this will be kept under review. However, if the UK exits the EU without a deal, European businesses will need to put safeguards in place for transferring data into the UK as it will be treated as a 'third country' for data transfer purposes.

UK businesses will need to consider the mechanisms in place with their European data exporters to ensure that data can continue to flow freely and lawfully in the event of a no-deal Brexit.

In certain scenarios (such as if you offer goods or services to individuals in the EEA or monitor the behaviour of individuals in the EEA but you do not have any EEA offices, branches or establishments) you may need to appoint a representative from the end of the transition period. Further details can be found on the ICO European representatives page. If your business relies on exchanging personal data with European organisations then you should take action now to protect your position with your European clients and suppliers.

Regulations for services

Services provided by UK businesses will be regarded as originating from a third country. Therefore, UK businesses providing services to EU customers may face additional legal, regulatory and administrative barriers from 1 January 2021.

In order to provide services in the EU, UK businesses will need to check the specific trade regulations for doing business on a country by country basis. The national regulations of each EU country explain the rules and formalities that need to be adhered to and how to operate in that particular country.

For each EU country, there are specific country guides for providing services and travelling for business from 1 January 2021 on the government website: www.gov.uk/government/collections/providing-services-to-eea-and-efta-countries-after-eu-exit

Recognition of Professional Qualifications

If you work in a regulated profession, you will need to check if your UK professional qualification is officially recognised by the appropriate regulator for your profession in each country where you intend to work. This can be carried out by checking the European Commission's Regulated Professions Database and contacting the single point of contact for each country.

Regulations for Manufactured Goods

The government has confirmed that if you have already placed your goods on the market in an EU country before 1 January 2021, no further action is required in relation to your conformity assessment.

What you need to do from 1 January 2021 will depend on the type of manufactured goods that you are placing on the EU market. Different rules and regulatory frameworks apply for different goods, so this should be carefully reviewed. From 1 January 2021, any mandatory conformity assessment will need to be undertaken by an EU-recognised conformity assessment body.

After the UK leaves the EU, all EU based distributors receiving goods from UK companies will become importers. The UK company and the EU based distributor will have legal responsibilities to ensure:

- Correct labelling of products, particularly if you are trading in live animals, plants or food products
- The correct conformity assessment has been carried out and all products carry the correct conformity marking
- The correct technical documentation has been prepared
- Records are kept for the requisite period of 10 years
- No placing of goods on to the EU market where the legal responsibilities are not followed.

If you use an EU-based fulfilment service provider, they will need to request certain compliance information from you, and goods will need to be labelled with their details.

From 1 January 2021, all UK based authorised representatives will no longer be recognised by the EU. Therefore, if you are required to, you will need to appoint an authorised representative based in the EU or EEA (and Northern Ireland until 15 July 2021). This may be where you sell goods without using an importer or fulfilment service provider, for example if you sell online and ship directly to the end user.

For the latest updates on the EU's requirements you should consult the European Commission's website.

ACTIONS

- If you are exchanging data with EU organisations consider what safeguards need to be put in place
- Service providers should review specific trade regulations for providing services to each country
- Those working in regulated professions should check that their qualification is recognised where they intend to work
- Review your exports to ascertain if you have already placed your goods on the market in an EU country
- Consider the rules and regulatory framework that apply for the type of goods you are exporting
- Check which conformity process you will need to follow for existing and proposed exports
- Check whether your legal responsibilities are changing where you use an EU-based distributor or fulfilment service provider
- If you ship goods without using an EU importer or fulfilment service provider, consider the need to appoint an EU authorised representative.

INTELLECTUAL PROPERTY

IMPACT

EU Intellectual Property law has continued to operate as normal during the transition period. No changes to the services provided by the UK's Intellectual Property Office (IPO) were proposed during this period and the withdrawal agreement included provisions for dealing with IP rights at the end of the transition period, ensuring continued protection of existing EU level IP rights.

Patents

The UK remains a participating state in the European Patent Convention which means leaving the EU should not affect the current European patent system or European patents covering the UK.

The Unitary Patent & Unified Patent Court

This unified system is expected to be available at the start of 2022 however the UK has already announced that it will not currently participate.

Trade Marks

At the end of the transition period EU Trade Marks will continue to protect trade marks in EU member states however they will no longer protect trade marks in the UK.

Under the withdrawal agreement the IPO will immediately and automatically create a comparable UK trade mark for all existing EU trade marks to ensure protection of trade marks in the UK is maintained. Businesses that have applications pending for EU trade marks at the end of the transition period will be granted 9 months to apply for the same protection in the UK.

Other rights and designs

The withdrawal agreement ensures continued protection of existing EU rights and designs in the UK following the end of the transition period.

ACTIONS

- If you have pending design right or trade mark applications, monitor the anticipated timescale to grant and assess the need for registering a UK right if the application remains pending at the end of the transition period
- If you are considering trade mark filings in the months running up to the end of the transition period you should file in both the EU and UK
- Monitor rights that are due to expire post transition period as there may be additional steps to be taken to ensure renewal in all required states
- Ensure any additional cost and administrative burdens are considered as part of future budgeting and resource planning exercise sea
- Consider the need to seek legal advice if any of your IP is subject to pending proceedings
- Consider the need to seek legal advice if your commercial agreements refer to the EU in relation to IP rights
- Explore whether government funded schemes to support and accelerate innovation can be taken advantage of if access to talented staff is restricted post transition period and as a result of Covid-19.

SUPPLY CHAIN

IMPACT

Over reliance on a large customer or supplier could increase Brexit-related risks. These risks include; disruption to supply chain, shipping timescales, pricing volatility and diversification by your own supplier or customer, potentially leading to a break in supply.

UK businesses should spread their risk where possible and stay close to all key customers/suppliers to gain an insight into their plans and understand their financial robustness. It may be necessary to impose credit limits or other controls.

ACTIONS

- Assess supply chain risks both from a customer and supplier perspective
- Consider alternative strategies to spread or otherwise control risks
- Consider how to resource closer supply chain management / build strategic alliances (e.g. consider sharing unused apprenticeship levy)
- Look to secure renegotiated contracts with customers / suppliers, seeking to mitigate risks.

CURRENCY

IMPACT

Exchange rate changes can have a big impact on trading performances, particularly if an SME is sourcing goods from Europe or the US and paying for them in Euros or US dollars.

This volatility can lead to significant cashflow pressures where there are long lead times between the date of contracting for the supply or purchase of goods and the timing of the cash settlement.

ACTIONS

- Assess business risks linked to exchange rate volatility
- Consider aligning trading currencies
- Aim to match currency transactions between customers and suppliers to avoid large foreign currency balances accumulating
- Consider using an FX agent or hedging to further mitigate the risk of volatility.

AFTERWORD

The Transition Period comes to an end at 11pm UK time on 31 December 2020. From that time onwards, the UK will no longer be part of the Customs Union or Single Market, and a new trading relationship will begin with the EU.

UK businesses must take action to prepare for this change. To do this, there is a considerable amount of information available, both from the government and from the business community.

All businesses, whether trading in goods or services, should use this information to assess their circumstances, identify the impacts and take the necessary actions.

We hope that this document will serve as a useful toolkit to aid your preparations, and please do get in touch to discuss any relevant aspects so that we can help steer you into 2021 and beyond.

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For more information about planning for Brexit, contact the Brexit team at Menzies LLP.

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