

Departures

BREXIT – Key Q&A

Following the UK's vote to leave the European Union ("EU"), we set out below some of the key questions and answers raised by this historic decision.

Q: What happens now from a legal point-of-view?

The referendum is purely advisory. It is not technically legally binding, although there is no question that it will not be followed through by the government.

The government (not Parliament, as has been reported in some publications) must invoke Article 50 of the Treaty on European Union and serve notice to leave the EU.

There has been much speculation over when Article 50 will be invoked and we should have more clarity on this in the coming days. There is no requirement to invoke it immediately. Some have suggested that the government may want to await the outcome of the French elections (and possibly even the German elections) next year. It may also be influenced by whether and when there is a second Scottish independence referendum.

Theresa May, who was appointed Prime Minister on 13 July 2016 following David Cameron's formal resignation, will take forward Britain's negotiations. Whilst her newly appointed cabinet includes figures from both sides of the referendum debate, three prominent Leave campaigners have been appointed to key Brexit-related positions.

When Article 50 is invoked, we will enter into a 2-year negotiating period. This can be extended but only with the unanimous agreement of all 27 other EU Member States. If we fail to reach an agreement and there is no extension, all EU Treaties and Regulations cease to apply in the UK at the end of the 2-year period.

If we reach an agreement with the remaining EU Member States, this must be approved by a qualified majority of those states (based on weighted voting).

Domestically, Parliament must then repeal the European Communities Act 1972. A key issue will be how Parliament deals with the thousands of statutory instruments adopted on the basis of that Act (i.e. statutory instruments implementing EU Directives). Unless they are expressly "saved", they will all fall away when the Act is repealed.

Q: Do current EU rules still apply?

In theory, yes. Until an agreement is reached with the European Council under Article 50, we remain a member of the EU and bound by the EU Treaties and other legislation (e.g. Regulations, Directives).

In practice, perhaps. The Vote Leave campaign, in their Brexit Manifesto, suggested that they would enact various legislative measures to effectively cease the application of all EU laws. The manifesto calls for:

- a European Communities Act 1972 (Repeal) Bill (so that EU Treaties cease to form part of UK law and the European Court's jurisdiction comes to an end);
- a European Union Law (Emergency Provisions) Bill (to limit the control of the European Court of Justice on national security);
- a special Finance Bill (to abolish the 5% rate of VAT on household energy bills);
- a NHS (Funding Target) Bill (so that by 2020 the NHS receives an extra £100 million, per week);
- an Asylum and Immigration Control Bill (to end the automatic right of EU citizens to enter the UK by 2020); and

- a Free Trade Bill (to restore the UK's power to control trade policy).

Q: What will happen if some or all EU laws cease to apply with immediate effect?

In short, this would lead to a very awkward legal position. Until an agreement is reached in accordance with Article 50, the UK does not have the legal right to cease applying EU laws. If the Government were to enact legislation which was contrary to EU laws, it would lead to some doubt over which laws would apply.

In practice, it is unlikely that the European Commission would take infringement action against the UK for a breach of EU Treaty. However, some EU rights could potentially be enforced against businesses in the courts, even if there is conflicting domestic legislation.

Q: Will pending EU rules be implemented?

Technically we would still be required to implement new EU legislation. However, Leave campaigners have made it clear that they would not look to implement any pending EU rules. This will affect various pieces of legislation affecting our clients including MiFID II and the Data Protection Regulation.

Q: What can you be doing now?

It is crucial to consider the legal impact of Brexit on your business as well as the economic impact. We have experts across the firm who can help review which EU laws affect your business and what the potential impact of changes to those rules may be.

We can also help you to influence the negotiations to protect your business' interests. We have an excellent track record of successfully influencing EU legislation on behalf of clients. In addition, we are able to draw on the extensive experience of our Parliamentary Counsel, Daniel Greenberg, to help influence legislation in Westminster.

Q: What will UK outside the EU look like?

This has been one of the main uncertainties in the referendum campaign. There has been talk of all the different possible models we might eventually adopt, including the Swiss, Norwegian, Turkish, and Canadian models, or a WTO option. Speculation aside, there will be ample opportunity for us to seek to influence the final agreement, and we are in a good position to help you do so.

Contact details

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