



**Commercial guidance in
case of no-deal Brexit |**
UK government technical notices
January 2019

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Overview

The UK government has reiterated its commitment to delivering a deal negotiated with the EU. While a no-deal Brexit remains a possibility, however, the UK government has continued to make contingency plans for such a scenario.

Part of this has been to continue to develop and publish new technical notices/guidance highlighting the practical effects that could result from a no-deal Brexit. It has also expanded upon some of the technical notices on a no-deal Brexit it issued last year. These include the technical notice on [‘Trade remedies if there’s no Brexit deal’](#) and the one on [‘Existing free trade agreements if there’s no Brexit deal’](#).

Given the continued uncertainty surrounding the approval of the Brexit deal by the UK, the EU has also started implementing a no-deal Contingency Action Plan. This includes the implementation of measures in a number of areas where a no-deal Brexit scenario would create disruption for citizens and businesses in the EU. The EU communication indicating the EU’s no-deal Contingency Plan can be found on the [European Commission’s website](#).

The UK government has also been issuing Statutory Instruments aiming to make the legislative changes required as a result of Brexit. These Statutory Instruments are being made under the EU Withdrawal Act 2018 and cover a range of areas. They can be found on the [‘EU Withdrawal Act 2018 Statutory Instruments’](#) webpage of the UK government website.

Further to our [October 2018 report](#) on the UK government technical notices on a no-deal Brexit,

this update gives a flavour of some of the new technical notices/guidance on a no-deal Brexit the UK government has issued that will be of interest in a commercial context. In these notices the UK government states that more information about specific requirements will be provided in due course, so interested parties should keep up-to-date with such developments.

Information on all the technical notices/guidance issued by the UK government (and on any changes made to these) can be found on the [Brexit webpage](#) of the UK government website. Information on the overall approach to a no-deal Brexit that the UK government follows can be found on its technical notice/guidance on [‘UK government’s preparations for a ‘no-deal’ scenario’](#).

We hope you find this summary useful. Please do get in touch if you have any specific queries about the implications for your business.



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‘The UK government has reiterated its commitment to delivering a deal negotiated with the EU.’

Exporting and importing goods if the UK leaves the EU with no deal

The import and export processes that are applicable to UK businesses trading with countries outside of the EU would also apply to UK businesses trading with the EU, in the event that the UK exits the EU without a deal.

Separate arrangements for trading with Ireland will be put in place by the UK government. Further information about the arrangements will be provided by the UK government in due course.

UK businesses would need to take certain actions before they import or export goods, including:

- Obtaining a UK Economic Operator Registration and Identification (EORI) number to continue to import or export goods with the EU in the event of a no-deal Brexit. More information on this can be found on the UK government’s guidance on how to [‘Get a UK EORI number to trade within the EU’](#).
- Deciding whether they want to hire an agent for declaring their goods at customs or whether they would prefer to make the declarations themselves (by using appropriate software).
- Making safety and security declarations for their goods by using an organisation (such as a haulage firm) to do that for them or by doing that themselves.

- Ensuring their goods are classified (by identifying the commodity codes of the goods). More information on the classification of goods can be found in this technical notice as well as on the UK government’s guidance on [‘Finding commodity codes for imports or exports’](#).
- Making sure that if they use a UK roll on roll off location (for example where a lorry or van travels through using a ferry or a train), their goods are declared. See ‘Moving goods to and from the EU through roll on roll off locations including Eurotunnel’ below for more information on this.
- Paying VAT, Excise or Customs Duty on imported goods.

For the specific requirements that apply for importing and exporting goods see the technical notice on [‘Exporting and importing goods if the UK leaves the EU with no deal’](#). More information on declaring goods at customs and paying customs duty can be found on the UK government’s guidance on [‘Declaring your goods at customs if the UK leaves the EU with no deal’](#).

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Customs procedures if the UK leaves the EU without a deal

In the event that the UK leaves the EU without a deal in place, UK businesses trading with the EU would need to apply the customs processes that are applicable to UK businesses trading with countries outside of the EU. Information on the separate arrangements for trading with Ireland that will be put in place will be provided by the UK government in due course.

This technical notice sets out the customs procedures that UK businesses can use to enable quick and easy trade across borders (these include customs warehousing and authorised use, among other procedures).

The notice also explains that goods must be declared electronically (by submitting a customs declaration – see section above for information)

before leaving the point of entry (such as a port or airport) and that a customs guarantee is needed before a customs procedure can be used (this constitutes a bank’s agreement to cover a customs debt arising when customs procedures are used).

For the specific requirements around customs procedures, see the technical notice on [‘Customs procedures if the UK leaves the EU with no deal’](#). For more information on customs guarantees see the technical notice [‘Import and export: customs guarantees’](#). A collection of regulations, explanatory memoranda and an impact assessment in relation to customs, VAT and excise in preparation for a no-deal Brexit scenario can be found on the [‘Customs, VAT and Excise regulations: leaving the EU with no-deal’](#) webpage of the UK government website.

Moving goods to and from the EU through roll on roll off locations including Eurotunnel

The UK government has confirmed that in a no-deal Brexit scenario goods imported in the UK from the EU would be subject to the customs, excise and VAT rules that are applicable to goods obtained from non-EU countries. Goods the UK sends to the EU would be subject to the rules the EU abides by when it receives goods from countries outside of the EU.

The notice flags that separate arrangements for trading with Ireland would apply and that more information on those arrangements will be provided in due course.

Businesses and carriers using roll on roll off locations to transport goods between the UK and the EU will have to submit customs declarations and pay any customs duty, excise duty or VAT that is due.

More information on this can be found on the technical notice on [‘Moving goods to and from the EU through roll on roll off locations including Eurotunnel’](#).

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CMA's role if there's no-deal Brexit

The technical notices published by the UK government reflect the contents of a draft Statutory Instrument (made under the EU Withdrawal Act 2018) aiming to make the legislative changes required in the area of competition as a result of Brexit. They provide information on how the UK competition regime would operate in the event of a no-deal Brexit scenario.

CMA's role in antitrust if there's no Brexit deal

The Competition and Markets Authority (CMA) and UK courts would not be obliged to have regard to decisions issued by the Court of Justice of the EU (CJEU) or the European Commission that occur after Brexit. This would be made possible through the repeal of section 60 of the Competition Act 1998 which requires decisions issued at UK level being consistent with the principles established by the CJEU and the European Commission.

Section 60 would be replaced by section 60A which would govern the treatment of CJEU and European Commission decisions made before Brexit. According to the new section, the UK must ensure that there is no inconsistency with pre-Brexit EU case law when applying UK competition law. There is however some room for divergence from pre-Brexit EU case law in certain circumstances (such as in case of developments in economic activity and differences between UK and EU markets).

The notice also confirms that the CMA would no longer be able to apply EU provisions on anti-competitive agreements and abuse of dominance (reflected in Articles 101 and 102 of the Treaty of the Functioning of the EU) following Brexit. The CMA would also be prevented from opening investigations

into infringements of UK competition law after Brexit where the European Commission has taken certain actions in relation to such investigations before Brexit (where for example it reached an infringement decision which has not since been annulled).

The notice also gives details of how EU block exemptions would be treated after Brexit. For example, 7 EU block exemptions would be retained in UK law in a revised form to correct any deficiencies resulting from Brexit.

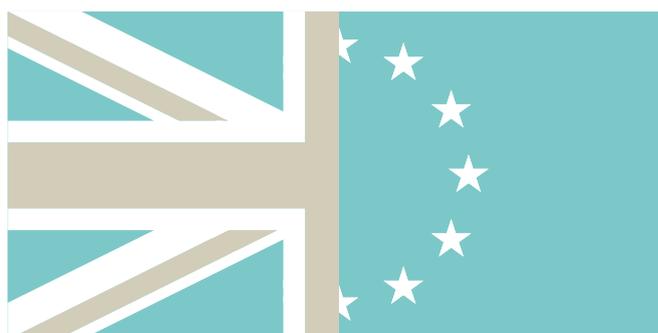
See the technical notice on ['CMA's role in antitrust if there's no Brexit deal'](#) for more information.

CMA's role in mergers if there's no-deal Brexit

The UK is currently able to intervene in an EU merger where a 'relevant merger situation' occurs in accordance with the conditions specified in the Enterprise Act 2002 (for example in order to address concerns around national security). Should the UK leave the EU without a deal in place, the UK would be excluded from that ability where the European Commission has issued a decision on a merger review before Brexit (unless that decision is annulled).

Where however a merger review has not been dealt with by the European Commission before Brexit (i.e. it remains ongoing), the CMA would not be excluded from taking jurisdiction over the UK aspects of the merger in accordance with the provisions of the Enterprise Act 2002. Where merging parties anticipate that such a scenario is possible, they are advised to engage with the CMA at an early stage.

More information on this can be found on the technical notice on ['CMA's role in mergers if there's no Brexit deal'](#).



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