

Brexit update – the legal considerations

- GDPR and Brexit
- Business immigration
- Employment law post-Brexit
- Commercial contracts

28 January 2021

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Welcome, today's presenters...

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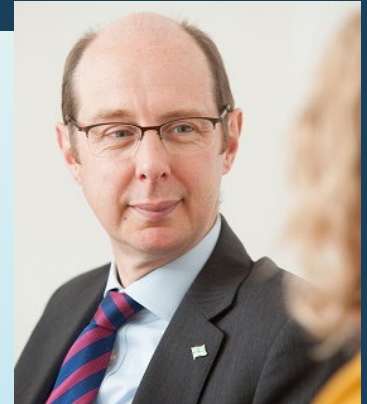
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GDPR and Brexit



GDPR and Brexit

- GDPR implemented in May 2018
- UK left the EU on 31 January 2020
 - during transition period, was still deemed an EU member for most legal purposes, including GDPR
- As of 1 January 2021, the UK is a 'third country'
- Data sharing is not part of the free trade agreement
- 'Applied GDPR' in force from 1 January 2021

GDPR and EU Operations

- European operations – “one stop shop”
 - which data protection regime(s) apply?
- DPO can combine UK responsibilities with EU responsibilities
 - but must be ‘accessible’
- Documentation
 - Update terminology e.g. in privacy notices
- Organisational awareness
- European representative

GDPR – European Representatives



Failure to comply with GDPR can expose your organisation to a fine of up to 20m Euros or 4% of annual turnover.



GDPR and Data Sharing

- Do you have data channels flowing in and out of the EEA?
 - if so, comply with both EU and UK data protection regimes after 1 January 2021
- What is the legal basis for transfer?
 - ‘adequacy’ decision
 - EU:US or EU:Swiss Privacy Shield
 - But n.b. *Schrems II* case
 - standard contractual clauses
 - binding corporate rules (BCRs)
 - industry or sector approved code of practice
 - a derogation applicable to a specific situation

GDPR and Data Sharing

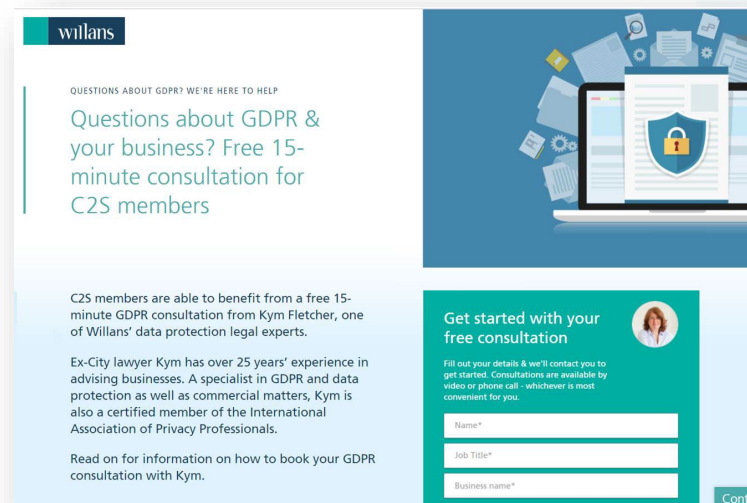
- Transfers from UK to EEA
 - no impact; UK deems EEA 'adequate' for data transfers
- Transfers from the UK to rest of the world
 - UK data export rules apply
 - either destination is deemed 'adequate' under UK GDPR rules;
or
 - need Applied GDPR data export solution (legal basis, as above)

GDPR and Data Sharing

- Transfers from the EEA to the UK
 - UK a 'third country' post-Brexit
 - UK may be deemed 'adequate' in due course, but still under negotiation and by no means a 'done deal'
 - Interim arrangements agreed for 4 – 6 months from 1 January 2021
 - After that, what is the legal basis for transfer?
- Transfers from the rest of the world to the UK
 - depends on local legislation
 - 11 of 12 third countries deemed 'adequate' by EU will maintain unrestricted data flows to UK

Free GDPR consultation for C2S members

- Get help with data protection requirements for your business.
- Free 15-minute GDPR consultation with **Kym Fletcher**, consultant at Willans LLP and Chief Privacy Officer at Willans Data Protection Services.
- Exclusive offer for C2S members.



The screenshot shows a webpage from Willans LLP. The header includes the Willans logo. The main content area features the text: "QUESTIONS ABOUT GDPR? WE'RE HERE TO HELP. Questions about GDPR & your business? Free 15-minute consultation for C2S members". Below this, it states: "C2S members are able to benefit from a free 15-minute GDPR consultation from Kym Fletcher, one of Willans' data protection legal experts." and "Ex-City lawyer Kym has over 25 years' experience in advising businesses. A specialist in GDPR and data protection as well as commercial matters, Kym is also a certified member of the International Association of Privacy Professionals." At the bottom of the main text, it says: "Read on for information on how to book your GDPR consultation with Kym." To the right, there is a graphic of a laptop displaying a document with a lock icon, surrounded by various data-related icons. Below the main text, there is a section titled "Get started with your free consultation" which includes a small profile picture of Kym Fletcher and a form with fields for "Name*", "Job Title*", and "Business name*". A "Contact" button is visible at the bottom right of the form.



To book, visit:
[willans.co.uk/c2s-offer](https://www.willans.co.uk/c2s-offer)

Business immigration



Free movement - key dates

- 11pm 31 December 2020 – free movement ends
- 1 January 2021 – new PBS introduced*
- 30 June 2021 – deadline for applying to EU settlement scheme

New PBS

- Applicable to EEA and non-EEA citizens
- Tier 2 general visa replaced by skilled worker visa category
- Cap on number of tier 2 visas allocated each month suspended
- Introduction of a new Health and Care visa
- No Resident Labour Market Test
- Lower minimum skill level
- Lower minimum salary threshold

What hasn't changed?

- Applicants must demonstrate an ability to speak English
- Requirement to select an 'SOC' code
- Immigration skills charge
- Emphasis on compliance

Points allocation

- Applicant needs to get to 70 points
- Applicant will earn 50 points if:
 - have a job offer from a licenced sponsor (20)
 - role meets appropriate skill level (20)
 - English at appropriate level (10)

Points allocation

Applicant must then obtain a further 20 'tradable' points through a combination of points for:

- salary (0-20)
 - If at least £25,600 per year or going rate for the occupation (20)
 - If exceeds £23,040 and 90% of going rate (10)
- applicant is a new entrant to the labour market (20)
- shortage occupation (20)
- holding a PhD in a relevant subject to job (10)
- holding a PhD in a STEM subject relevant to job (10)

Further considerations

- Graduate visa/route
 - Launched summer 2021
 - Un-sponsored route
 - Undergraduates and Masters graduates can remain in UK for 2 years post-degree (PhD – 3 years)

- RTW checks
 - no requirement to carry out retrospective checks
 - no requirement to check if employees applied under EU settlement scheme
 - From 1 July 2021 must see proof of immigration status

Employment law post-Brexit



Employment law post-Brexit

- **Legislation**

- European Union (Withdrawal) Act 2018 converts all EU law into UK law at the point of exit
- Parliament has the power to diverge from EU law in future UK legislation
- EU has no power to prevent this, but ‘level playing field’ provisions → potential trade dispute & sanctions
- Article 6.2: *“A Party shall not weaken or reduce, in a manner affecting trade or investment between the parties, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards.”*

Employment law post-Brexit

- **ECJ case law**
 - Still valid for interpretation of EU legislation as at point of exit
 - Supreme Court & CoA can depart from ECJ decisions – but will they really?
 - If Parliament amends laws in future, courts give effect to new wording, regardless of EU law



Employment law post-Brexit

Business secretary confirms post-Brexit review of UK workers' rights

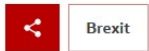
Kwasi Kwarteng says his department is examining EU protections but insists they will not be watered down



...ing the working time directive.
... is reviewing how EU
...er **Brexit**, while insisting

Brexit: No plans to dilute workers' rights, minister says

15 January



Kwasi Kwarteng



Edna Mohamed

Wed 27 Jan 2021 23:59 GMT



Business Secretary Kwasi Kwarteng has
is planning to dilute UK workers' rights.

It comes after the Financial Times said so
law - such as the 48-hour limit on the working week - could be scrapped.

Review of UK workers' rights post-Brexit is axed in sudden U-turn

Only last week, new business secretary Kwasi Kwarteng confirmed consultation was going ahead



▲ Kwasi Kwarteng says he does not want to water down workers' rights. Photograph: Barcroft Media/Getty Images

Employment law post-Brexit

- **Areas which might have been in the government's sights!**
 - holiday pay
 - working time record keeping
 - changing terms post-TUPE
 - TUPE information and consultation – small transfer exception
 - cap on discrimination compensation
 - positive action

Employment law post-Brexit

- **Employment Bill 2021**

- Commitments from Conservative manifesto 2019
 - redundancy protection for new parents
 - carers' leave
 - neonatal leave
- Policies left over from Theresa May government
 - Taylor review – gig economy, employment status, minimum wage
 - ethnic pay gap monitoring
- NB these are all enhancements to employment rights

Commercial contracts post-Brexit



Brexit and.....

Commercial contracts

- Where are we?
- 'Brexit' focused review of key contracts

Commercial contracts

Brexit review - key clauses

- Brexit clause?
- Automatic renewal clauses
- Are there references to the EU and how is it defined?
- Force majeure
- Pricing, import tariffs and currency
- Disputes

Keep up-to-date

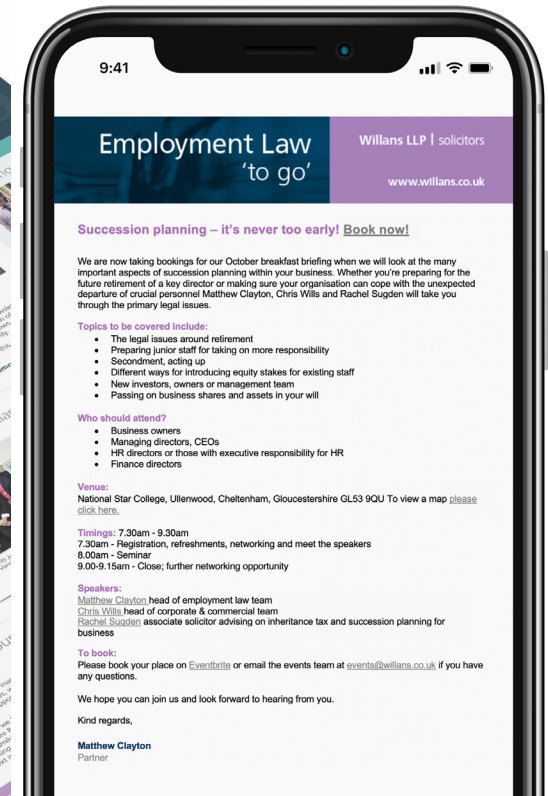
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you need the best people.

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