Insurance Breakfast Briefing

27 March 2019
Brexit Headlines

In a 52-48 referendum this would be unfinished business by a long way.

The day after we vote to leave, we hold all the cards and we can choose the path we want.

Brexit means Brexit and we’re going to make a titanic success of it.

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# Agenda

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Brexit Overview

David Carson
Employment Services and Tax Considerations

Jonathan Warnes
Brexit

Key Reward / Mobility / Immigration issues to consider

**Reward and regulation**
- Local differences in reward regulation and governance requirements
- Approach to retain and motivate staff in UK for remaining staff and in EU countries for movers/local hires – impact on reward policy
- Severance issues

**Mobility**
- War for talent
- Mobility strategy and policies
- Mobility support, commuters/STBV/STBV and change management
- Cost modelling
- Social security
- Location analysis, e.g. availability of inpatriate regimes, wealth tax costs

**Share plans**
- Understanding tax/social security positions for mobile employees
- Timing of move versus vesting/delivery
- Securities law and data protection
- CT deductibility and recharging/local accounting
- Operational aspects

**Pensions**
- Plan eligibility
- Deductibility of contributions to UK plans in EU territories
- Application of annual limits
- Consideration of local mandatory provision
- Legacy international pension plans

**Employment taxes**
- Taxation of benefits and expenses
- Claw back treatment
- Termination rules
- Utilisation of exemptions/reliefs
- Agreements with tax authorities
- Audits/reviews

**Pensions**
- Plan eligibility
- Deductibility of contributions to UK plans in EU territories
- Application of annual limits
- Consideration of local mandatory provision
- Legacy international pension plans

**Employment law**
- Steps to transfer employment
- Comparative employment law rights
- Works Council requirements re TUPEs/engagement with employee bodies
- Enforcement of restrictions

**Payroll**
- Requirement for new payroll registrations
- Vendor capabilities
- Assessment of current internal payroll system capability
- Establishment of new payrolls (as required)
- On-boarding of employees
- Resourcing

**Go forward**
- Project plan
- Questions to be considered with dependencies
- Implementation
**Brexit**

**What we are seeing in the market**

**Mobility**
- Fluidity in policy approach
- Smart use of technology and automation
- SARP – practical considerations
- Short term business traveller challenges

**Reward**
- Upskilling in key reward areas
- Ensure local teams are equipped to deliver core services

**Talent**
- Strong demand for certain roles putting significant pressure on indigenous employers to retain talent
- Shortage of mobility & HR expertise in the Irish market
- Capitalise on the opportunity from UK fallout
Overview

Permission to Work
- Employment Permit or other work authorisations
- Required by all non-EEA nationals
- Issued by Department of Business, Enterprise and Innovation
- Applied for online with no original documents
- Usually issued for 2 years

Permission to Enter
- Entry Visa
- Required by only visa required nationals
- Issued by Irish embassy/ Department of Justice
- Applied for online and in person/by post at Irish embassy
- Issued for single entry into Ireland only.
- Then must apply for re-entry visa once in Ireland. This is done by way of post with original documents. This can take 5 weeks to issue.

Permission to Reside
- Irish Residence Card (formally called GNIB card)
- Required by all non-EEA nationals
- Issued by Department of Justice
- Applied for in person at appointment at INIS office, Burgh Quay in Dublin or Garda Station in Cork/Maynooth
- Usually issued for one year
Impact of Brexit on immigration in Ireland

1. Common travel Area
2. Irish policy
3. UK nationals in Ireland
## Deal vs No Deal

### UK nationals into the EEA

<table>
<thead>
<tr>
<th>Arrivals before departure</th>
<th>Deal</th>
<th>No Deal</th>
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<tbody>
<tr>
<td>EEA countries obliged to put in equivalent local settlement schemes for UK nationals.</td>
<td>EEA countries not obliged to offer equivalent local settlement schemes must rely on EU principle that permanent residence automatically acquired after five years’ residence, but no protection of residence shorter. Treatment will vary from country to country.</td>
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<tr>
<th>New arrivals after departure (Transition)</th>
<th>Deal</th>
<th>No Deal</th>
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<tr>
<td>New arrivals in the transition period 29 March 2019 – 31 December 2020 will enjoy the same right to live and work in the EEA as those who arrived before 29 March 2019.</td>
<td>No commitment to protect status of UK nationals – work permits and residence permits may be required and will vary in each country.</td>
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### EEA nationals into the UK

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<th>Arrivals before departure</th>
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<tr>
<td>• Can continue to live, work and study in the UK</td>
<td>• Can continue to live, work and study in the UK</td>
<td>• Must apply via the EU Settlement Scheme by 31 December 2020</td>
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<tr>
<td>• Must apply via the EU Settlement Scheme by 30 June 2021</td>
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<th>New arrivals after departure (Transition)</th>
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<tr>
<td>New arrivals in the transition period 29 March 2019 – 31 December 2020 will enjoy the same right to live and work in the UK as those who arrived before 29 March 2019,</td>
<td>• Can arrive with a valid EU passport or National ID card until 31 December 2020</td>
<td>• Those wishing to stay longer than 3 months must apply for European Temporary Leave to Remain (application details TBC), which will be issued for 3 years and is non-extendable.</td>
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<td></td>
<td>• From 1/1/2021: Must obtain permit as worker or family under the new immigration rules</td>
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Data and GDPR
Nicola Flannery
## GDPR and Brexit: Transfer Mechanisms

The free flow of personal data within the EU, governed by the GDPR brings the necessary freedom to organisations to drive all aspects of their business operations. The impact of a 'no deal' Brexit on this flow of information to and from the UK requires organisations to consider alternative transfer mechanisms to ensure compliance with the GDPR.

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<tr>
<th>Adequacy Decision</th>
<th>Binding Corporate Rules (BCRs)</th>
<th>Model Contract Clauses</th>
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### What is it?
The European Commission (EC) has the power to determine whether a country outside of the EU offers an adequate level of data protection, either through its domestic legislation or international commitments it has entered into. What this means is whether or not the EC deem the non-EU country to have local data protection laws of the same or similar standard as the EU. The process of adoption of an adequacy decision involves a number of steps and can be a lengthy process.

### The challenge
Despite organisations in the UK currently complying with GDPR, this does not guarantee an adequacy decision for the UK. If the UK does not receive this adequacy status, it will be deemed a ‘third country’ from 29 March 2019. This means that any flow of personal data will have to be under an alternative transfer mechanism such as Binding Corporate Rules or Model Contract Clauses.

### What is it?
BCRs are internal rules for data transfers within multinational companies. They allow multinational companies to transfer personal data internationally within the same corporate group to countries that do not provide an adequate level of protection. There is a lengthy approval process involved in establishing BCRs including a review of the BCRs by relevant Data Protection Authorities (DPA). Where countries are taking part in mutual recognition (i.e. the lead authority is satisfied that there are adequate safeguards in place and participating DPAs can accept these findings without further review), the process can be quicker.

### The challenge
BCRs are a strategic solution for a multinational organisation, however, the BCR process is a significant undertaking which requires DPA review that can be a lengthy process. A straightforward BCR application can take 12 months to complete. This leads to a period of time where alternative arrangements must be considered.

### What is it?
The European Commission can decide that standard contractual clauses offer sufficient safeguards for personal data to be transferred internationally. It has issued standard contractual clauses for the following circumstances:
- EU controller to non EU or EEA controller
- EU controller to non EU or EEA processor

### The challenge
Organisations have just gone through a lengthy process of contract changes and amendments required by GDPR. With the UK leaving the EU as an outcome of Brexit, further review and amendment of any data processing/transfer agreements between the EU and UK will be required. This poses not only an administrative burden but has financial implications also.
GDPR and Brexit: Key steps to take now

With many organisations still slowly working towards achieving full demonstrable compliance with GDPR, a ‘no deal’ Brexit poses additional challenges. However, a well prepared action plan aligned with on-going initiatives can help to ensure a smooth transition and continuation of a free flow of personal data between the EU and the UK.

**GDPR Initiatives**

**Records of Processing**
Under Article 30 of the GDPR, all organisations processing personal data are required to have records of processing. Completed records will identify data flows and quickly establish any transfers to and from the UK.

**Transparency**
One of the core rights a data subject has under the GDPR is the right to transparency. Data Protection Notices must be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

**Third Party Management / Intra-Group Transfers**
Data controllers and data processors must have appropriate measures in place so that all processing and transfer of personal data meets the requirements of GDPR. Any transfer of personal data between group entities must also meet such requirements.

**Tech & Org Measures**
Ensuring the integrity and confidentiality of personal data by using appropriate technical or organisational measures is a GDPR principle. For any transfer of personal data outside of the EU, there must be adequate controls in place.

**Key Brexit activities**

- Maintaining up-to-date records of processing is core to compliance with the GDPR. Use records of processing to form a complete list of all data flows to and from the UK.
- Fully identified data flows should allow organisations to quickly scope out and plan for the majority of the work that will be required in terms of subsequent contract and data protection notice updates/amendments.

- Review all data protection notices and amend where necessary. Consider notices that have a blanket statement such as ‘No personal data will be transferred out of the EU’ as well as any derogations that may apply under Article 49 of the GDPR.
- Formulate communication plan for updated DPN’s and any associated costs (e.g. call centre scripts for queries, sending hard copy DPN’s, data subject requests as a result of the changes (erasure, access etc.).

- Update due diligence procedures to allow for data processors situated in the UK.
- Review and update all existing data processing contracts to ensure appropriate clauses are in place e.g. Model Contract Clauses.
- Consider the use of Binding Corporate Rules to continue to transfer personal data to group entities based in the UK.

- Assess what transfer mechanisms are currently in place to protect personal data and any additional security measures necessary.
- Consider any planned initiatives to identify UK dependencies from both a system and contract perspective.
- Consider updates required to Data Protection Impact Assessments and Privacy by Design controls.
Regulation

Sean Smith
# Brexit – The Regulatory Aftermath

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<thead>
<tr>
<th></th>
<th>Deal</th>
<th>No Deal</th>
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<tbody>
<tr>
<td>Ireland to UK</td>
<td>Status Quo – Dec 2020</td>
<td>TPR FSCR</td>
</tr>
<tr>
<td>UK to Ireland</td>
<td>Status Quo – Dec 2020</td>
<td>Run Off – 3 years</td>
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- **Sweden**
- **Germany**
- **Netherlands**
- **France’s “Projet d’habilitation”**
Brexit – The Regulatory Aftermath

- **Governance and Organisation**: Local, independent functions and controls which report locally to the Board.

- **Conduct & Culture**: How the firm’s culture promotes good regulatory behaviour. Quantitative and qualitative measures to be provided.

- **Risk Management and Internal Control**: Proportionate to the scale and complexity of the business model.

- **Outsourcing & Business Continuity**: Detail of material outsourcing, contracts, objective rationale for selection oversight, selection, due diligence, ongoing monitoring and control etc.

- **Business Model**: Including strategy, products and services, business lines, regulated/unregulated activities and details of clients etc.

- **Production of certain policies, procedures, documentation**: Client Asset Management Plans, Market Abuse etc.

**Substance**

Day 1 vs Day 2
Brexit – The Regulatory Aftermath

Super Regulators
- Greater convergence amongst EIOPA, ESMA, EBA
- Higher regulatory expectations

Sophistication / Diversity
- Larger, more sophisticated and diverse insurance industry

Waves 1, 2, 3
- Expectation is that initial presence will be small (meet regulatory requirements) but that this presence will increase with future waves as firms become established

Third Country Relationships
- Regulatory considerations
- GDPR
- Contracts / Legals – moving goalposts
Tax Impacts

Conor Hynes
Brexit Tax Impact
Key Considerations for Insurers

Exit Charge
• Potential exit charge on the transfer of certain assets.
• For example, moving goodwill, customer lists, IP, etc. – what value is being moved out of the UK into Ireland?
• Pre and Post 2002 considerations.

Employment Taxes
• Impact of the transfer of staff from the UK to Ireland.
• Consideration of any reliefs available or required.

Transfer Taxes
• Consideration of, for example, stamp duty and whether any reliefs would be available to mitigate any potential liability arising.

VAT Impact
• Is there VAT due on the transfer of assets / business from the UK to Ireland?
• Going forward, will services be provided on a cross border basis on which reverse charge VAT is due with limited right of recoverability?
• Can any VAT arising be mitigated?

Transfer Pricing
• Consideration of transfer pricing implications regarding the initial transfer and in respect of transactions/services provided between connected parties on an ongoing basis.

Operational and Policyholder/Product Taxes
• Be aware of ongoing policyholder tax impact, including reporting, withholding and other compliance obligations in Ireland and other relevant foreign jurisdictions.
Conclusion

Eimear McCarthy
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