



PREPARING FOR BREXIT

A MODERN LAW FIRM PURPOSE BUILT TO SUPPORT AMBITIOUS
BUSINESSES FROM START-UP TO SCALE-UP

CONTENTS

Introduction from Toby Harper - Page 3

Six steps to getting ready for Brexit - Page 4

Case Studies :

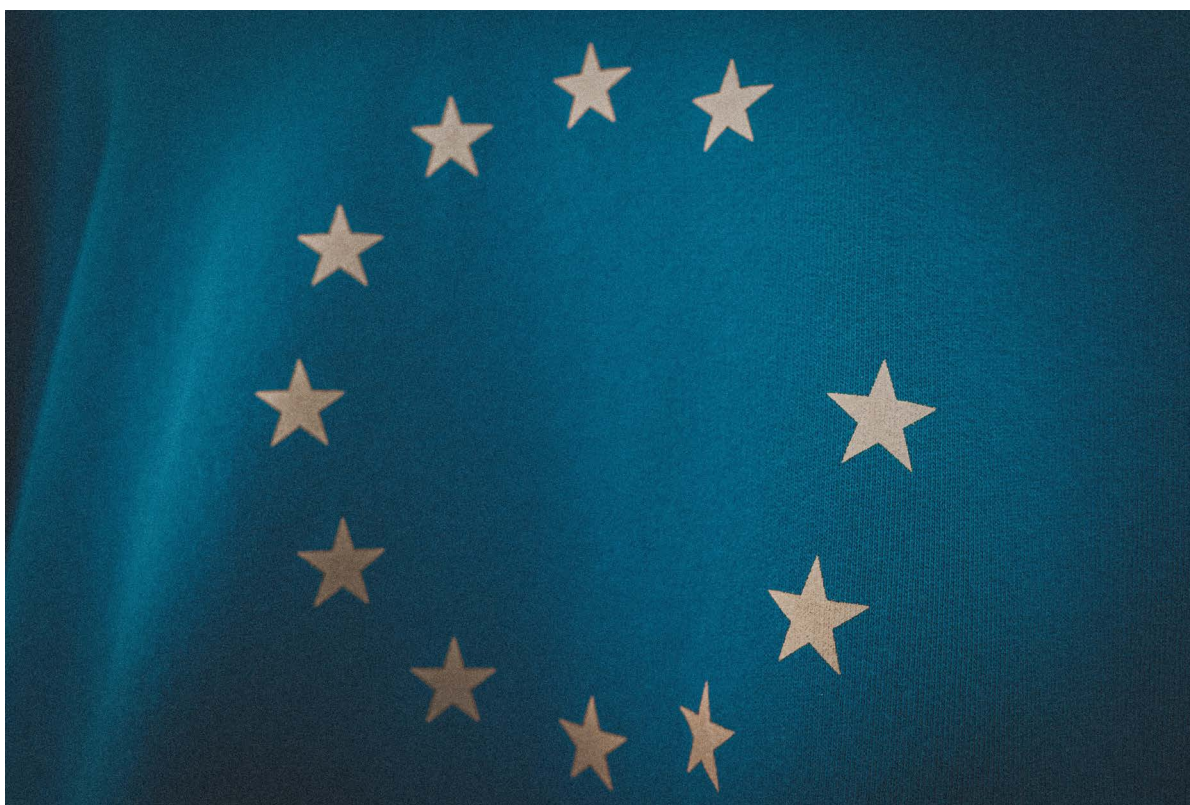
Twipes - Page 13

Zoom Abroad - Page 15

Peter Wilkinson - Page 16

Emma Jones - Page 18

About Harper James - Page 20



INTRODUCTION

Following the monumental challenges the Covid-19 pandemic has thrown up, businesses now face a new battle: dealing with Brexit. In the weeks and months ahead, one question will be on every entrepreneur's mind: how will Brexit affect my business?

As business owners, we don't like uncertainty. The government now needs to provide regular, clear and updated advice on what our withdrawal looks like and how it will impact on companies across the UK. But, equally, as our report sets out, there are things that all businesses can do right now to try and best manage the challenges Brexit will bring.

A recent report by the Institute of Directors revealed:

- ▶ Only a quarter of business leaders thought their organisations were fully ready for the end of the transition period
- ▶ Nearly half of the 978 company directors polled said they weren't able to prepare
- ▶ Of those, one in seven admitted to being 'distracted' by coronavirus
- ▶ Almost a third said they needed the details of any changes to be clearer before adjusting
- ▶ The overriding message was businesses felt unable to prepare, whether due to pressures of the pandemic or because they needed more clarity

It is against this backdrop that Harper James Solicitors, a law firm purpose built to support businesses from start-up to scale-up, releases this white paper: *Preparing for Brexit*.

Preparing for Brexit is a step-by-guide to preparing your business for the changes coming next year. We speak to our clients who set out how Brexit will impact their business and the kind of support they are looking for. Peter Richardson, Founder of the LinkedIn Better Business After Brexit group, shares his thoughts on why it's vital SMEs get the legal advice they might need to get ready for Brexit. Business expert and best-selling author Emma Jones MBE reveals how the publication she founded, *Enterprise Nation* are standing up for small firms and start-ups and helping prepare their community for the changes to come.

Getting the right advice now and ensuring your business is Brexit-ready could save you a lot of money and prevent disruption to your business in the future.

Toby Harper
Founder and CEO, Harper James Solicitors
September 2020

SIX STEPS TO GETTING READY FOR BREXIT

What should your business be doing now to get ready for Brexit? Here, we guide you through the six steps companies should be looking at between now and 1 January. Our commercial partner and Brexit expert Sarah Gunton provides detailed advice on how firms can best prepare.

1. TAX, TARIFFS & CUSTOMERS

From 1 January 2021, an Economic Operators Registration and Identification (EORI) number is required to move goods into or out of the EU. Register for an EORI number [here](#). All goods imported to the UK will also be subject to UK Global Tariffs from 2021. As a business owner you check what these will be [here](#).

If the UK leaves the EU without a deal, there will be new tariffs on many goods and services that are exported from the UK to the EU. Even if a deal is agreed, there may still be tariffs to pay on some traded items. Those goods that we export to the rest of the world that are currently subject to EU-negotiated tariffs will be subject to new duty rules too, many of which have yet to be agreed.



What can you do now?

- ▶ Monitor announcements about new foreign tariffs that could apply to your goods.
- ▶ Review your current commercial contracts to understand your commitments and how the different Brexit outcomes may impact them.
- ▶ Consider whether employing a customs agent to fill out customs declarations could be cost and time effective.
- ▶ Check if you will have to register for VAT in EU countries that you work in. An accountant with EU experience will be able to advise you on this.

SARAH GUNTON, COMMERCIAL PARTNER AT HARPER JAMES, SAYS:

It may well be the case that your existing agreements do not specifically mention Brexit. However, they may still contain provisions which address the allocation of risk between the parties, including sharing cost increases. For example, where you are the supplier, you may have the right to increase your prices in certain circumstances or with effect from a specified date each year. You should consider the best time to exercise those rights: it may be that the increases in the relevant prices index will only be manifested after 1 January. It's worth waiting a while before you call on your rights.

Your agreements may also contain force majeure provisions which relieve one or more parties from the consequences of a breach caused by something outside that party's control; for example, a delay in delivery which would not have happened were it not for an act of government.

Clearly, such provisions will not always be in your favour, but it may be useful to be aware of them so that you can prepare for any requests by your customers or suppliers for a reallocation of risk in their favour.

2. SUPPLY CHAINS

Start-ups must audit their supply chains to check which goods or services are procured from the EU.

What can you do now?

- ▶ Familiarise yourself with all your contracts. Do you know what will happen if certain clauses get activated, and will they work in your favour?
- ▶ Speak to all of your suppliers and service providers about their plans for Brexit.
- ▶ Ask whether your suppliers are stockpiling to cover any delays at the borders.
- ▶ Find out if anyone in your supply chain will be putting their prices up to cover additional Brexit costs. Where any links in the supply chain are found to be ill-prepared for Brexit, look for alternate suppliers.

SARAH GUNTON SAYS:

Again, this is a matter of being clear as to your current contractual position, as well as the legal and regulatory framework. Where you are subject to exclusivity obligations, for example to buy all of your requirements for a particular item from a particular supplier, then your options may be more limited. Where you depend on a particular manufacturer to supply products, including spare parts, then you too might want to consider stockpiling, adjusting your forecasts if necessary to ensure that you are entitled to insist upon supply before 31 December.

3. STAFFING

Any UK-based employees who are citizens of the EU, the European Economic Area (EEA) or Switzerland, must register for settled status to continue living and working in the UK six months after the end of the transition period on 30 June 2021. A new points-based system for sponsored workers will be coming into effect from 1 Jan 2021. This will cover EU and non-EU migrants alike.

What can you do now?

- ▶ Check to see if all your staff can continue to live and work legally in Europe post-Brexit.
- ▶ Ensure any affected staff apply here.
- ▶ British nationals working in Europe need to be able to continue to legally work there too.

SARAH GUNTON SAYS:

You may be required to make nominated members of staff available to a particular customer, who may also have the right to veto any proposed replacement (either on good grounds or on any grounds). If a replacement member of staff must have a particular skillset, then you should take steps to ensure that you can recruit that person in good time. This may be particularly relevant if you are providing consultancy services in the computing industry.

4. FINANCE

Additional stockpiling and storage costs to cover potential delays at the borders as the UK gets to grips with life after Brexit, new tariffs, price increases and currency fluctuations could all make a big dent in start-up finances.

What can you do now?

- ▶ Speak to your bank or finance lender about finance options for temporarily increasing your cashflow and consider locking in currency prices at current rates.

SARAH GUNTON SAYS:

Unsurprisingly, new financial arrangements will take time and may involve extensive documentation. Your funder will also be seeking to minimise the risks of uncertain times: in order to do so, it may seek to transfer risk to you. You will need to leave enough time to ensure that documentation is thoroughly reviewed, appropriate to your requirements and has the right risk profile for your business.

5. REGULATORY CHANGES AND DATA

Currently most UK regulations are recognised within the EU and vice versa. The UK is now creating a new set of regulations to operate in parallel with the EU, but there is no guarantee that they will all be ready in time or that the EU will accept them all. These regulations cover every industry, even down to the classification of organic foods.

Brexit could have a major impact on the regulation of data. From 1 January 2021, the EU is most likely to treat data transfer to and from the UK in the same way that it does other non-EU countries. Non-EU countries that wish to transfer data without restrictions, subject to GDPR compliance, from the EU are subject to adequacy decisions by the EU.

The EU should have already begun its adequacy assessment of the UK and it's hoped that it will make an adequacy decision on the UK during the transition period, providing all the conditions are met, but this is not guaranteed.

If an adequacy decision is not made, GDPR transfer rules will apply to any data coming from the EEA into the UK. To comply with these rules, you may have to take steps to put GDPR safeguards in place to ensure that data can continue to flow into your company in the UK from the EEA.



What can you do now?

- ▶ Keep up to date with changes to UK data protection law after Brexit by regularly checking the UK Information Commissioner's Office (ICO) website.
- ▶ The government is advising some UK data controllers and UK data processors to appoint an EEA-based representative: check if this applies to you.
- ▶ Even if you don't transfer data to and from the EU, review where your data is stored. You may discover that your third-party cloud computing supplier hosts your data in the EEA.
- ▶ If this is the case, move your data to the UK during the transition period. You don't want your data to be stuck in a data no-man's land in the event of a no-deal Brexit.
- ▶ Assess which regulations impacting your business could change: industry bodies are a good starting point.
- ▶ Contracts and other paperwork may need to be revised post-Brexit. Assess whether your privacy rules, terms and conditions, contracts and other documentation need revising to reflect post-Brexit data protection laws and other regulations.

SARAH GUNTON SAYS:

Your privacy policy must make transparent to each data subject what you do with personal data. This includes detailing those of your suppliers who handle personal data on your behalf. If you change those suppliers – such as your hosting services provider – then you will need to amend your privacy policy so that it gives an accurate picture of your data practices to each data subject.

6. LOOK TO NEW MARKETS

Brexit may cause some UK start-ups to shift their focus from EU business. If your trade could be negatively impacted by Brexit, look into expanding into new markets outside of the EU.

What can you do now?

- ▶ The Department for International Trade is actively encouraging small businesses to test out new international markets: [find out more here](#).

SARAH GUNTON SAYS:

While the UK was a member of the EU, you could assume that many laws were effectively the same across the EU. This made it easier to justify insisting with European customers and suppliers that a contract should be subject to the laws of England and Wales. As there is no guarantee that the interpretation of a contract under the laws of England and Wales will be the same as an interpretation under another law, you may have to take local law advice. It's also worth exploring whether your goods and services requirements can be achieved by contractual obligations, rather than relying upon the law. For example, if the regulatory controls are weaker in your new market, then in order to maintain the required quality standards, you may need to use the specification for the goods or services that you are buying to impose equivalent controls.

CASE STUDIES

TWIPES

Elle McIntosh



Co-founder, Twipes

‘As a business, we believe that there will be massive changes in terms of production and manufacturing.’

Elle McIntosh is the co-founder of Twipes, a company that makes biodegradable wipes. She says Brexit will have a big impact on her firm’s supply chain and is urging ministers to ‘be transparent.’

How will Britain’s exit from the European Union impact your business?

There are many unknowns when it comes to Brexit. As a business, we believe that there will be massive changes in terms of production and manufacturing. By having European suppliers, there’s potential to incur high import tax and charges that as a SME, we will have trouble keeping up with.

What you are doing to help manage this impact?

We have taken steps to tighten our supply chain and bring it closer to the UK. By closing our supply chain and sticking with as many UK suppliers as possible, we believe that we can protect ourselves from any severe changes that may come with us leaving the European Union.

Have you considered getting legal advice on how to Brexit-proof your business?

We have been looking at the legal aspects of managing the company and working within the EU once Brexit takes effect. We would love help from import lawyers and to get answers about how to operate within the EU and with European clients when Brexit hits.

Do you think the government is doing enough to prepare SMEs and start-ups for our withdrawal?

I think for SMEs, there is still a huge amount of information missing in terms of what it means for them. A lot of start-ups either rely on European trade or manufacturing. Many of us are still heavily kept in the dark when it comes to knowing what is to come. It's the responsibility of the government to provide clear instructions on what it means for us.

What message would you send to ministers overseeing withdrawal?

Be as transparent as possible. Be clear and understand that this is unprecedented, so we need to be informed so we can prepare for what's to come. Do this as soon as possible, as we business owners are already running out of time to prepare.

ZOOM ABROAD

Abhishek Nakhate



Founder, Zoom Abroad

'We are planning to get legal advice on EU regulations and GDPR-related adaptability. We are keen to know if there will be any changes after Brexit.'

Abhishek Nakhate is the founder and CEO of Zoom Abroad, who help place international students with UK universities. He thinks Brexit could offer opportunities for his company, but is worried about a lack of government advice.

How will Britain's exit from the European Union impact your business?

We believe Brexit will positively impact our business, although my personal views are different. Since we cater to international students, who are motivated by job opportunities and work permits, the expectation is that post-Brexit, non-EU students will enjoy the same treatment and opportunity as EU students.

What you are doing to help manage this impact?

We are planning on offering our service to EU students to help them apply to UK universities. Currently, we only work with students from Asia. We will still need to adapt our business to this new opportunity.

Have you considered getting legal advice on how to Brexit-proof your business?

We are planning to get help on EU regulations and GDPR-related adaptability as we are keen to know if there will be any changes after Brexit.

As a business owner, what message would you send to ministers overseeing withdrawal?

We need more clarity on how immigration and work permits would work, there is still ambiguity.

PETER WILKINSON



'Legal advice will be important. Put in systems to monitor and then review risks.'

Peter Wilkinson is a strategic marketing consultant and founding member of the LinkedIn group, Better Business After Brexit.

How will Britain's exit from the European Union impact your business?

It will offer many opportunities. For me, the focus will be on managing the increased workload created by the business opportunities.

Have you considered getting legal services advice in relation to ensuring your business can cope with any challenges Brexit may bring?

Reviewing legal is always important. Mid-term, the changes that will happen when some of the EU law is redefined in British law will need watching. Strategic opportunities may present themselves, but also risks.

Do you think the government is doing enough to prepare SMEs and start-ups for our withdrawal?

Yes, businesses can find out what they need to know if they look. There will always be uncertainty in a fluid negotiation, such as the government is in with the EU. There is always risk in not having definitive answers, but we have to be pragmatic given the situation. Clearly some old skills that we had pre-EU integration will need to be sharpened or learnt again.

As a business owner, what message would you send to ministers overseeing withdrawal?

Keep up the good work and get us out by the deadline, no extensions or exit drift. Don't give any ground on fishing rights, borders, immigration, law-making or our ability to control our financial systems. Great Britain needs to be master and commander of its own ship.

The key message to my fellow SMEs is to find and see the opportunities. Strategic planning and robust SWOTS. Rise to the challenge and reap the rewards that will be there for those that wish to find them. Put in systems to monitor and review risks.

EMMA JONES

Emma Jones



Founder, Enterprise Nation

‘Small firms will need a lot of support, potentially financial, to get them up to speed and allow for continuity.’

Emma Jones MBE is a business expert and best-selling author. She is founder of Enterprise Nation, a vibrant community of over 75,000 small businesses and business advisers.

How does Enterprise Nation believe Britain’s exit from the European Union will impact the SME and start-up sector?

We are ever optimistic about the opportunities Brexit might bring whilst trying to strike a balance between providing useful advice and clarity in response to announcements and challenging where we feel small firms might be marginalised. We think it’s too early to tell what the impact will be. One thing we know already is that small firms will adapt when the time comes. In terms of start-ups there are many reasons to see a de-coupling from the EU as a boost, certainly financially we might be able to see the opening up of investment routes into tech firms, for instance. We do however think small firms will need a lot of support, potentially financial, to get them up to speed and allow for continuity. We suggested Brexit vouchers to the Government in 2019, a move now supported by other business groups.

Does Enterprise Nation think the Government is doing enough to prepare this sector for our exit?

Whilst we all want to see progress, what is happening is enormous and happening concurrently with a global pandemic. We also know that what we see is not necessarily what you get when it comes to politics. Yes, we’d like clarity, continuity and tariff and quota-free agreements all round. But the reality is, it’s not going to be entirely frictionless. And we must prepare for that.

What impact do you think a no-deal Brexit would have on the start-up and SME sector?

It's true to say that lawyers are going to be busy! We've been offering support via our Recovery Advice for Business initiative that gives small firms access to an hour's free advice from a qualified adviser. Legal issues seem to be more around IP, raising finance and managing employee relations than any other legal concerns, but that may change.

If there was one message Enterprise Nation would like to send to Ministers overseeing our exit what would it be?

That's simple. Micro firms and start-ups make up 96% of the UK's business community. They are diverse, but as we've seen over the pandemic, they are a vital cog in the wheel. Without independent cafes and restaurants, shops and offices, garden centres and pubs, we've seen high streets and our lives and fortunes changed dramatically. Today you can trade globally from your kitchen table via powerful platforms like Amazon, for example. Small firms are diverse and complex and different, but also brilliant. I hope they will focus on ensuring transition will be smooth, as frictionless as possible but above all, easy to navigate and give firms access to the correct advice from experts.

ABOUT HARPER JAMES SOLICITORS

As a full-service commercial law firm we can provide expert advice in banking and finance law, commercial law, corporate law, dispute resolution, employment law, data security and protection, and intellectual property.

Almost all of our lawyers have previously worked for a top 100 UK law firm or in-house at large international businesses. Many having achieved partner level or beyond, with at least 10 years post qualified experience.

WHAT WE DO

The commercial team at Harper James Solicitors is ready to help you legally prepare for every challenge that Brexit may bring and are well equipped to advise swiftly, pragmatically and with your business needs in mind.

As experienced commercial solicitors, we understand that your business decisions need to be supported by legally water tight agreements that enable you to capitalise on opportunities while minimising legal risks.

We have an in-depth and comprehensive understanding of commercial law and are able to assess, prepare and negotiate all forms of your business arrangements.

WHO WE HELP

We advise a wide range of companies and business owners in the UK, ranging from high growth companies, start-ups and investors, to medium-sized enterprises, across multiple sectors on how to make effective commercial decisions – focusing on the issues that matter to you.

OUR COMMERCIAL TEAM



CLIVE MACKINTOSH
DATA PROTECTION
& PRIVACY



EDWARD KILNER
IP & COMMERCIAL
TECHNOLOGY
ASSOCIATE



EMILIA SMITH
COMMERCIAL SOLICITOR



MICHELLE HAYWARD
COMMERCIAL SOLICITOR



RANA CHATTERJEE
COMMERCIAL SOLICITOR



ROB COBLEY
IP & COMMERCIAL
TECHNOLOGY PARTNER



ROB COURT
IT & COMMERCIAL
SOLICITOR



SARAH GUNTON
COMMERCIAL PARTNER

CLIENT FEEDBACK



Over the years Harper James have helped us navigate complex legal issues and red tape, providing distilled options and legal consultancy that far exceeds the service levels we've previously experienced from more traditional law firms. The team act like our own in-house counsel so, regardless of which lawyer we work with, we feel supported and that they truly have our best interests at heart.

Michael Edwards,
Co-Founder

inspire



I can't sing our solicitor's praises enough: fast, efficient, sensible and supportive. A quick and fair resolution to all queries that we have worked on together and would thoroughly recommend her to any of my contacts.

Samuel B Higgs,
Account Director

SIGNAL

WE'RE UNLIKE ANY OTHER LAW FIRM

Small but exciting businesses often struggle to afford the legal support they need at a time when it's critical to their success. We're on a mission to make legal services more cost effective and accessible, particularly for entrepreneurs and early-stage/high growth businesses.

OUR SERVICE PLANS ARE WHAT MAKES US DIFFERENT

We have a different approach here at Harper James Solicitors. Our unique subscription plans coupled with our remote operating model allows us to deliver expert legal advice, from partner level lawyers, at just £99 per hour - a fraction of the cost compared with traditional law firms.

A NATIONAL LAW FIRM

We mainly work remotely, so we can work with you wherever you are. But we can arrange face-to-face meeting at our offices or a location of your choosing.

- ▶ Birmingham
- ▶ Cambridge
- ▶ London
- ▶ Manchester
- ▶ Oxford
- ▶ Sheffield



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