

Group Briefing

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Brexit: Immigration and Employment Law Implications

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On Thursday, 23 June 2016, the United Kingdom will vote in its referendum to determine whether the UK should remain in or leave the European Union. A leave vote could have very wide ranging implications for employers in the Republic of Ireland with UK operations and UK employers with Irish operations. The 2011 Irish Census recorded 46,902 UK nationals living and working in Ireland, while 90,000 Irish nationals are said to have moved to the UK since 2008.

While the full extent of any such implications would depend on subsequent negotiations between the EU and UK or Ireland and the UK, we have set out some of the key issues likely to arise below. The fact that the Republic of Ireland (RoI) and Northern Ireland (NI) would, in a leave scenario, also share an EU/Non-EU border throws up further potential complexities.

This note does not address any consequential developments such as Scotland, Wales or Northern Ireland adopting an approach that differs to that of England. Irrespective of the outcome of the referendum, the RoI will continue to be an EU member state.

It is worth noting that there will be no "automatic" effect of a leave vote. Rather, a majority vote in favour

of leave would trigger lengthy and complicated negotiations to define the leave process for the UK and potentially, its future relationship with the EU. The process for exiting the EU may take up to 2 years to negotiate.

In addition, the UK would need to examine its relationships with all of its other international trade partners with whom it currently trades under EU based agreements. Therefore, it will take some time before the precise form of Brexit becomes clear. Given the close ties between the UK and RoI, including the historical Common Transport Area (e.g. when the UK opted to remain out of the Schengen zone, the RoI followed suit to preserve the CTA) and the additional complexities of implementing a physical border between the RoI and NI (ignoring the obvious political sensitivities accompanying any such development), the effect of a Brexit, could have very substantial implications for employers in one jurisdiction operating in the other.

POST-BREXIT OPTIONS

Broadly, there are five models the UK might follow if the majority vote is for a Brexit.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

**1. Join the European Economic Area (EEA):
The Iceland, Lichtenstein, Norway Model**

Members of the EEA (either through the EFTA or direct agreement) accept most EU legislation but have no voting rights at EU level or direct ability to influence EU legislation, although they do have input. Certain specific areas are excluded from the EEA such as laws regulating agriculture and fisheries. For this reason, this is considered a highly unlikely option as it would seem to achieve little required by a leave vote. If UK, post-Brexit, was to enter the EEA it would still mean free movement of people, goods, services and capital (the “four freedoms”) within EU member states but without direct representative influence into policy, etc.

However, if this approach was adopted, little if anything would change for employers based in either jurisdiction with operations in the other.

2. Join the European Free Trade Association (EFTA) and/or Equivalent Bilateral Trade Agreements: The Swiss Model

Switzerland currently engages with the EU through this model, joining the EFTA but supplementing same with bilateral trade agreements with the EU (currently 20 major and 100 minor agreements). Switzerland agreements with the EU include free movement of persons within the EU meaning there are no entry visa requirements are imposed on EU nationals.

This model would also seem unlikely due to the adoption of the majority of EU laws/replication of same, the adoption of same seemingly irreconcilable with a majority leave vote.

The implications for UK employees in Ireland and vice versa would depend on the outcome of the negotiations between the EU and UK and/or the UK and RoI. However, it might be anticipated that the CTA could be retained under such an arrangement.

**3. Establish a Customs Union with the EU:
The Turkish Model**

The relationship between Turkey and the EU is governed by a customs union. Entry/exit and employment permit requirements are negotiated with individual EU member states.

A customs union would create a form of free trade area with a common external tariff. This would require the UK to apply the same import quotas, customs duties, etc. agreed with the customs union.

The implications for UK and RoI of this model would remain to be seen in light of post-Brexit negotiations and, whether or not the CTA was retained.

This is also viewed as an unlikely option.

**4. Negotiate a Bilateral Trade Agreement with the EU such as a Comprehensive Economic and Trade Agreement (CETA):
The Canadian Model**

This is viewed as a possible model for Brexit as it would eliminate the huge burden that would be presented by negotiating individually with EU member states. However, the UK would still have to negotiate with non-EU trade partners with whom it currently trades under EU negotiated agreements, most notably the United States of America.

Once the CETA is ratified, it will govern EU-Canadian trade relations. Under this agreement, the movement of workers is substantially facilitated but it is not a charter for the free movement of workers. The CETA will also create preferential trading relationship between the EU and Canada, allowing temporary entry and stay to those travelling for business purposes. CETA negotiations commenced on 10 June 2009 and the Agreement is currently undergoing translation into all Treaty languages, following which Canadian-EU ratification processes will begin.

If UK-EU trade relations were to be governed by an agreement similar to CETA, the free movement of workers between the UK and the RoI could

be facilitated, however, it would be in a manner more stringent than that provided for under current EU arrangements and the CTA.

5. Trade within the World Trade Organisation (WTO)

Under the WTO, the UK would need to negotiate its own trade agreements with other countries. This option presents the most uncertainty and the highest level of logistical demand.

Under the WTO model, the UK would not access the EU on terms more advantageous than other countries that do not have free trade agreements with the EU.

EFFECTS ON UK-IRISH OPERATIONS

The implications of the UK leaving the EU raise the prospect of significant changes for Irish and UK businesses with operations in the other jurisdiction. In the short-term, a Brexit would create a very significant amount of uncertainty as to how future relationships would be governed and the uncertainty may create significant difficulties for employers and their planning/decision making.

Longer term, depending on the model adopted by the UK in respect of its relationship with the EU or directly with the RoI the following might be anticipated as common difficulties for employers in either jurisdiction:

- » Passport controls being placed on all borders between the UK and the EU, would this include between RoI and NI?
- » Will employment permits be required for Irish citizens working in the UK and UK citizens working in RoI? “Island of Ireland” based staff (e.g. field sales, etc.) may require visas or employment permits to enter RoI/NI depending on “home” territory.
- » Will registration and immigration controls be imposed for existing non-national/non-EU workers already in the country?

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- » Necessity for UK-run pan-European HR teams to remain familiar with EU employment laws if managing workforces/assisting managers in the RoI/EU, notwithstanding a Brexit and any relaxation of such EU labour laws in the UK.
 - » Unravelling of trans-European works councils/consultation fora for UK based employees? What if the original European forum was only established relying on UK based employees to meet eligibility criteria or was reliant on UK employee votes to be established?
 - » The commercial and regulatory feasibility for services currently provided out of one jurisdiction but “passported” to the other or others under existing EU permissions.
- at times shared history, interact in the future. Dependent on the decision of the UK citizens and how a Brexit is implemented, if it arises, workers from either jurisdiction currently working in the other, or planning to do so, may find themselves working and living in a much changed environment subject to immigration and related controls which have never before featured heavily in the relationship between Ireland the UK.

From the perspective of UK operations in the RoI and vice versa, in addition to entry requirements for persons travelling, trade restrictions such as taxes, import duties and customs duties on the transfer of goods/services of some form are likely to be imposed. With increased trade barriers, trade volumes (and potentially price) of important products are likely to be impacted. Sectors such as chemicals and pharmaceuticals account for a large share of exports from RoI to the UK but other sectors such as agriculture, food and beverages are heavily dependent on export to the UK. From the UK’s perspective, financial and business services might be regarded as the most important services exported to and imported from the UK and there are already signs of major financial services companies assessing their “Brexit options” and developing contingency plans.

Whatever the future may hold, it is clear that a vote in favour of a Brexit, will require a very significant assessment by the UK and Irish governments of their relationship and, depending on the form of the Brexit, may require extensive bilateral negotiations to determine how both States, with a long, close and

OUR TEAM

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