

BREXIT UPDATE:

What has happened since March?



Brexit negotiations resumed on April 20th and will continue on May 11th. A progress review is scheduled for June.

Following the first round of Brexit negotiations on 2nd March, the coronavirus pandemic struck Europe and both EU and UK Chief Brexit negotiators. As a result, Brexit news fell into the shadows and negotiations were delayed by 6 weeks. Negotiations resumed via videoconference on April 20th and are set to continue on May 11th and June 1st. A formal review of negotiation progress will take place on June 30th.



Much remains to be resolved within the existing timeline and the IMF Chief has suggested an extension

There is still much to be resolved between both sides, even at a high level. Matters include rights to fishing waters, how bound to EU regulation the UK will remain (i.e. the ‘level playing field’) and an agreement as to dispute resolution proceedings, specifically whether it is appropriate for the European Court of Justice to have full oversight of and jurisdiction on these matters. There have also been requests from the IMF chief Kristalina Georgieva to extend the transition period to ease the burden on governments trying to manage the unprecedented uncertainty resulting from the coronavirus pandemic.

But the UK will not compromise the deadline and it seems inevitable that it will leave the EU on 31st December

Yet despite this, the UK government continues to emphasise its unrelenting commitment to the existing timelines irrespective of whether the EU were to request an extension, and it has remained firm in the belief that “legislative and economic flexibility” resulting from independence will enable it to better manage the UK’s economic recovery.

It therefore seems inevitable that the transition period for the UK’s exit from the European Union will be 31st December 2020 and regulatory divergence will begin thereafter.

A no-deal scenario is looking more likely

Furthermore, the odds of no-deal or ‘hard Brexit’ are increasing as even prior to coronavirus pandemic and subsequent negotiation delays, many voices from within the EU, including EU chief Ursula von der Leyen and chief negotiator Michel Barnier, were saying that it would be impossible to reach a comprehensive trade deal by this deadline.

A full Brexit timeline is available at the end of this document

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Sanitary/PhytoSanitary (SPS) are likely to be required at UK-EU borders from 31st December 2020

As part of the EU, the UK and EU were, on the whole, able to partake in frictionless trade underpinned by the EU principal of Mutual Recognition: anything produced legally in one member state can be marketed in any other member state. This avoided the need for tax or sanitary/phytosanitary (SPS) restrictions on border crossings and promoted smooth trade. With regulatory divergence and with the UK wanting to have the ability to determine its own taxation, customs checks look inevitable to ensure food crossing to and from the EU meets the required standards, and SPS checks on crossing look almost inevitable.

From a trade perspective, Northern Ireland will, on the whole, be treated as a part of the EU in order to avoid a hard border within Ireland.

Customs checks and regulatory assurance have been a particular issue of concern at the land-border between The Republic of Ireland (Southern Ireland, which will remain part of Europe) and Northern Ireland (which will remain part of the UK). Negotiations to avoid a 'hard border' within Ireland resulted in a 2019 agreement that require British officials to undertake European customs regulatory and veterinary checks on products entering Northern Ireland from the rest of the UK (as part of the EU they would happen by default when entering the Republic of Ireland). However, to date the EU are concerned about a lack of progress on this particular issue.

A committee was established in April to address this and a 'special academy' has been created to train people to manage the additional trade documentation

A committee has been established and first talks reportedly took place on 30 April 2020. This week, the government announced plans to train 50,000 people to fill in customs forms through the creation of a 'special academy', having so far invested £34 million into the customs intermediary sector. Beyond this, concerns regarding the creation of intra-UK trade barriers between the UK mainland and Northern Ireland, customs duties, VAT and state-aid restrictions are yet to be defined.

REGULATORY CHANGE AND DIVERGENCE

UK divergence from EU legislation will begin on 31st December 2020 and preparations for this are already underway

All pieces of EU legislation deemed necessary have been imported into the UK Statute database (www.legislation.gov.uk) and the relevant amendments are in place to make the legislation functional once the transition period ends. Once the transition period ends the UK is going to stop directly adopting future amendments made by the EU and in effect, regulatory divergence begins.

Some aspects have already changed: Novel foods and nutrition and health claims now require separate submissions to the EU and UK

For things requiring approval such as novel foods and nutrition and health claims, these can no longer be submitted for inclusion on the associated lists via the UK authorities and will need to be submitted via the EU. As the approval process can be expected to take longer than the remaining transition period they will not automatically be imported into UK Legislation and to be applicable within the UK will need to be submitted via UK regulatory authorities when that possibility becomes available after the 31 December 2020.

However, to continue trading with EU it is likely that the UK will need to stay well aligned

The EU has continued to emphasize that the UK cannot benefit from access to the single market if it is not willing to meet its requirements, or if the UK seeks to gain a competitive edge that disadvantages those within the single market.

This follows directly from Article 11 of EU Regulation 178/2002:

Food and feed imported into the Community for placing on the market within the Community shall comply with the relevant requirements of food law or conditions recognised by the Community to be at least equivalent thereto or, where a specific agreement exists between the Community and the exporting country, with requirements contained therein.

And in the short term, for example, uncertainty prevails regarding issues such as organic equivalence as it is unclear whether the UK should count as a third country

Organic equivalence hasn't as of yet been established, or certification bodies approved, mainly due to the UK not yet fully counting as a third country so until this occurs, from 31 December 2020 it will not be possible to export Organic produce or goods, and even after that it may take some time for arrangements to be put in place.

Fundamentally, businesses trading internationally must continue to be conscious of the receiving market's regulation and manage these requirements even where they may conflict

This brings into light questions about various other trade deals, particularly that with the USA which may drive divergence. Essentially, the UK and food manufacturers looking to trade with EU or any other 3rd party market, must be conscious of the appropriate standards and supply to those, as is already the case with exports to the USA.

Further regulatory divergence within the UK is possible from 2023

Following devolution, Scotland and Wales gained responsibility for Food Legislation in their territories and from 2023 (following a two-year hiatus whilst BREXIT is resolved) it is possible that they may introduce their own legislation overwriting any unwanted legislation from Westminster (England/UK).

But Northern Ireland is likely to remain aligned with EU

As per the agreement in 2019 and to avoid the creation of a hard border between Northern Ireland and the Republic of Ireland, the current understanding is that Northern Ireland will remain subject to EU Legislation apart for goods that can be guaranteed not to end up south of the border. As a result, there will need to be some form of border controls on the Irish Sea crossings.

CONFUSED OR CONCERNED?

Help is included with your standard membership fee

As regulatory divergence occurs you will need to make sure that for exports you are following the correct legislation for the destination market, this may also include an auditing requirement. Leatherhead Food Research's Science and Regulatory Team will always be available to keep you up to date with what those requirements are.

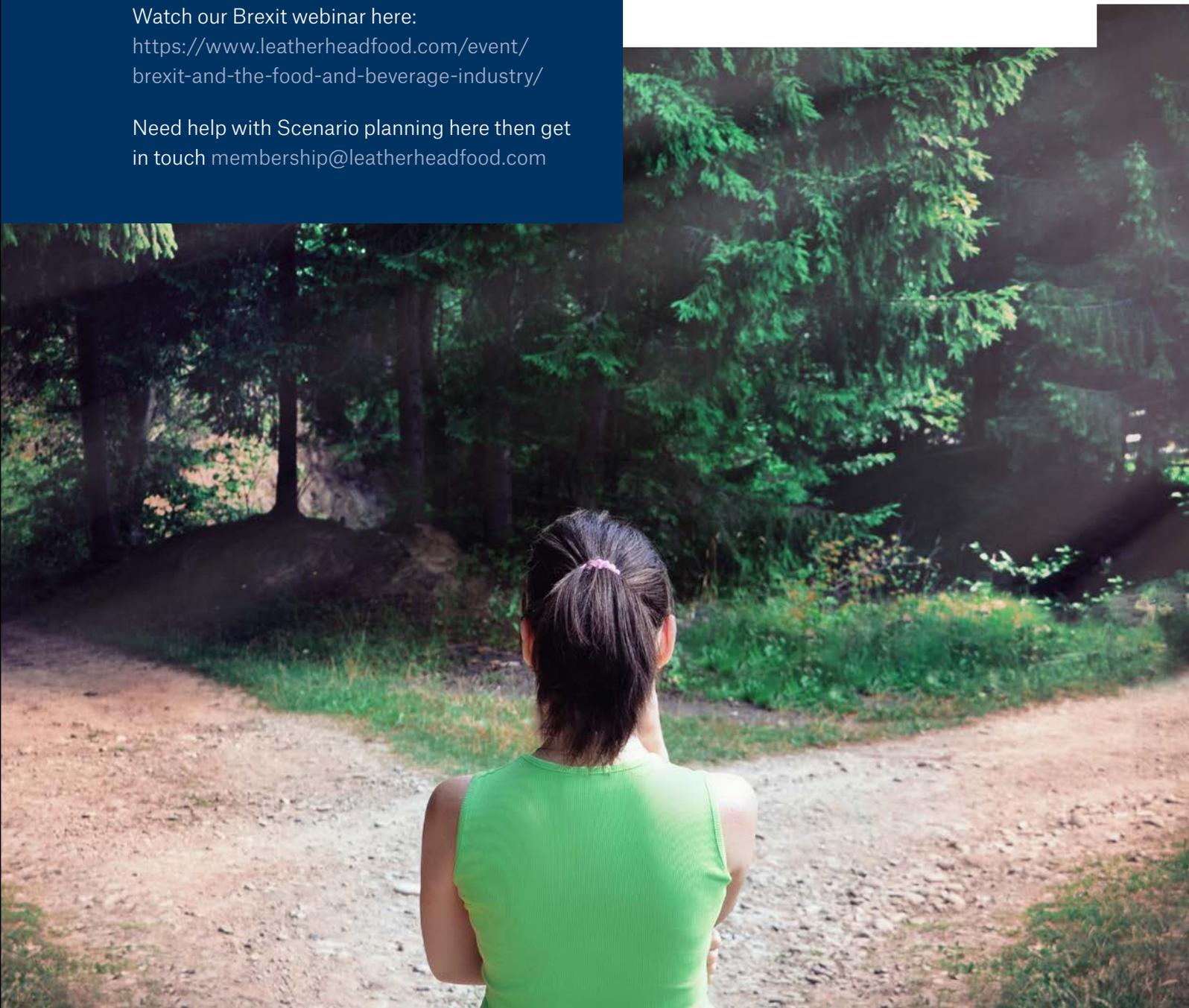
Members can use their helpline to answer general enquiries including Brexit related questions by emailing legislation@leatherheadfood.com

Enquiries outside of your helpline allowance may be subject to additional fees.

Watch our Brexit webinar here:

<https://www.leatherheadfood.com/event/brexit-and-the-food-and-beverage-industry/>

Need help with Scenario planning here then get in touch membership@leatherheadfood.com



BREXIT TO DATE AND THE TIMELINE SO FAR:

23rd June 2016:

The referendum called by David Cameron took place. 48.1% voted remain 51.9% to leave.

24th June 2016:

David Cameron resigned

13th July 2016:

Theresa May became Prime Minister

29th March 2017:

Theresa May activated Article 50
Government departments working on necessary legislation changes

8 June 2017:

Theresa May called a general election

23 July 2019:

Boris Johnson became leader of the Conservative Party, the next day Theresa May resigns and Boris Johnson becomes Prime Minister.

17 October 2019:

The UK and EU agree a draft political agreement on the UK's withdrawal from the EU.

12 December 2019:

Boris Johnson calls a General election winning with an 80 seat majority.

December 2019-January 2020:

The COVID 19 pandemic begins in Wuhan China.

31 January 2020:

The agreement having been ratified came into force and the UK left the EU.

2nd March 2020:

Round 1 of negotiations

30 April 2020:

Round 2 of negotiations

May 11th 2020:

Round 3 of negotiations scheduled

June 1st 2020:

Round 4 of negotiations scheduled

June 30th 2020:

Formal review of negotiation progress

31st Dec 2020:

UK transition period for exiting the EU, ends



It is important to note government departments have been working on the necessary changes to legislation since Article 50 was activated, with the UK working under EU legislation until the end of the transition period 31st December 2020. (Unless it is extended.)

References

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