Trainees take on business

September 2016

The Referendum Series

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Executive Summary

Trainees Take on Business

The "Trainees Take on Business" blog was started by RPC Trainees in 2010 to provide comment from a trainee perspective on current issues in the legal and business markets. Since that time, over five generations of RPC trainees have added their voice and their pen to the blog engaging in some of the most topical issues of the day.

The "Referendum Series"

Never afraid to take on the most challenging of topics, in May of this year – with the EU Referendum vote looming – the blog's Editorial Team decided to tackle Brexit head on. A call was put out for writers to submit articles discussing the possible impact of leaving the EU on different industries and legal sectors. The uptake was fantastic with 12 writers submitting articles on a wide range of topics – from online shopping and our trade relationship with Europe to environmental protection and the property market. The blog's "Referendum Series" was born!

These articles were posted to the blog each day during the two weeks leading up to the Referendum vote and were circulated to the blog's internal and external subscribers. The Referendum Series culminated in a "Brexit or Stay" Breakfast, at which trainees gathered in the client lounge to share their views and consider the key issues ahead of the vote. They were also treated to a few words from Managing Partner Jonathan Watmough on how the vote might affect the firm.

Aftermath of the EU Referendum vote

Whilst the articles in the Referendum Series hypothesised at what the potential effect of a Brexit might be, it's probably fair to say that the majority of writers did not anticipate the actual outcome of the vote on 23 June 2016. The day after the vote, the British public woke to the news that the UK had voted to leave the EU, winning the Referendum by a majority of 51.9% to the 48.1% that voted to remain.

We are now almost three months on – so what has happened since the vote and were the blog's predictions correct?

To answer this question, the writers have produced brief updates reflecting on how the vote to leave has affected the industries and legal sectors they originally wrote about. This pack brings together all of the original articles which featured in the Referendum Series as well as the updates. We hope you find these engaging and informative.

If you have any questions about the blog or would like a hard copy of this pack then please contact the Editorial Team at: BusinessBlogEditoralTeam@rpc.co.uk.

Finally, the Editorial Team would like to say a massive thank you to all of those writers who contributed to the Referendum Series.

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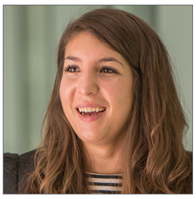

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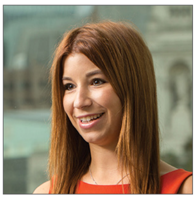

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How would a Brexit affect financial services regulation in the UK?

6 June 2016

Financial services is one of the UK's most important sectors, contributing over £126bn to the UK economy and representing 10% of GDP. The key post-Brexit issues for the sector are summarised below.

A new regulatory framework

The UK's relationship with the EU forms the basis of the UK's regulatory framework for financial services, mainly through a myriad of ever harmonising directives, such as MiFID II. There are three potential outcomes of a Brexit which could replace the current framework:

- membership of the European Economic Area (EEA), allowing full access to the single market but requiring general compliance with EU legislation and principles
- membership of the European Free Trade Association (EFTA), consisting of bilateral agreements granting access to the single market on a sector by sector basis in return for compliance with sector-specific EU legislation
- reliance on current membership of the World Trade Organisation (WTO) and unilateral treaties, meaning no access to the single market and compliance with EU and national regulations unless specifically negotiated.

UK regulation of financial services

Despite many rules being sourced in EU law, the regulation of financial services is broadly unlikely to change significantly for a number of reasons.

Firstly, the FCA and PRA have been influential in the design of key directives such as Solvency II and will be slow to reject rules they helped shape to improve regulation following the financial crash. Secondly, the respective roles of the FCA and PRA constitute a UK-imposed high watermark of "twin peaks" regulation, which is unlikely to be weakened by unravelling current rules. Thirdly, the UK will be keen to maintain regulatory equivalence with EU member states so that UK firms can maintain access to the single market in financial services (outcomes 1 and 2 above would require this).

Finally, some rules embody continuing obligations outside of the EU, such as the EMIR, which implements the G20's commitment to reform the derivatives market in 2009.

It is possible that some rules, such as the AIFMD, could be reduced to ease the burden on those dealing in lower risk alternative investments. However, the regulatory appetite for this is unclear and it is unlikely to be high priority in the immediate aftermath of a Brexit.

EU regulation of UK financial services

Currently, there is no EU-specific regulation of UK financial services as EU "passporting" rules allow providers access to the whole of the single market by relying solely on UK authorisation.

Loss of this regulatory freedom would be felt keenly by the full spectrum of banks, building societies, insurers, brokers/intermediaries, fund managers, investment firms, advisers and payment service providers.

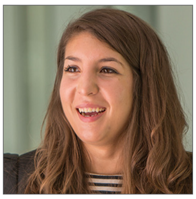
Many EU and non-EU financial firms currently headquarter their operations in London and have been vocal about leaving in the event of losing their passporting rights. London is also the largest centre for financial services in the EU. 2,000 UK firms passport their services and their activities constitute 75% of all MiFID passported services into the EEA.

It is likely that the implications for EU consumers as well as the UK economy would motivate both the UK and the EU to maintain single market access for UK financial services. If not, the exact rules imposed by EU regulation of UK financial services will depend on which of the outcomes detailed above the UK is able to achieve in the wider post-Brexit negotiations.

Update: September 2016

Several months on from the UK's vote to leave the EU, we are still not much wiser about the likely framework for the UK leaving, or how that framework will affect the regulation of financial services in the UK.

The FCA was quick to release a statement the day after the result, confirming that current regulation will remain in place (regardless of origin) until the government makes any concrete changes. It also stated firms must continue to abide by all regulatory obligations (EU or otherwise) including implementation plans for future legislation. This "business as usual" approach was cemented by the FCA's reassurance that it is working closely with the Treasury, the Bank of England and the government to monitor developments and prepare for the UK's future relationship with the EU.



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How would a Brexit affect our trade relationship with Europe?

7 June 2016

There are a number of variables which would materially shape our trade relationship with Europe in a post-Brexit world. This article considers how the key economic grounds for a Brexit stack up when considered through the prism of our continued relationship with Europe.

The preliminary issue to acknowledge is that the choice is not one of detachment from the EU versus the status quo. It is detachment from the EU versus continuing to move towards deeper integration, as was envisaged in the founding treaties.

Trade Agreements

The first obstacle for the UK Government post-Brexit would be to agree a tariff-free trade agreement for goods and services. UK trade standards are already in line with EU standards, so agreeing a transition would seemingly be straightforward. The main pitfall with this avenue would be the short intermediate period between a Leave vote and when any deal is agreed – Boris' so-called "Nike tick" spell. Any agreement would have to tackle myriad details, for example rules of origin to prevent Britain being used as a backdoor by other nations to access the European market.

The second potential obstacle would be agreeing a way of trading with EU states without having to fully accede to the single market – an aspect which is key to the Brexitiers, whose arguments are underpinned by critiquing the single market's detrimental impact on national sovereignty and control of our borders. EU regulations would still apply to goods and services being sold into Europe, and Europe could potentially invoke tariffs on goods which they believe are undercutting EU prices or standards. The likelihood of this actually happening however is uncertain. The CBI (strongly in support of remaining) commissioned a report by PwC to analyse the impact of Brexit. While that report suggested short-term disruption, it concluded that, over a 15 year period, there would only be a 2-3% differential in impact on GDP as a result of Brexit.

Services

The issue of services will also be critical for the UK economy which is heavily reliant on this sector. The Government will likely try to set up bilateral deals for those areas where agreement has already been struck, such as in digital services. If, however, Eastern European nations are hit by stricter British immigration rules, for example, they could be in a position to block such deals.

Passporting

The question of "passporting" in relation to financial markets is also vital. The UK would have to quickly establish a means of being permitted to passport its services into the continent, notwithstanding its removal from the EU. This is of course already possible for some non-EU nations, and any such agreements would likely be replicated for an independent UK.

Conclusion

Notwithstanding the economic arguments for our continued membership with the EU or otherwise, there will be those on the Leave side who will argue that the benefits of re-claiming sovereignty far outweigh any economic cost that could only potentially befall us if we were to vote Leave. Likewise, the Remain campaign will argue that "pooling" sovereignty and accepting compromises is worth the benefits that the single-market/free-trade bring.

Update: September 2016

Overall, it is clearly too early to tell how our trade relationship with Europe will be affected by Brexit given there is not yet any agreed plan for that relationship. The short-term impact of Brexit has transitioned from immediate panic to a more stable and resilient outlook.

Measures have been taken to steady the ship; the Bank of England has cut the base rate to 0.25% and launched a £70bn bond-buying programme. A mixture of signals indicate that there may be some capital flight, however the markets have steadied and, despite a downgrading by some credit-rating agencies, have not discriminated against UK debt.

There are voices emanating (predominantly from London) that insist unfettered access to the Single Market will be vital for guaranteed continuing prosperity. The Government will have a difficult task however to ensure that our financial services sector retains the current advantages it enjoys whilst extricating us from other aspects of the Single Market.

The UK's position is undoubtedly unique. Considering the size of the UK economy and the fact that it has been a member for over 40 years, the EU may well favour close trade ties and agree a "special" package of measures. The Ministry for Brexit though will likely encounter hardliners who will be determined to prevent any precedent being set which could prove attractive to other EU member states.

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How would a Brexit affect online shopping from the EU?

8 June 2016

In or out? No matter which side you're on, there's one thing we can all agree on: we buy a lot from Europe.

In fact, the EU represents 54.5% of the UK's imports. This article considers how "Brexit" might affect what we buy, and answers the questions your inner consumer is dying to know.

Will the cost of what I buy go up after Brexit?

This depends on a large number of factors but the consensus seems to be that prices will increase immediately after Brexit, as businesses react to greater uncertainty by increasing their profit margins and passing on uplifts in the cost of shipping, duties, red tape and border delays to consumers. Exiting the EU would also almost certainly lead to a fall in the value of the pound which is expected to have an adverse effect on prices. A report by ParcelHero ("Delivering Brexit: The True Cost of Leaving the EU") indicates that a typical £150 purchase from the EU would cost Brits around £195: an increase of £45 or 30%.

Ok, so that's the short term. Will prices go down again?

Potentially; but perhaps not for a while. One theory is that, after an initial hike, prices may well fall back one or two years after Brexit as the UK reaches preferential trade/tariff arrangements with cheaper export markets outside of the EU, such as China, Brazil, Russia and India, through the World Trade Organisation. Of course, it is difficult to predict what the net effect may be as trade/tariff arrangements would need to be negotiated on a country-by-country basis, but it is hoped that the UK could reduce tariffs to below EU levels. VAT, already one of the lowest in Europe, is also predicted to stay the same, meaning that we would continue to enjoy zero rates for certain items such as food, children's clothes and newspapers.

How about the cost of delivery from the EU?

On a current assessment, this seems likely to rise. ParcelHero has predicted that transport costs will increase as the UK becomes a less competitive market for international couriers and global carriers impose new "customs clearance" charges – typically around £15. However, much will depend on the extent to which retailers are willing to absorb some of these costs.

Are my consumer rights still protected?

Yes. Consumer rights in the UK were established before we joined the EU and are enshrined in legislation and through case law. Our existing system now includes some EU-inspired rights but is likely to remain the same, unless Parliament decides to repeal or change the law. This means that you would still be entitled to a refund if the goods you bought turned out to be unfit for purpose, for example. All UK-based manufacturers who supply EU countries would still need to comply with any new EU standards so we would be protected by these anyway.

One grey area is Europe-wide protections such as fixed mobile roaming tariffs; could this really be our last summer of envy-inducing social media snaps? It has been predicted that consumers would probably lose out on benefits such as Europe-wide mobile tariffs, at least in the short term. This recently introduced EU law banning roaming fees would no longer benefit Brits after Brexit and caps would therefore be removed.

As this article shows, in the event of a Brexit, it would be up to our Government to ensure that the UK is included in any Europe-wide arrangements so that Brits' shopping habits aren't affected.

Update: September 2016

In my original blog I (rather predictably) predicted that the value in the pound would fall if Britain decided to leave the EU. And this has happened with aplomb. For those who base their manufacturing in Europe, this will be an unwelcome pinch on production costs. On the other hand, the weaker pound should help to boost sales. Professor Joshua Bamfield, director of the Centre for Retail Research says: "UK-based online retailers will be able to sell a lot more goods abroad priced in Sterling, as their prices are much cheaper now compared to overseas rivals." The latest data from CIPS suggests that after a slump in July, manufacturers have seen an uptake in orders in August, with factory activity reaching a 10-month high and new export business growing at the fastest pace for 26 months.

Retailers should also now be able to buy in the cheapest markets. One big question is whether Britain will gain access to the single market, with many smaller retailers hoping for this outcome. If it does, there is no clear picture of the terms upon which access will be granted. Whatever happens, changes to the rules and regulations for sales into Europe are almost certain. Luxury retailer Net-a-Porter is shoring against the risk that Britain loses its ability to import goods from the EU for free. The message from the retail world seems to be: as with much of the post-Brexit world, it's far too early to tell the precise long term impact.

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How would a Brexit affect the insurance industry in the UK?

9 June 2016

The insurance industry plays an essential part of the UK economy and manages investments equivalent to 25% of the UK's total net worth.

Right at its doorstep is the world's largest insurance market: the EU. In the event of a Brexit, the UK insurance industry may therefore be left particularly exposed. This briefing looks at some of the risks and (potential) rewards associated with a "leave" vote.

Market turmoil

When a 1979 referendum produced a "leave" vote, it took Greenland nearly six years to reach agreement with the EU on the single issue of fishing rights; the exit was therefore delayed until 1985.The UK will have much larger issues to resolve. Pending clarity of the UK position, insurers are likely to respond with a withdrawal of investments. We may also see a drop in foreign investment and a possible downgrading of insurers' credit rating, which will have an impact on liquidity and capital positions.

Regulatory implications

Passporting

The EU passporting regime allows UK insurers to write insurance on a cross-border basis without the need for further authorisation or additional local branches. This means that UK firms are not required to deposit additional funds to meet liabilities in other EU jurisdictions, or to report to other EU supervisors. A Brexit will therefore have an adverse impact on insurers that make use of these passporting arrangements. Local law often dictates that a risk can only be underwritten by an EEA authorised insurer or with the benefit of an EU passport.

Regulatory regime

The blanket EU governance regime comes at a price and the UK insurance market may benefit from an improved and flexible national regulatory landscape. There is scope for the UK to set its own level of regulation, "rather than being shackled to an outdated 'one-size-fits-all' model". Lighter regulatory burdens may also increase innovation – a cornerstone of the London market – and provide better access to emerging markets.

Emerging competition

The UK is home to the world's largest specialist insurance and reinsurance centre, Lloyd's of London. The 300-year old insurance hub controls £60 billion of gross written premium. At its doorstep is the world's largest insurance market, which has a 35% share of the global market. The UK offers the best of all words in terms of access to both the London market and the single market. A key part of an emerging market insurer's diversification strategy is through London and Lloyd's. This perspective could dramatically change if the UK leaves the EU. As business opportunities in the UK subside, we can expect the emergence of significant competition from other insurance centres around the world.

Conclusion

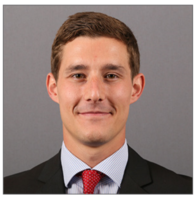
Looking back to the 1975 referendum, 67% of voters backed the UK's continued membership with the EU. Recent polls paint a very different picture. A Brexit is a very real possibility, and given the insurance market's extensive relationship with its European neighbours, the implications are likely to be far reaching.

Update: September 2016

The impact of Brexit on the insurance industry will take time to play out. The immediate negative economic effects of Brexit are expected to reduce returns for insurers and drive higher insurance premiums for policyholders. At least for the foreseeable future, the vote is unlikely to lead to any big dilution of the EU's capital rules or a radically different regulatory landscape.

The insurance industry is undoubtedly set for a considerable period of uncertainty. Insurers are closely monitoring developments (eg by setting up an internal taskforce) and looking to evaluate contingency plans. Lloyd's has already begun implementing its own plans – engaging with the UK government and regulators across the Continent "at all levels".

The focus is now on the critical issue of whether the UK will be able to retain its passporting rights. If this right is withdrawn, the business models of global London based insurers (and captive arrangements) are likely to come under scrutiny. The extent to which UK insurers will need to restructure will depend on trade negotiations.



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How would a Brexit affect environmental protection in the UK?

10 June 2016

In 2013, the EU introduced an interim ban on a class of pesticides called neonicotinoids.

Two years later, before the EU had finished its review of the ban, the UK Government partially overruled it. Does this difference in approach say anything about the future of environmental protection should the UK vote to leave the EU on 23 June?

Neonicotinoids (neonics for short) are used in the agriculture industry against sap-feeding insects like aphids. They are also a possible culprit behind an alarming rise in the rate of bee deaths. Whilst research has started to indicate that neonics negatively affect bees, the EU's precautionary approach to environmental pollution made it one of the first international organisations to take action.

As well as being precautionary, the EU approach to environmental protection promotes prevention and rectification of pollution at source, and is based on the polluter paying for it. In contrast, the British approach, at least up to the 1980s, was to deal with pollution by diluting and dispersing it, and only after "sound science" existed that it was causing a problem.

Environmental policies introduced by the EU have had a wide impact on the UK. Birds like the hen harrier are protected from threats like habitat loss and hunting by the Birds Directive. The Water Framework Directive sets out a joined up approach to improving the status of all rivers, lakes, estuaries and coastal and ground water and progressively more stringent emission standards have driven down limits for exhaust emissions for new vehicles.

As a supranational organisation, the EU is more likely to deliver stronger environmental protections than Britain would do on its own. Individual countries often have weaker incentives to deal with environmental issues because the impacts are remote or dispersed. One example is air pollution – much of the UK's sulphur and nitrogen pollutants are exported to continental Europe by prevailing winds. Taking decisions at a supranational level means decision makers are more aware of the bigger picture impacts of environmental degradation.

However, removing the influence of Brussels over the environment could help avoid disenchantment and allow faster improvements to schemes that do not perform as expected. Much has been made of the fact that powerful kettles could be the next home appliance facing extinction under an EU scheme to fight climate change, a big issue in a nation that consumes six times more tea than the European average. And the EU was seen as slow to respond to accusations that the CAP and Common Fisheries Policy encourage excessively intensive farming and the discard of millions of tonnes of edible fish a year.

Bees, emissions standards and powerful kettles will probably rank close to the bottom of a post-Brexit priority list and, in the short run, it is unlikely that there will be any sudden environmental shocks if we vote out. Taking a longer view, although the UK would likely be required to implement minimum environmental protections in order to trade with a residual EU (for example, the Emissions Trading Scheme Directive applies to Norway and Iceland as members of the EEA), the risk is that some of the more ambitious and progressive environmental protection solutions would not make it onto the domestic agenda.

Update: September 2016

Early indications are that the UK's strategic energy policy will have a considerable impact on environmental protection post-Brexit. Within 50 days of the referendum, the government has already abolished the Department of Energy and Climate Change and developed suggestions for incentivising shale gas extraction (fracking).

Beyond this, there are environmental protection issues that will need to be considered within two years, including the extent to which the UK will:

- take action on its regular breaches of EU air quality regulations
- ratify the Paris agreement to reduce carbon output, either as an individual state or as part of the EU
- continue to transpose EU Directives such as the Environmental Impact Assessment (EIA) Directive 2014, which it is obliged to implement by May 2017.

These questions need to be answered as businesses pay for uncertainty – for example, green investment is discouraged and scoping resources for larger projects is complicated without clarity.

The overall outlook is that if environmental protection becomes a mainly domestic issue (subject to any other international obligations) the policy landscape is likely to be more reactive and vulnerable to political sentiment than the gradually unfolding and technocratic framework established by the EU.

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How would a Brexit affect law firms in the UK?

13 June 2016

As with many sectors, the implications of a Brexit for law firms in the UK are largely unknown and heavily dependent on the UK's relationship with the EU. Law firms will need to be alive to the impact across different practice areas as well as on the business as a whole.

Practice areas

An influencing factor as to whether a firm will struggle or flourish post-Brexit depends on its range of practice areas. The impact is likely to be greater in certain practice areas such as Intellectual Property (IP), Employment and Financial Services Regulation.

IP

UK IP rights are heavily influenced by EU law. Whilst national IP rights would not be affected by a Brexit, all pan-EU IP rights – such as the European trade mark – would cease to apply in the UK. IP lawyers will need to help their UK clients with the transition to ensure existing IP rights continue to benefit from protection in the EU.

Employment

Much of UK employment law emanates from the EU, including discrimination rights and transfer of undertakings. Whilst the Government could repeal these laws, this is realistically unlikely to happen. The biggest likely concern is the restrictive impact that a Brexit could have on the free movement of workers. Employment lawyers will need to assist their clients with the effects on both existing and future migrant workers.

Financial Services Regulation

The legal framework governing UK financial institutions is largely derived from EU law. In particular, financial firms benefit from the EU financial services "passport" which allows firms authorised in the UK to carry on business in other EEA states. Lawyers will be asked to advise on how the post-Brexit regulation model will affect businesses with operations elsewhere in Europe.

Whilst advisors to financial institutions may see a flurry of work in the immediate aftermath of a Brexit, the UK's position as the EU's largest financial centre could be jeopardised by a Brexit which may lead to a re-positioning of financial services.

People

As noted above, a Brexit will likely result in a restriction on the free movement of workers between the UK and the EU. As with many other businesses, law firms are equally as susceptible to this risk, losing out on current talent and future potential.

Access to the EU

EU services "passports" and the free movement of workers have encouraged companies to invest in the UK as an access point to the EU internal market. Many law firms have developed their reputations and expertise through being able to provide cross-border advice to those businesses and are permitted to do so under EU rules. A Brexit may result in companies relocating to another EU member state, meaning UK law firms can no longer provide the cross-border legal advice that clients need. On the other hand, firms that already have a presence in an EU country will see this as an advantage over competitors.

Conclusion

In September 2015 the Law Society warned us that legal services would be disadvantaged disproportionately compared with the UK economy as a whole in the event of a Brexit. Whether that warning comes to fruition remains to be seen, as the impact of a Brexit on law firms is just as uncertain as the effect of a Brexit on other sectors.

Update: September 2016

Whilst the impact on the specific practice areas discussed in this article is still relatively unknown given the amount of time that a Brexit will actually take, law firms have still been affected in numerous ways.

There have been reports of delayed or cancelled pay reviews and even redundancies at some firms. This is unsurprising given the impact that the EU Referendum vote has had on traditional users of legal services. For example, the value of UK M&A deals has dropped although some are of the opinion that Brexit should no longer be an excuse for this and that businesses, particularly those overseas, can even use the vote to their advantage by capitalising on falling share prices and the currency exchange rate.

The vote has also seen many firms registering lawyers in Ireland so they can continue to give advice in Europe post-Brexit and others are considering opening offices in Ireland. If this becomes a growing trend, it could have an adverse impact on the UK legal market as firms which are unable to practise in Europe in this way might suffer, causing the legal profession to become much more domestically focussed.

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How would a Brexit affect the cost of living in the UK?

14 June 2016

The Brexit campaign is littered with statistics about the impact of a Brexit on the UK's economy. But how does this translate to its potential impact on the cost of living?

Housing

With the largest portion of our pay cheques invariably going on rent or mortgage payments, the impact of a Brexit on the housing market is likely to be acutely felt. George Osborne has suggested that a Brexit could cause house prices to fall by 10-18% by 2018, although ratings agency, Fitch, has suggested that the house price fall could be by as much as 25%. Although good news for prospective purchasers finding it easier to get onto the property ladder, this could leave existing homeowners heading towards a position of negative equity.

The cost of food

The UK is a net importer of food, importing 2.5 times more food from the EU than it does from the rest of the world; the EU is a much more important trading partner for the UK than the UK is a trade partner for the EU. The general consensus is that a Brexit would result in a weaker pound, with the Treasury estimating that leaving would lead to a 12% fall in the pound's value. A weaker pound would result in more expensive imports. Any new tariffs added to the cost of imported food would further increase prices, with the Prime Minister estimating that leaving the EU would increase the cost of food and drink by almost 3% (or £120 a year for the average family).

However, another view is that the price of food may decrease as the UK would no longer be subject to the EU's arguably "protectionist" policies. The EU's controversial common agricultural policy injects billions into the UK's farming industry but has been criticised by some for inflating the price of food.

Employment

A Brexit could affect the wage we bring home, and our working environment. EU regulations impact the hours we work, our annual and parental leave, and anti-discrimination laws. Some of these regulations could be rolled back following a Brexit, although in practice these rights are likely to continue to be protected. Perhaps of greater significance is the effect on the free movement of EU workers. EU citizens' right to live and work in any of the member states would no longer be automatic, making it harder for businesses to recruit workers from the EU. Workers already employed in the EU may have to return to their country of origin. While migrant workers have contributed to economic growth and the income tax coffers, others argue that they have forced down wages for British workers. It is estimated that the jobs of three million people in the UK derive from trade with Europe and it is uncertain how a Brexit would change the demand for these jobs.

On a final note ...

Reassuringly (to some), it has been confirmed that whichever way the UK votes on 23 June 2016, due to its membership in the European Broadcasting Union it will still be eligible to enter the Eurovision Song Contest.

Update: September 2016

Although much of the impact of Brexit will not be felt for months and years to come, short-term effects are evident.

Whilst house prices in July were 1% lower compared to June, they were still 8.4% higher than average house prices this time a year ago. Evidence as to whether this is indicative of the housing market generally is inconclusive: whilst Foxtons has posted a 42% fall in its six-monthly profits, the Mineral Products Association (a trade body of companies providing construction materials) suggests that there has been an upturn in the industry.

The weak pound has made imported products, and therefore the cost of food shopping, more expensive. Research by price comparison site mysupermarket.co.uk found that the price of a food shop increased from £82.83 in June to £83.44 in July. Many retailers have currency hedges in place (Next, for example has covered 60% of its dollar and euro requirements until spring/summer 2017), so price increases in retail are likely to be postponed.

The employment market has taken a hit as recruiters have reported the largest drop in permanent job placements since 2009. Furthermore, the Bank of England has suggested that unemployment could increase from 4.9% to 5.5% as a result of Brexit.

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How would a Brexit affect the property market in the UK?

15 June 2016

Industry participants have forecast a slowdown in residential and commercial property markets in the lead up to polling day on 23 June.

There is nothing particularly unusual about this; it is common for political uncertainty to have a stagnating effect and the debate over Europe will be no exception. What has proved more interesting, however, is the anticipated effect on the property market in the event that Britain votes to leave.

A report commissioned by the National Association of Estate Agents and the Association of Rental Letting Agents (the Report) suggests that a Brexit is likely to reduce demand. There are multiple factors at work here:

- lower immigration rates if, as is expected, Britain opted not to maintain the current free movement of people agreement with the EU. Indeed, the Office for National Statistics estimates that the population could be up to 1.06 million smaller in 10 years compared with principal forecasts
- the relocation of foreign firms to other EU countries in order to gain access to the single market. This has the potential to impact on both commercial and residential property if a substantial number of employees elect to move with them
- the UK property market may be perceived as a less attractive option for foreign investors, particularly in light of the political and economic uncertainty that would exist as the details of the transition are worked out.

A reduction in the demand for property would impact prices. The Report estimates that the average UK house will be worth £2,300 less by 2018 if Britain votes to leave. The effect will be worse in London, where the average house will be worth £7,500 less; that is a cumulative reduction in value of £26.5bn. These figures are in line with forecasts from other sources. Indeed, the IMF envisages a “sharp drop” in house prices and the Treasury has suggested that prices would be between 10% and 18% lower than base level projections by 2018. Although this might be good news for first-time buyers, the Treasury believes that any benefit is likely to be outweighed by increased borrowing costs and a decline in real wages.

A vote to leave may also impact on the UK’s housing supply. According to the Report, 4.7% of the workforce and 9% of sole proprietors in the construction industry were born in other European countries. Greater restrictions on foreign workers coming to the UK may therefore harm our ability to build new homes. There are also indications of a potential impact on finance; a KPMG poll of 25 real estate investors with assets under management of over $400bn suggested that two thirds of them believe that a Brexit would result in less inward investment into UK property.

What about the impact on the rental market? In the short-term at least, this is likely to be minimal. The Report suggests that there even may be a slight increase in demand as EU nationals decide to relocate whilst they still can during the transitional period. The long-term effect, however, is likely to be more severe. European nationals are far more likely to be renters than homeowners, so if fewer migrate to the UK there is likely to be an impact on prices. However, if the reduction is to such an extent as to prevent landlords recouping their costs, this may lead to an exodus from the market which will, in turn, push prices back up.

Update: September 2016

Unsurprisingly, the referendum result on Friday 24 June led to an initial wave of panic across the UK's property market. On the domestic side, estate agents and mortgage brokers received a high volume of calls from buyers seeking to pull out of transactions, some attempting to make use of the so-called "Brexit clauses" that they had been offered ahead of the vote. On the commercial side, a number of property funds suspended trading after of a wave of attempted withdrawals. Meanwhile, the fall in the pound prompted a renewed interest from overseas investors hoping to pick up a bargain.

But what of the lasting impact? It seems that it may be too early to tell. Initial indications are that prices in the prime London market have been hit, with Knight Frank's index down 1.5% in July from a year earlier. Overall though, the country does seem to have held its nerve, with data from Nationwide even suggesting a moderate rise of 0.5% in July and an increase of 5.2% on this time last year. However, the uncertainty that plagued the market in the lead-up to the referendum is likely to continue, at least for the foreseeable future, causing a further slow-down in transaction rates.

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How would a Brexit affect the banking and finance sector in the UK?

16 June 2016

Financial services represent around £26bn or 57.5% of the City of London's total income and accounts for 7.5% of the total national income of Great Britain; 18% of cross-border lending is arranged in the UK and over 250 foreign banks are in London. A Brexit could threaten the City of London's well established reputation as detailed below.

Finance transactions

The impact of a Brexit on finance agreements is likely to be limited: choice of law and parties' rights and obligations should remain the same. Specific Brexit provisions are unlikely to be accepted and may be counterproductive, given that there would probably be specific post-Brexit legislation.

However, a Brexit may adversely affect some businesses, which could potentially trigger a material adverse change. This would likely constitute an event of default and entitle a lender to terminate the loan agreement and enforce its security. Due to the uncertainty and financial volatility caused by the referendum businesses may experience a drop in income with the slowdown in market activity as customers hold off on spending and investing. In the long term, businesses will be affected if they can no longer rely on free movement of goods, capital or people. Additionally, lenders may suffer increased costs with the introduction of new laws or regulations.

Insolvency proceedings

Furthermore, a Brexit may well push debtors into insolvency and therefore lenders will be concerned about how enforceable their security is.

For insolvent entities domiciled and trading only in the UK, the effect of a Brexit would be limited as UK insolvency legislation is not derived from EU law. The future of multi-jurisdictional insolvencies however is more uncertain.

Where an insolvent entity has its main centre of main interests within an EU country, the EC Regulation on Insolvency Proceedings 2000 (the EC Regulation) applies (soon to be replaced by the "recast" Insolvency Regulation 2015). The EC Regulation governs the jurisdiction for a debtor's insolvency proceedings, the applicable law, and provides automatic recognition of those proceedings in other EU member states. If the UK were to leave the EU, the EC Regulation would cease to apply to it.

Despite this, a Brexit would probably not be severe enough to stop debtors and lenders from choosing to use English insolvency and restructuring procedures (ie the choice of England as the forum for such proceedings). Particularly given that one of the main tools – the English scheme of arrangement – is not covered by EC Regulation.

Access to European markets

Access to European markets is currently permitted via "passporting" rights under EU legislation. These rights give UK-based financial institutions the ability to sell products and services into other EEA member states. Without them, institutions may need to explore whether their business streams should be moved to other hubs within the EU.

Similarly, EU legislation currently enables an issuer of debt securities to "passport" its prospectus offering of debt securities to other EEA member states. If the UK was unable to agree any equivalent arrangement, a UK issuer would find it more difficult and costly to market its securities in Europe, as the EU could block access to the market entirely in relation to certain services (eg some retail products and euro trading). If the UK's ability to access the single market for financial services is not preserved there could be significant consequences for the banking and finance sector.

Update: September 2016

Material adverse change clauses are unlikely to have been triggered by the actual vote result itself but it is not yet clear what will happen as a result of any actual Brexit. At this stage, there is still no need to deliberate wholesale changes to new loan documentation and they should be considered on a transaction by transaction basis. However, documents may need to be amended in due course as the exit arrangements take shape.

Once an exit date is in sight, a review of cross border security packages in facilities which extend beyond the exit date may be required in order to assess whether any changes to cross border insolvency regimes would cause enforcement issues.

The regulatory landscape remains one of the biggest uncertainties for lenders following the referendum vote. The fact that the UK regulatory framework is currently compliant with EU requirements enhances the chances of recognition of equivalence but this is by no means a foregone conclusion. Equivalency concerns aside, the regulatory framework is constantly evolving and the UK's ability to influence changes has now diminished.

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How would a Brexit affect Intellectual Property laws in the UK?

17 June 2016

The future of IP law in the UK might not be at the top of your list of considerations when thinking about which way to vote on the 23 June. However, this area of law is heavily harmonised across the EU meaning that a vote to leave could have serious ramifications for businesses relying on IP rights.

EU Trade Marks (EU TM) and Community Design Rights (together EU Rights)

The shape of IP law in the UK post-Brexit would depend on the replacement legal model chosen. However, under almost all possible models EU Rights would likely cease to have effect in the UK.

In the event of a leave vote, the UK might introduce successor rights or transitional provisions to provide EU Rights holders with protection in the UK. However, there is a possibility that businesses relying on these pan-European rights will need to apply for new national rights (and incur the costs of doing so).

Owners of existing EU Rights will be affected by a diminishment in value of those rights should they cease to offer protection in the UK. In addition, EU TMs that are only used in the UK could become vulnerable to non-use revocation following a Brexit.

Patents

The European Patent System is not governed by an EU institution meaning that a Brexit would not necessarily affect the UK's participation in the system. On the other hand, the future of the Unified Patent System (which will offer a single patent covering most EU countries and which is expected to reduce the cost of obtaining patent protection) would look uncertain following a vote to leave the EU. At the very least, the Unified Patent Court Agreement would require amendment before being implemented meaning that the regime (which is currently due to be fully operational in 2017 if the UK stays in the EU) is likely to suffer significant delay if we vote "leave".

Copyright

Although copyright law in England and Wales has been largely influenced by EU law, it is essentially an area of national law, meaning that there will not necessarily be any immediate effect on this area if we leave the EU. Long term we could see a divergence between copyright law in the UK and the EU as UK courts would, in theory, no longer be bound by EU case law (although in practice UK judges might continue to consider EU case law and regulations in their decisions).

Practical Considerations

If the UK votes to leave the EU, the actual exit date is unlikely to be before 2018. Before then businesses would need to review their IP portfolios to ensure that their IP rights would be adequately protected under the new legal model. This would be a key consideration not only for businesses with an existing IP portfolio but also for those looking to buy or sell a business or an IP asset. In addition, businesses would need to review existing IP licences to ensure that they will be effective post-Brexit.

Update: September 2016

In the weeks immediately following the referendum, speculation as to the future of IP rights in the UK was rife but no one was really any more certain about the impact of Brexit on IP than they were before the vote. On 2 August 2016 the UK Intellectual Property Office issued a guidance note entitled "IP and BREXIT: The Facts" which aimed to "offer factual information on the future of many international IP agreements that UK rights holders and business can make use of". You can read the guidance note here.

Predictably, the guide does not provide much new information about the future of IP rights in the UK; in short, the Government is considering its options and we will not know the position for certain until Brexit negotiations are concluded. In the meantime, EU rights (eg registered EU Trade Marks and Design Rights) continue to have effect in the UK until we actually leave the EU and patents obtained from the European Patent Office will not be affected by the vote. Copyright laws will continue to comply with EU law for as long as we are in the EU but the effect of EU directives and regulations on copyright laws after we leave "will depend on the terms of our future relationship".

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How would a Brexit affect employment in the UK?

20 June 2016

Whilst the papers tell us to panic and the politicians speak of a potential apocalypse, the general view is that there will likely be very little immediate change to employment law should we vote to leave the EU on 23 June 2016.

Though many of our employment rights emanate from the EU and could, in theory, be repealed, some of those core rights are generally viewed positively by both employees and businesses and would not appear ripe for wholesale repeal. That said, the possibility of erosion of some other workers' rights and repeal of some protections cannot be discounted as detailed in a recent report commissioned by the TUC.

At the very least it is not unlikely that there would be some "tinkering" of current legislation that has proven unpopular with some businesses in the UK, reducing workers' rights in the process. For example, taking some of our legislation which derives from European directives:

- if a company wishes to make 20 or more employees redundant at one establishment within 90 days, the rules on "collective information and consultation" are triggered and can be time-consuming for business. However, if we were to leave the EU, the UK would be free to lessen the burden for employers (perhaps by raising this threshold to, for example, 100 employees, or by shortening the time periods which must elapse before redundancies can be made)
- similarly, employers are currently restricted by the Working Time Regulations which limit the working week to a maximum of 48 hours absent an effective opt out. This has long been a sore point for the UK Government and so a Brexit would pave the way to raise or even abolish this limit
- under the TUPE Regulations (which govern the movement of employees if a business is sold or service outsourced) there are limits on changing an employee's contract after they have moved across to the new business, allowing employees to keep their original employment terms in many circumstances. The Government may well remove or soften this restriction following a Brexit to allow the terms and conditions of new employees to be harmonised with the existing terms of the buyer's employees. Movement to abolish these regulations would be welcomed by employers, though certainly not by trade unions.

Traditionally, our Government has not had the best track record in protecting workers' rights. Take, for example, the right to paid holiday. Prior to 1997 there was no statutory right to paid annual leave; however this changed with the introduction of the Working Time Regulations 1998 which created the statutory right to four weeks' annual leave. The UK Government was so opposed to this directive that it went to the European Court of Justice to attempt to get it annulled (*United Kingdom v Council of the European Union*).

European employment law sets a minimum not a ceiling for our employment rights. Therefore, without these minimum standards set by Europe there is room for a shift away from laws such as those above which protect employees in the long term. UK employment law has always been subject to the political will and sensibilities of the Government in power at any one time; be that a desire to strip back trade union power or aiming to increase family friendly rights. Removing the ultimate checks and balances of European law will provide freedom for the Government to set its own legislative agenda on workers' rights which might well be to the detriment of the average employee.

Update: September 2016

Several months after the Brexit vote and nothing has actually changed in terms of employment law. However, the effect on the jobs market has been great. Almost immediately after the vote, several large financial services firms announced they were moving large numbers of jobs overseas. In the week following the EU Referendum vote the uncertainty in the market led UK job vacancy adverts to fall by almost 700,000 from 1.25 million jobs to 820,000 as businesses pulled roles and froze hiring. Even Richard Branson admitted that following the vote Virgin had pulled out of a deal which would have created 3,000 jobs.

In terms of employment law, whilst nothing has changed yet, the Tories do not have a good track record with employment protection. Therefore many are predicting an erosion of some of our European employment rights. However a glimmer of hope does come from a blog post written by David Davis prior to his appointment as "The Secretary of State for Exiting the European Union" where he pledged his support to employment regulation: "The great British industrial working classes voted overwhelmingly for Brexit. I am not at all attracted by the idea of rewarding them by cutting their rights".

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How would a Brexit affect the NHS?

21 June 2016

The potential effect of a Brexit on the NHS has become a key political battleground with wildly divergent statistics being quoted and outlandish claims being made by both campaigns. Should the UK vote to leave the EU on 23 June there are a number of potential impacts on the NHS, outlined below.

Funding

The Leave campaign has repeatedly argued that leaving the EU will save money which can be diverted towards NHS funding. The Institute for Fiscal Studies (IFS) has calculated that the net UK contribution to the EU over the next few years will be approximately £8bn a year. However, this is balanced by the potential risks to the economy that a Brexit poses – a negative effect of just 0.6% on national income would cancel out any saving.

So whilst there is the potential for greater funding of the NHS after a leave vote, it is a gamble. It is also important to remember that it is up to the Government how any saving would be spent – and there is no guarantee that the funds would be diverted to the NHS budget.

Demand

It is clear that an increased population means increased demands on the health service. Pro-leave campaigners have suggested that remaining in the EU will lead to increased migration and demands on the NHS (noting that a number of countries could possibly join the EU in the near future).

Under the Vienna Convention, any EU citizen currently residing in the UK will be entitled to stay, regardless of a Brexit. Therefore the population currently entitled to use the NHS will not reduce, but a Brexit may stop any increase caused by migration, thereby creating a cost saving.

Staffing/recruitment

Meanwhile, 130,000 non-British Europeans work in the NHS, making up around 10% of NHS doctors and 4% of nurses. As noted above, under the Vienna Convention, these individuals are entitled to stay in the UK, so there is unlikely to be an immediate staffing crisis.

However, the EU's single-market rules provide the legal basis for laws on recognition of professional qualifications – meaning healthcare staff can work anywhere in Europe. Leaving the EU will mean the UK no longer benefits from this cross-country recognition and so it will be harder to recruit overseas staff to work in the NHS.

Reciprocal treatment arrangements

Whilst part of the EU, the UK benefits from reciprocal treatment arrangements, whereby it is able to reclaim the costs spent treating EU nationals in the UK (and other EU countries can reclaim their costs from the UK).

If we were to leave the EU some kind of reciprocal arrangement would need to be negotiated, which would mean setting up and agreeing a system of charges with each country. Whilst this is achievable, it may take some time to organise, and lead to delays or increased administrative pressures on healthcare staff.

Research Funding

Currently, the UK is the largest beneficiary of EU funding for health research; the Horizon 2020 programme, for example, invested £232m into NHS providers in 2014/2015. A leave vote would not necessarily mean the NHS would no longer benefit from cross-country research programmes and cooperation, but parting ways with the EU would almost certainly mean saying goodbye to a significant portion of the research funding the NHS currently receives.

Update: September 2016

Since the vote to leave the EU, the NHS has remained a focal point for commentary and criticism. However, the failure to trigger Article 50 means that little has changed in the day to day working of the NHS and we will have to wait and see what impact a withdrawal from the EU will have.

One notable difference is key Leave campaigners appearing to backtrack on pledges to increase NHS funding. Iain Duncan Smith suggested that the pledge to spend £350m on the NHS was "never the total" (despite being emblazoned on buses and forming a key part of the rhetoric). Nigel Farage went further and admitted it was a "mistake" to pledge such funds for the NHS. So it is entirely possible Brexit will not result in any extra Government funding for the NHS.

We are yet to see an effect on the other key areas (demand, recruitment, reciprocal treatment arrangements and research funding). Any impact on these areas will depend on what kind of withdrawal the UK negotiates (particularly with regards to immigration), so we will have to wait and see.

Whether Brexit is the saviour or the executioner of the NHS remains to be seen.

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