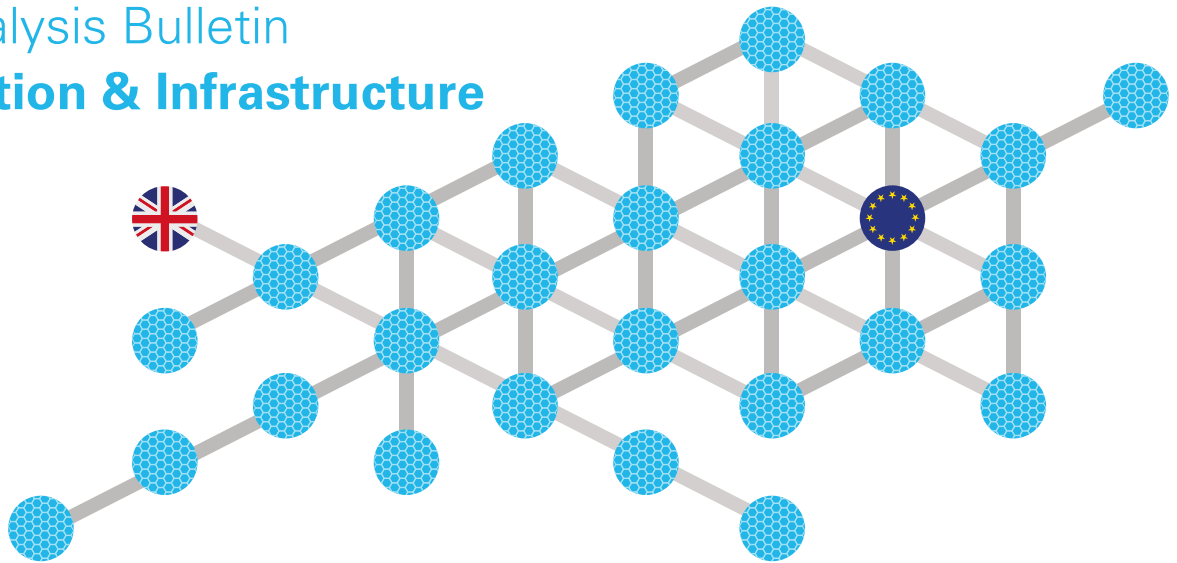


Brexit Analysis Bulletin

Construction & Infrastructure



The UK construction industry generates around £90 billion annually, accounting for 6.7% of GDP and employing over 2.9 million people. Although a largely domestic market, given that it accounts for a significant proportion of UK GDP, the potential impact of a Brexit on the industry is an important consideration.

Earlier bulletins in our Brexit series have dealt with the options available to the UK if it leaves the EU and these are detailed below for ease of reference.

What happens if the UK leaves the EU?

The UK may leave the EU but join the European Free Trade Association (EFTA) and remain part of the European Economic Area (EEA) (often referred to as the Norwegian approach). The EEA agreement incorporates the four freedoms laid down in the Treaty of the Functioning of the European Union (free movement of goods, services, persons and capital), as well as competition and state aid rule. This option would negate much of the benefit of Brexit as it would still require the UK to adopt EU market legislation and provide financial contributions to the EU, but it would lose its power to negotiate and vote in respect of EU regulations.

If the UK did not remain a member of the EEA, it could join EFTA but negotiate bilateral agreements with the EU to govern the on-going relationship between them in respect of matters such as freedom of movement and goods. This is the approach taken by Switzerland, which has to follow EU trading standards and make financial contributions to the EU. The outcome of this option would depend on post-Brexit negotiations, but the EU is likely to insist on the UK being bound by at least some EU regulation.

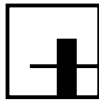
Given that many proponents of Brexit want to curtail the free movement of persons, the UK may move away from membership of EFTA, towards a Turkish-style customs

union and bi-lateral agreements with the EU. Another alternative would be to operate under World Trade Organisation rules, which is similar to the US approach when trading with the EU. Both of these approaches would allow free movement of goods but not persons.

Labour supply

As a sector which relies heavily on foreign skilled and non-skilled workers, it is unsurprising that one of the key concerns within the construction industry is the potential curtailment of free movement of persons following Brexit. The construction industry is already struggling with a labour and skills shortage, caused by (1) a lasting effect of the large number of job losses resulting from the recession and (2) an ageing workforce and therefore a high retirement rate which is likely to continue increasing as 22% of UK construction workers are over 50 and 15% are over 60.

In a recent survey¹ 66% of firms reported having turned down work due to a lack of staff. As a result of the skills shortage, wages are reportedly increasing with the same survey showing average earnings to have risen by more than 6% in the year to October 2015. With UK unemployment at a low of about 5.1%² the labour and skills shortage in the construction industry cannot be resolved domestically.



Data from the Office for National Statistics and the Organisation for Economic Co-Operation and Development indicates that approximately 10% of the UK construction workforce are foreign born. There is obvious concern that the industry's skills shortage would worsen in the event of a Brexit.

The actual impact will depend on the nature of any new relationship with Europe. If the UK were to be part of EFTA, EU nationals would continue to be able to live and work in the UK, and the effect is therefore likely to be minimal. However, immigration is one of the main arguments put forward for leaving the EU, and therefore this is perhaps an unrealistic outcome. Although the UK could grant entry to skilled workers, or introduce a flexible system of working permits to reduce the impact on the skills shortage, the burden of this may act as a deterrent to workers, who could freely work in an EU member state.

Procurement

The effect on procurement will be covered in detail in a later bulletin. However, briefly as EU procurement rules are enshrined in UK law, in the event of a Brexit the rules will remain in force until the UK Government repeals or amends the UK legislation. Many complain that the EU procurement process is bureaucratic and relies on a box-ticking mentality that is not well suited to smaller firms and which favours those with previous experience of similar project types. However, the UK would still require to have some form of procurement rules, and how much they could differ from the EU rules would largely depend on the emerging relationship between the EU and the UK. The current UK procurement rules, or at least the Scottish regulations, go further than is required by the EU and therefore a Brexit may be unlikely to have a significant impact on procurement.

Imports

Although the UK construction industry uses mainly domestic materials, it does import some materials, with the four largest markets for import being Germany, China, Italy and Sweden. With three of these being in the EU, the continuing free movement of goods is a concern for the industry. This depends on the relationship between the UK and the EU, but there has been some suggestion that it could require compliance with the World Trade Organisation rules, which could increase costs.

Exports

The Construction Products Regulation 2011 lays down harmonised rules for the marketing of construction products in the EU. Whilst the Regulation would no longer apply to the UK after a Brexit, the UK would still require to comply with the Regulation for products exported to the EU. The result would be a need for the UK to comply

with regulations in relation to which it had no powers of negotiation.

Some proponents of Brexit suggest the UK would be more able to trade with the rest of the world in the event of a Brexit. However, the UK would have to set up unilateral trade agreements to replace the multilateral agreements it trades under as part of the EU. Some countries, notably the USA, have strict trade barriers and only countries that they have agreements with can export there. Whilst the UK is currently able to trade with such countries, as the EU has those agreements in place, new agreements would have to be negotiated in the event of a Brexit.

Regulation

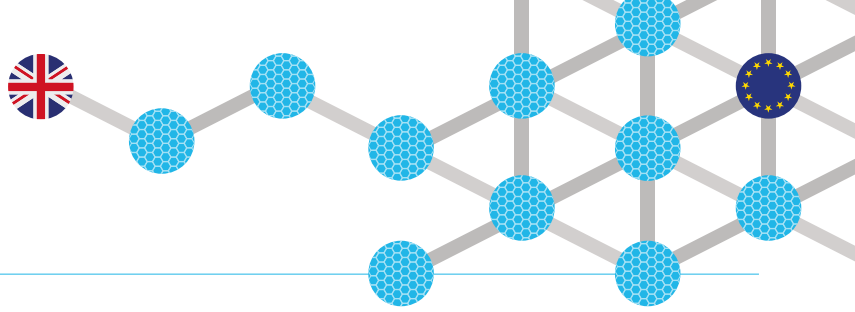
Supporters of Brexit within the construction industry point to the "red-tape" in the industry resulting from European directives and regulations, particularly with regard to environmental and health and safety legislation. However, this is mainly embedded into UK law and therefore Brexit itself would not result in less "red-tape". The UK law would require to be specifically repealed, and thereafter replaced with new UK law. The on-going relationship with the EU would impact how much the domestic law could be amended.

Looking at a couple of examples, the Construction Design and Management (CDM) Regulations enact EU Directive 1992/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites. The most recent version of these removed the exemption for domestic clients specifically in order that the UK were in compliance with the Directive (which the two previous versions of the CDM Regulations had not achieved). So, there may be some amendments in the event of a Brexit but core health and safety regulations would remain for obvious reasons.

The Energy Performance of Buildings Directives³ include requirements for Energy Performance Certificates for all properties (homes, commercial and public buildings) when sold, built or rented; Display Energy Certificates for larger public buildings over 500m² and regular inspections for all air-conditioning systems over 12kW. There is also a requirement that all new buildings must be nearly zero energy by the end of 2020. Depending on the on-going relationship with the EU there may be potential to reduce or repeal the obligations under the UK regulations.

Conclusion

From a legislative perspective a Brexit is unlikely to cause any immediate change, although in the future it may give the UK more flexibility in relation to its environmental and health and safety legislation in particular. The extent of



any changes will be dependent on the nature of any new relationship with Europe and/or membership of the EEA/ EFTA and it remains to be seen how this will impact the workers comprising the construction industry.

SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS JOINING THE DOTS OF THE EU REFERENDUM

What If?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

With the EU referendum now only months away, members of our dedicated Brexit Advisers will continue to interrogate the 'what if' questions, relating to specific sectors, that will emerge when the UK decides whether to remain in or leave the EU.

For further information in the first instance, please contact:



Euan McLeod
Partner
T 0131 473 5469
M 0779 560 0477
E euan.mcleod@shepwedd.co.uk

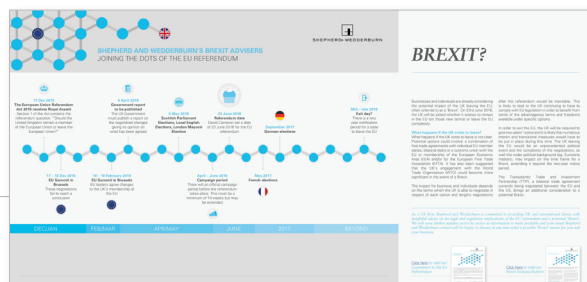


Kirsteen Milne
Senior Associate
T 0131 473 5343
M 0792 1284 532
E kirsteen.milne@shepwedd.co.uk



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