

## Construction Law Update

### The Brexit Trade Deal and its Impact on the Construction Industry

On 24 December 2020, the UK and the EU reached a trade and co-operation agreement (the “**Trade Deal**”) addressing the arrangements that now apply between them. This bulletin highlights a number of the key elements of the Trade Deal which affect the construction industry.

#### **Movement of goods**

When the UK was a member of the EU single market, UK businesses were able to move goods and materials freely between other countries in the EU without charges, taxes, quotas or tariffs. The concern of many was that if the UK left the EU without a trade deal, there would be an introduction of import duties/tariffs which would likely lead to higher costs for materials. However, the Trade Deal has ensured that there will be no quotas or tariffs on any goods imported from or exported to the EU provided that the goods meet the relevant rules of origin. These rules set limits on the percentage of goods that can be made outside of the country of origin.

Although there will be no quotas or tariffs, the free movement of goods did end on 1 January 2021 meaning that custom checks and controls at borders will be in place from now on. This may cause some delays which contractors will need to consider when agreeing programmes.

#### **Standards of materials**

Part of being a member of the EU meant goods, materials and products had to comply with EU regulations. In relation to the construction industry, CE marking was a large element of this. Although the UK has left the EU, products with CE marking will still be accepted on most goods in the UK market until 1 January 2022. However, the UK intends to introduce a new marking system for products used in the UK market. The intention is for this new marking (the UK Conformity Assessed (UKCA) marking) to be closely aligned with the CE marking system so goods can pass the CE standard without the need for further testing.

It is important to note that, because there is no hard border within Ireland, Northern Ireland is subject to a different conformity assessment regime.

Naturally, it is still a requirement for goods in the EU market to have the CE mark. Therefore, where necessary, export businesses intending to export goods, materials and products to countries within the EU after 1 January 2020 will need to ensure that any mandatory conformity assessment is carried out by an EU-recognised body.

#### **Labour and services**

When the UK was a member of the EU, people from EU countries had an automatic right to work in the UK and vice versa. The construction industry benefited from the free movement of people in the EU as a skills shortage in the UK could be met by workers from the EU.

However, the free movement of people between the EU and the UK ended on 1 January 2021. Now, a new points-based system will apply so that any migrant workers who want to move to the UK will have to qualify for 70 points. A typical applicant will need to be able to provide evidence of a job offer (at the required skill level) that meets a new minimum salary threshold.

The intention is for this points-based system to attract ‘skilled workers’ including architects, engineers and quantity surveyors, as well as tradesmen such as bricklayers and carpenters. However, given that the general labour force on construction sites is unlikely to meet the minimum salary threshold, this is likely to have implications for the construction industry.

The recognition of qualifications is also impacted by the UK leaving the EU. The professional qualifications obtained outside of the UK by architects, engineers and other professionals will not be automatically recognised qualifications in the UK. Likewise, qualifications obtained in the UK will not be

## Construction Law Update

automatically recognised in any EU countries. Accordingly, it will be harder for people with qualifications gained in the UK to sell their services in the EU. Individuals will need to check each country's rules to make sure their qualification is still recognised.

However, the UK and EU have pledged to continue to improve access for the service sector in the future.

### Public procurement

In relation to public procurement, the primary objective set out in the Trade Deal is to “*guarantee each Party's suppliers access to increased opportunities to participate in public procurement procedures and to enhance the transparency of public procurement procedures*”. The types of procurement covered by the Trade Deal are those which Article II of the World Trade Organisation Agreement on Government Procurement (the “**GPA**”) applies to.

The aim of the GPA is to mutually open government procurement markets to contractors from other member countries. This means that UK businesses will still be able to compete for public contracts across the EU (as well as other GPA member countries) although, in relation to EU countries, this will be on a more limited basis than before.

### Data protection

The UK is no longer obliged to comply with EU standards in relation to data protection. However, data will continue to be exchanged in the same way for at least four months provided the UK does not change its data protection rules.

### Analysis

There can be no doubt that there will be change ahead as everyone comes to terms with the new rules and regulations that will impact the construction industry. However, keeping informed on the changes to the law and ensuring procedures are in place early is key to reducing the negative impact on your business.

*This article contains information of general interest about current legal issues, but does not provide legal advice. It is prepared for the general information of our clients and other interested parties. This article should*

*not be relied upon in any specific situation without appropriate legal advice. If you require legal advice on any of the issues raised in this article, please contact one of our specialist construction lawyers.*

© Hawkswell Kilvington Limited 2021