



## **Practical Law survey report:** **the in-house approach to Brexit**

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## Foreword

It is a little over a year since the UK voted to leave the EU, and it is some months since Article 50 was triggered. Brexit Day is no longer merely a hypothetical possibility and organisations both within and outside the UK must decide how to approach a future where the UK is no longer a member of the EU.

Against this backdrop, Thomson Reuters has conducted a survey of in-house lawyers to find out how businesses perceive Brexit, how they are planning for a range of possible Brexit scenarios, and the impact the Brexit vote has had on their operations to date.

The survey results provide a snapshot of the range of current approaches, priorities and concerns when it comes to dealing with Brexit, from the perspective of lawyers of all levels working across a range of industries and in organisations of differing sizes, headquartered both within and outside the UK.

There were 172 survey respondents in our survey, a large majority of whom were in-house lawyers and almost 20% of whom were GCs.

The responses show that organisations are rising to the challenge of Brexit and are preparing for a range of outcomes. Some organisations are seeking to have their say on the terms of Brexit by making submissions to the government on how it should be handled. Importantly, the survey highlights that in-house lawyers are playing a prominent role in their organisation's preparations. They are often members or indeed leaders of their organisation's 'Brexit team' and almost half of respondents told us that their organisation will rely solely on its internal legal resource for advice on the legal implications of Brexit.

Clearly, Brexit has presented an opportunity for many of our respondents and with it has come the added responsibility of managing through a period of great change. At Thomson Reuters, we recognise that in order to navigate Brexit successfully, you will want to be equipped with the very best in legal know-how, tools and online resources. As a trusted source of news and information to professional markets around the world, Thomson Reuters has the resources to support you and remains well placed to help you and your clients navigate the uncertainty that lies ahead. For more information on the legal implications of Brexit, please visit our resources on Practical Law: [Brexit: the legal implications](#).

I trust that this report will be of use to you as you form a view on the adequacy of your organisations' preparations to date and develop your strategy for the months to come.



*Lucinda J Case*

**Lucinda Case**  
Managing Director

## Summary of key findings

### Perception

Brexit is not generally seen as the disaster that some had predicted: almost a third of respondents thought that they could continue 'business as usual'...

...but a recurrent theme in the survey responses is the challenge posed at every stage by the lack of certainty on what the detailed terms of the Brexit agreement will be.

### Planning

Organisations are, however, rising to the challenge of planning for a range of scenarios. Measures taken by many to date include:

- Carrying out an assessment of the likely impact of Brexit – and of different 'types' of Brexit – on the organisation's existing contracts, relationships and regulatory permissions.
- Setting up a dedicated 'Brexit team' to direct and manage the organisation's response to Brexit.
- Introducing resources for staff to keep them updated on the Brexit vote's implications for them.

Some organisations are also seeking to have their say on the terms of Brexit by making submissions to the government on how it should be handled.

### The role of in-house lawyers

In-house lawyers are playing a prominent role in their organisation's preparations. They are often members, or indeed leaders, of their organisation's 'Brexit team' and almost half of respondents told us that their organisation will rely solely on its internal legal resource for advice on the legal implications of Brexit...

...however, perhaps surprisingly, a large majority of respondents said they were spending very little of their day managing Brexit at the moment.

## **Performance**

There has been some, limited, negative impact on organisations' contractual and employment relationships to date. Some survey participants reported that the Brexit vote had encouraged their counterparties to seek to renegotiate their relationship, or that their organisation had experienced difficulty in recruiting from the EU since the referendum ...

...however, others said that the fall in the value of sterling immediately after the Brexit vote had positively impacted their figures.

## **Futureproofing**

Survey participants reported various practical steps their organisations were taking to allow them to respond to future consequences of Brexit with as much agility as possible. These included considering restructuring options and changes to their business's operations and procedures, as well as the feasibility of placing more reliance on technology to mitigate the potential impact of loss of freedom of movement on their access to key skills.

Contractual measures mentioned ranged from including new 'Brexit clauses' in their contracts to wholesale incorporation of particular areas of EU legislation to ensure their continued application to their commercial relationships.

## **Key concerns**

It is apparent from respondents' comments that certain issues are of particular concern to their organisation, whether as areas in which impact is expected to be greatest, areas on which specific legal advice has been or will be sought, or areas of EU law which organisations are choosing expressly to incorporate into their own contracts to preserve the status quo post-Brexit.

Access to labour and data protection law are by some distance the most frequently mentioned areas, with intellectual property rights and access to markets also high on many respondents' lists.

## Overall impressions of the significance of the Brexit vote

We were interested to know what opinions respondents had formed of the overall impact of Brexit on their organisations, and the complexity of managing it, in the time since the referendum. Was it the impending catastrophe some had predicted, was it 'business as usual', or was it somewhere in between?

Respondents were therefore asked:

- What they thought the overall impact of the Brexit vote on their organisation would be?
- How straightforward they thought dealing with Brexit would be?

The results (Fig. 1 and Fig. 2) reveal a range of views. Only a very small number of respondents thought that Brexit would completely change their businesses, although almost half of the respondents expected it to require significant changes to some of their business operations. When asked for their views on handling Brexit, each of the respondents who thought Brexit would completely change their businesses also went on to say that they thought that Brexit was a complex problem that required a new approach. A substantial number of respondents who thought Brexit would have a less significant impact on their businesses also thought that it required a new approach.

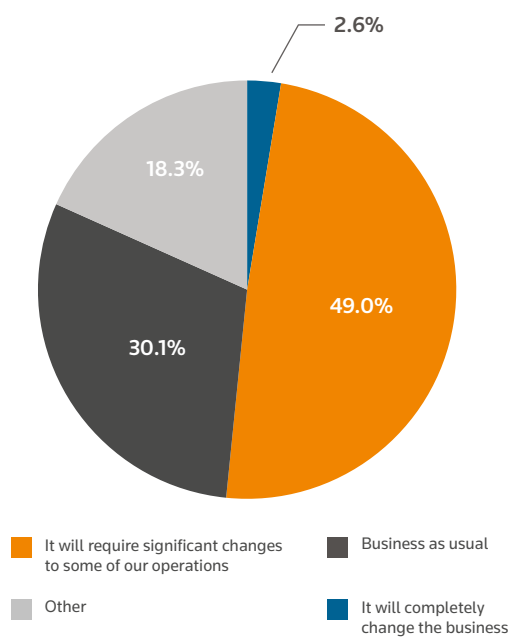


Fig. 1. Impressions of the overall impact of Brexit

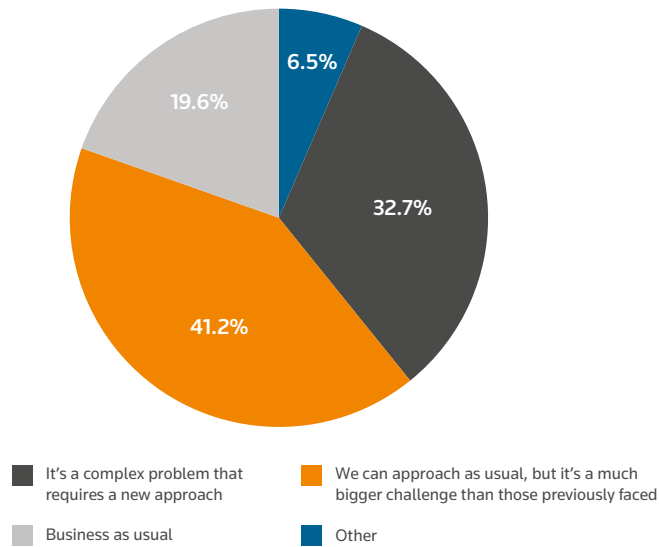


Fig. 2. Impressions of the complexity of managing Brexit

A common theme in respondents' comments – whichever of the options they selected – was the requirement for more certainty around the terms of Brexit in particular areas before the impact would be apparent.

Some such areas were mentioned by businesses working in disparate sectors, and will come as no surprise (for example, tariff changes, and employment law). Others were more sector-specific, such as access to EU funding for research projects and freedom of movement for tourism purposes.

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***“It won't quite be BAU but it won't require significant changes. We are a UK-based business with a UK footprint, however, we do source our wheat overseas and from Europe, so we will be affected by the commodity markets. We will also be impacted by changes/amendments to food regulatory legislation.”***

– General Counsel and Company Secretary, large UK-headquartered manufacturing company

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For many respondents, the same issue of uncertainty arose in relation to the complexity of managing Brexit. Comments reveal a concern that participants are having to manage a project whose desired outcome is as yet unclear. Their tools in doing so? Research, educated assumptions and the application of risk management and mitigation techniques.

## Brexit audit and risk assessment

Practical Law wanted to know how respondents had come to their views on the impact of Brexit: was their impression the result of a formal process of analysis of how their business's operations and procedures might have to change?

We therefore asked whether participants' organisations had conducted a review of their position in order to assess the likely impact of Brexit on their businesses (termed in the survey a 'Brexit audit and risk assessment').

The response was:



Fig 3. Has your business carried out a 'Brexit audit'?

All those who thought that Brexit would completely change their businesses said that their organisation had conducted a Brexit audit. Less than a fifth (17.4%) of the 30.1% who thought that they could continue 'business as usual' following Brexit (see Fig. 1) said that their business had carried out a Brexit audit.

### Mechanics of the Brexit audit

We were interested to know how organisations and their lawyers had conducted their Brexit audits. What had been the starting point? Had they relied solely on internal resources? Had the process been manual or software-led?

Of the 34 respondents who gave descriptions of how their organisation's audit had been conducted:

- 11 referred to a review of existing relationships, contracts and/or regulatory permissions.
- 10 mentioned a dedicated Brexit 'working group', 'steering team', 'project team', 'task force' or similar which had carried out the audit.
- 5 described a process of consultation with key stakeholders.
- 5 had treated the process as a discrete risk management project or created a separate Brexit risk register.



Three organisations had engaged external resources or hired extra staff to assist with the audit; most, however, had conducted it using existing internal resources. Only one respondent referred to using software to aid the process.

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***“Our process started with identifying our main clients and sources of funding from within the EU and then making a determination as to whether Brexit might affect our relationship with them. We also considered wider impacts such as impact/likely reaction from local UK clients.”***

– Brad Duncan, Head of Legal and Company Secretary at the Carbon Trust

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Of those whose organisations had not carried out a ‘Brexit audit’, 55.1% said that they intended to do so in future. They described the impetus for doing so as follows:

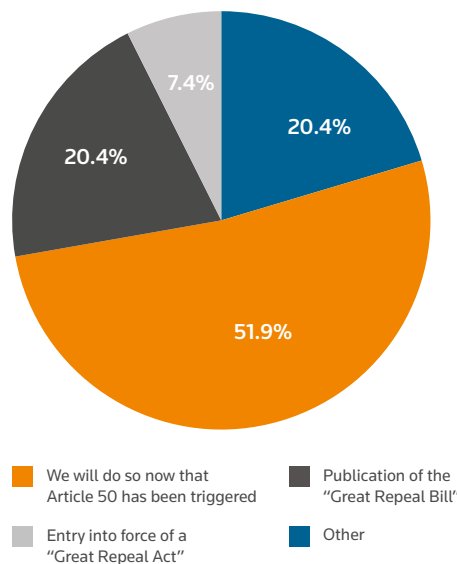


Fig. 4. Impetus for carrying out a ‘Brexit audit’ in future

As to ‘other’ events that would trigger such an audit, one respondent said that Brexit would be dealt with in their organisation’s next scheduled risk review. Otherwise, organisations were waiting for further clarity on the terms of Brexit before carrying out their ‘Brexit audit’ – particularly in the areas of transitional arrangements, passporting rights and the terms of a UK/EU trade deal.

## Brexit planning

We wanted to know what mechanisms and structures organisations were putting in place in order to manage Brexit: were they relying on external consultants and advisers, or managing matters themselves? Had they put formal structures and policies in place, or were they taking a more ad hoc approach? Was it just too early to be considering these things? And, finally, were they seeking to influence how the government was handling Brexit, or would they simply adapt their approach in response to the course set?

### Internal resourcing

We asked:

- Did they have a dedicated 'Brexit team'?
- Where there was no such team, who within the organisation was taking responsibility for Brexit?
- How much of respondents' time was currently dedicated to handling Brexit?

The responses were as follows.

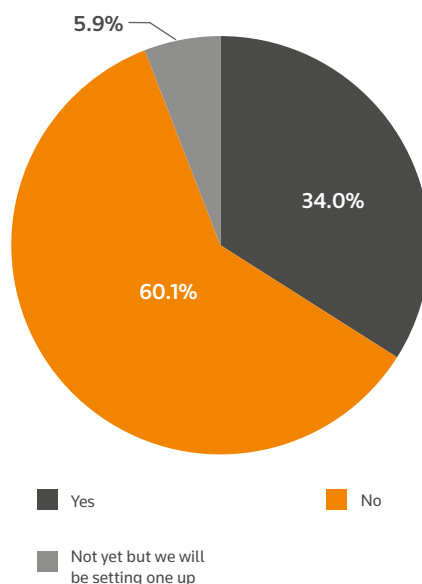


Fig. 5. Does your organisation have a dedicated 'Brexit team'?

The role of lawyers within the Brexit teams that have been (or will be) established is prominent: more than 93% of respondents said that their organisation's Brexit team included or would include at least one lawyer. Over a fifth of Brexit teams are led or will be led by lawyers.

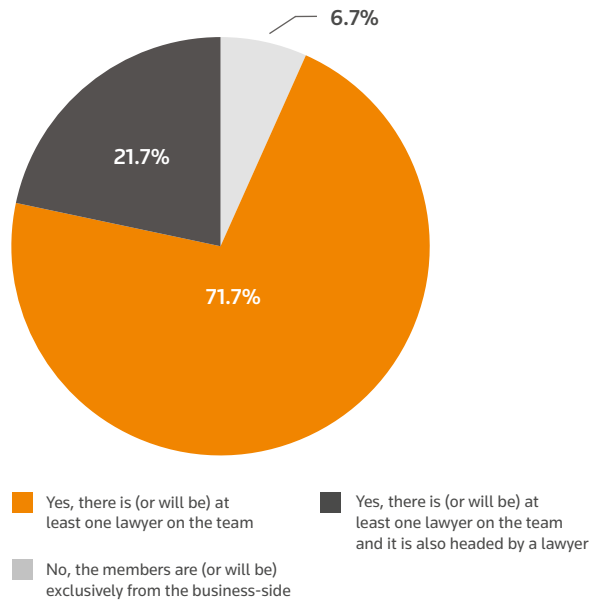


Fig. 6. Does (or will) the 'Brexiteer' team include lawyers?

Where there is no dedicated 'Brexiteer' team, responsibility for Brexit sits with different teams within the respondents' organisations:

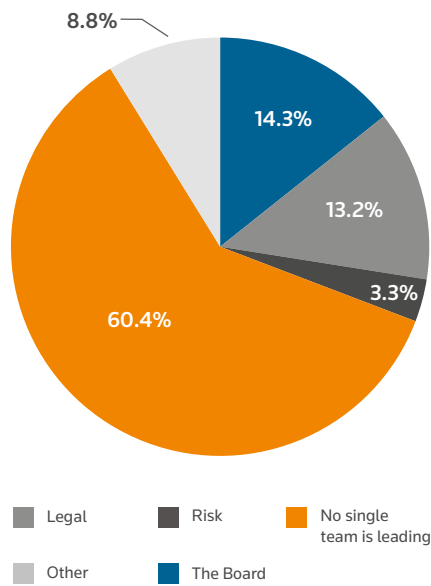


Fig. 7. Who within your organisation is taking the lead on Brexit?

As yet, however, for the vast majority of respondents, Brexit is not absorbing a great deal of time: two thirds of respondents reported spending 5% or less of their time dealing with Brexit, with nearly 90% of people spending 10% or less of their time on it. Just 4.6% said that they were spending more than 25% of their time on this issue.

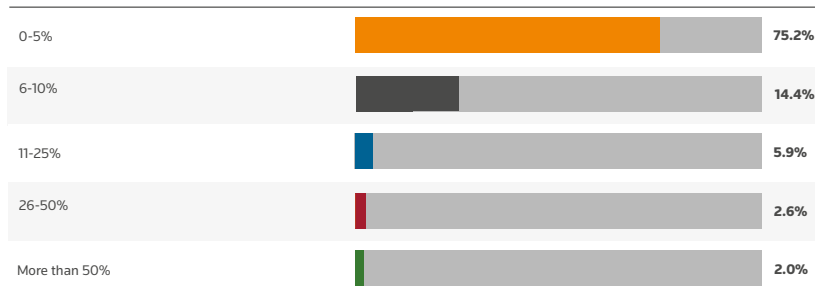


Fig. 8. How much of your time is currently dedicated to dealing with Brexit (whether within a 'Brexit team' or not)?

### External resourcing

The time spent by in-house lawyers on Brexit may well increase, however, as almost half (47.7%) of respondents' organisations intend to deal with Brexit's legal ramifications internally rather than relying on external legal advice.

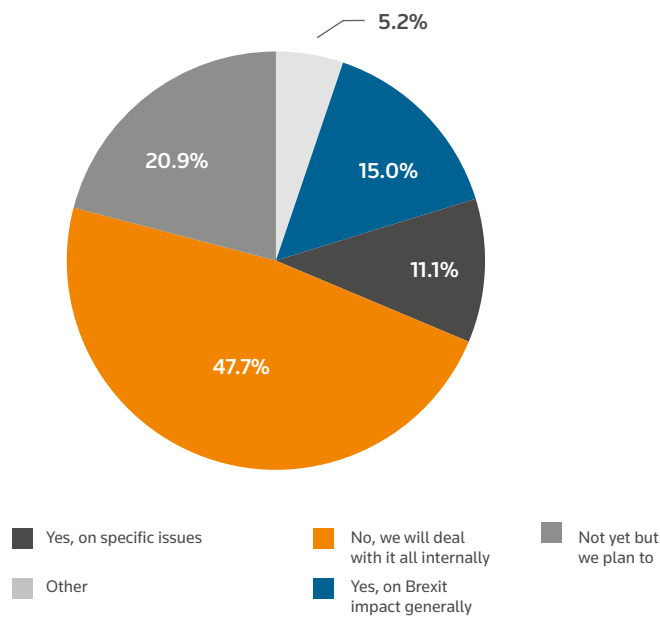


Fig. 9. Have you obtained independent legal advice on the likely impact of Brexit on your organisation?

Respondents revealed a range of reasons for not having obtained comprehensive legal advice from external sources:

- More than one respondent was of the opinion that obtaining detailed legal advice at this stage was premature – some referred to the large amount of free advice available as being sufficient pending further clarity on the terms of Brexit.
- One respondent said that their organisation was relying on discussions with and advice from industry associations.

- MiFID II implementation was currently of more pressing importance for one respondent, while it had been the subject of some of the detailed legal advice on Brexit sought by another.

The most common issues on which legal advice had been, or was likely to be, sought were:

- Access to labour.
- Data protection.
- Incorporation of subsidiaries in the EU and other restructuring matters.
- IP rights.
- Passporting and access to financial services markets.

A majority of survey participants also thought that it was too early to say whether their organisation would be engaging external consultants to assist in managing Brexit on a day-to-day basis. However, over a third said that their organisation would not be taking this route.

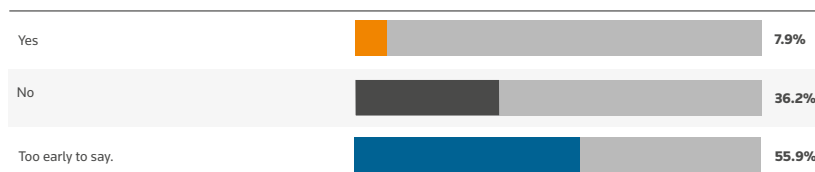


Fig. 10. Will you be engaging external consultants?

## Staff resources

Time spent managing Brexit to date has, in part, been devoted to setting up resources for organisations' employees. Survey participants told us that their organisations had put the following in place for staff:

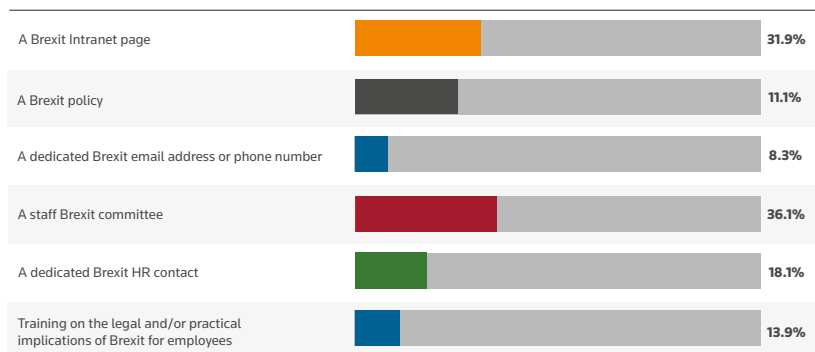


Fig. 11. Which of these Brexit resources have you put in place for staff?

In addition to the resources identified in the survey question, some organisations had prepared:

- Employee communications on Brexit.
- Support on immigration issues for EU nationals.

The last of these is consistent with a small but significant minority of respondents (13.4%) who said they had experienced difficulty in recruiting EU nationals since the Brexit vote.

One such respondent gave further details of the nature of the difficulty experienced, and the support put in place to mitigate it.

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***“Approximately a third of our UK staff are from the EU. We run our multi-lingual customer service centre for Europe in the UK and many of that team are from other EU countries so that, for example, a customer who calls from Spain will be routed to a Spanish national. We also employ a lot of scientists who originate from other EU countries, in common with other companies in our sector.***

***Following the Brexit vote, we arranged for a local law firm to have one-to-one sessions with EU nationals who would like help in securing residency. We will continue to pay for legal support on immigration issues for EU nationals so we can retain our staff. We’ve unfortunately lost a few good people who have decided to move to another EU country to avoid uncertainty with their immigration status, especially where they have school-aged children. We hope that the legal support will assist retention.”***

– Senior lawyer, large company in the life sciences sector

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### **“Brexit means...”: government lobbying**

One fifth (21.7%) of respondents’ organisations have made submissions to the government on how it should handle Brexit. A further 8.6% were considering doing so.

The vast majority (92%) of those that had and who also confirmed the size of their organisation worked in ‘large’ organisations. Of them, 47.8% were headquartered in the UK; 30.4% in an EU country other than a UK country and 21.7% were headquartered outside the EU.

## Impact on contractual arrangements

We wanted to understand whether the Brexit vote had already affected organisations' contractual relationships. Had they or their counterparties sought to amend their contractual relationships during the currency of a contract for reasons relating to Brexit? Were they or their counterparties introducing different provisions in contracts entered into since the Brexit vote? And, if so, which side was driving this change?

### Existing contracts

The vast majority of respondents (73.7%) said that there had been no attempt by their counterparties to terminate or renegotiate existing contracts for reasons related to Brexit. Only 6.9% reported that there had been such an attempt in relation to more than 5% of their contracts.

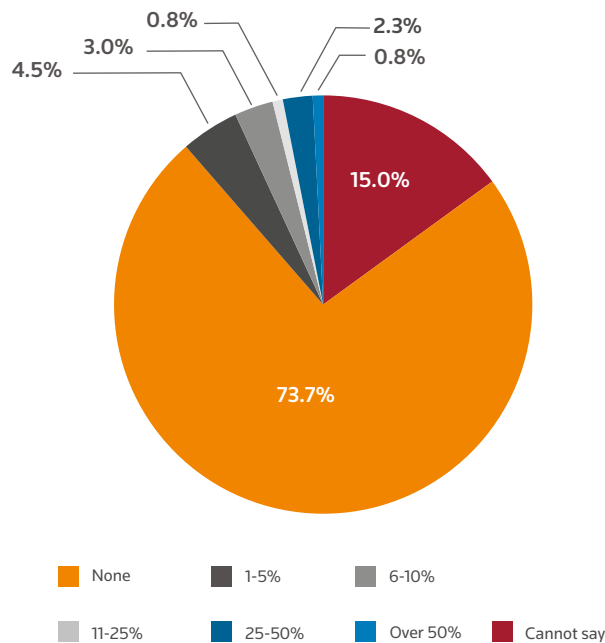


Fig. 12. Percentage of contracts which organisations' counterparties have attempted to terminate or renegotiate.

However, where such attempts had been made, counterparties had relied on a variety of clauses:

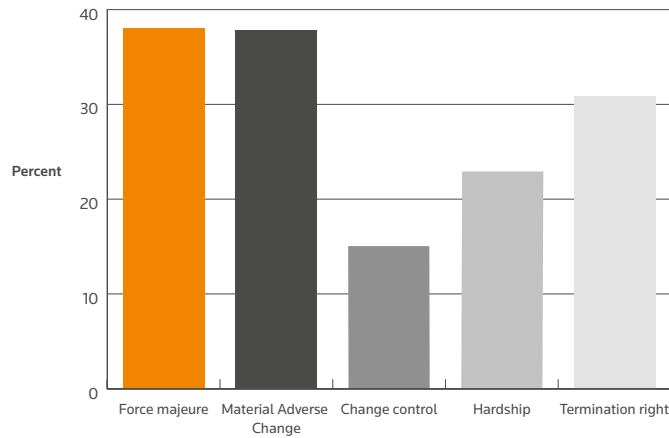


Fig. 13. Clauses relied on by counterparties as giving a right to terminate or renegotiate existing contracts.

Counterparties had also sought to rely on data protection clauses and passporting rights, as well as attempting to initiate negotiations without there being a clear contractual right to do so.

For one respondent’s organisation, contractual terms were not the issue. Rather than a contractual boilerplate clause providing an opening for discussions, their pricing structures had been changed totally.

Another participant commented that their counterparty’s attempt to rely on a force majeure clause had not been successful, while a separate organisation’s suppliers had tried to incorporate Brexit as a force majeure event and right to terminate.

Some respondents gave details of where the counterparties attempting to change a contractual relationship were based:

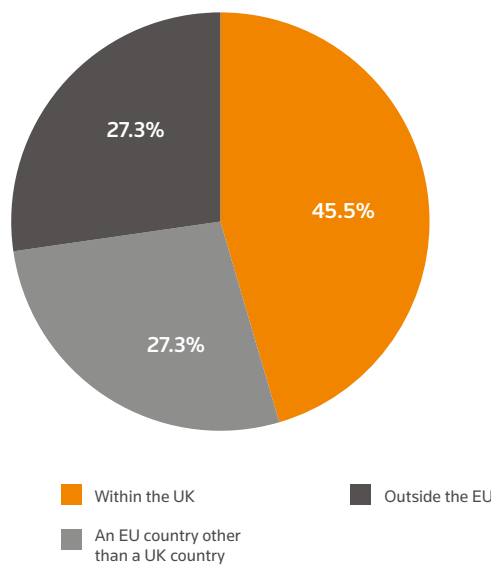


Fig. 14. Where are the counterparties purporting to terminate or renegotiate contracts mainly based?



When asked whether their own organisation had sought to renegotiate or terminate existing contracts for reasons relating to Brexit, the response was overwhelmingly 'no':

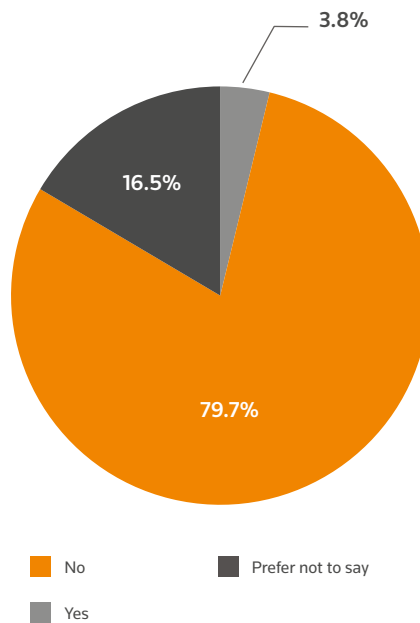


Fig. 15. Has your organisation sought to amend contractual arrangements due to Brexit?

Those which had, however, had relied predominantly on force majeure clauses (40%) or a termination right (20%). One respondent said that this had been done in the course of an annual contract renewal.

### New contracts

We asked whether, since the Brexit vote, respondents' organisations were entering into fewer contracts which:

- Were subject to English law and jurisdiction?
- Relied on LIBOR as a benchmark?
- Were denominated in sterling?

In each case, the response was generally 'no'. However, there had been more negotiation on these points than was typical before the Brexit vote.

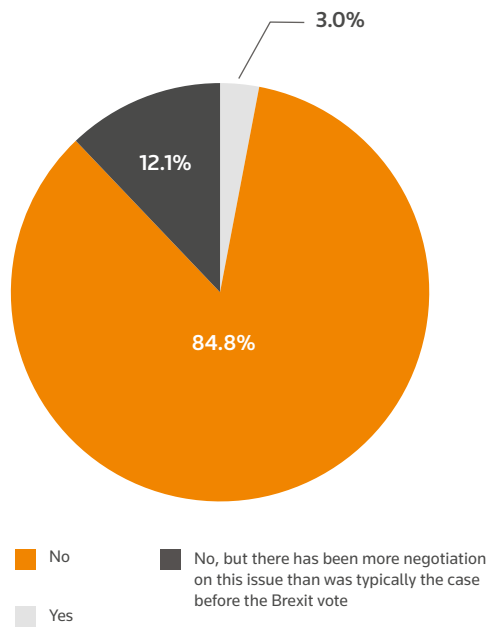


Fig. 16. Have you entered into fewer contracts subject to English law and jurisdiction?

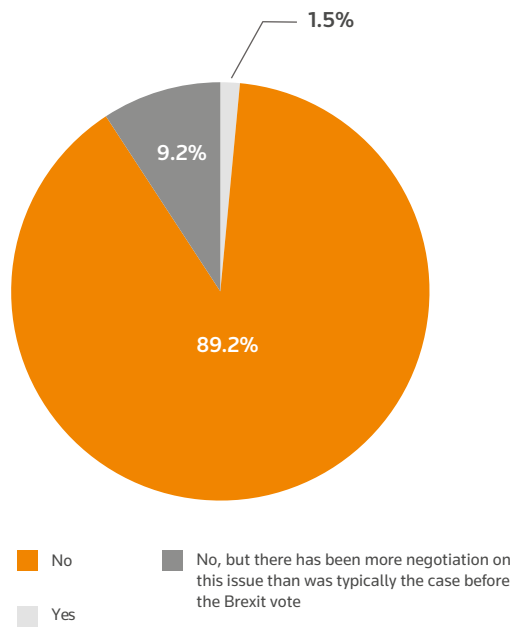


Fig. 17. Have you entered into fewer contracts which rely on LIBOR?

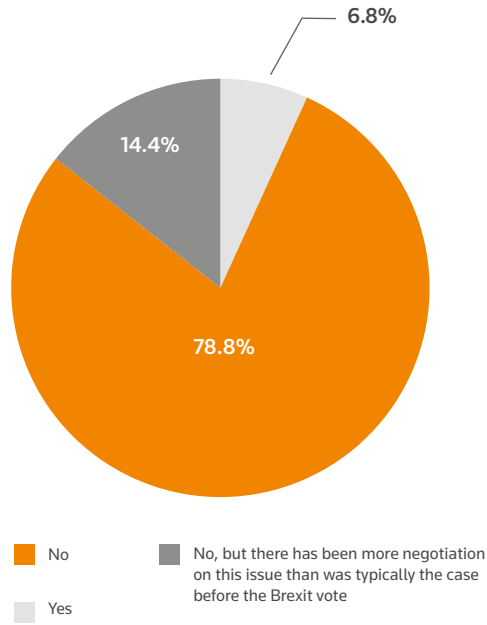


Fig. 18 Have you entered into more contracts denominated in a currency other than sterling?

Where different terms had been agreed, respondents identified the following drivers:

- Law and jurisdiction: in every case, this was due to the other side's insistence.
- LIBOR: in 50% of cases this was at the other side's insistence; in the other 50% of cases it was a mutual decision.
- Currency: this was a more mixed picture (see Fig. 19)

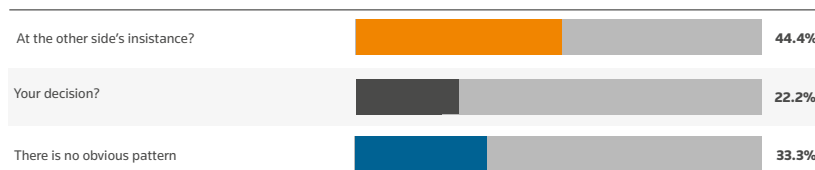


Fig. 19. Party driving decision to enter into a contract not denominated in sterling, which would have been prior to the Brexit vote.

### Brexit clauses

Almost a quarter of respondents (24.8%) reported that their organisations had entered into a contract, whether new or renegotiated, that included a 'Brexit clause' (such as that **produced by Practical Law**) since the Brexit vote. However, there was no clear trend on which party was driving this change:

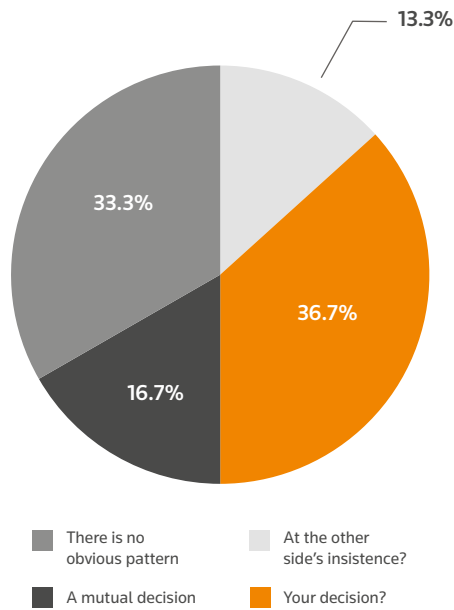


Fig. 20. Whose decision was it to introduce a 'Brexit clause' into contracts?

Of those who had reviewed Practical Law's clause, over half (57.7%) said that they had included or planned to include it in contracts which were currently under negotiation (with or without amendment). Respondents gave various reasons for not doing so, including:

- A belief that other contractual provisions could be relied on if necessary (55.6%).
- Inclusion of other clauses intended to deal with specific anticipated effects of Brexit, rather than a single 'Brexit clause' (55.6%).
- A belief that it was uncommercial to try to include any such clause and that counterparties would not agree to it (33.3%).

Two respondents also explained that Brexit was more likely to be an issue during their next annual supply contract negotiations.

### **Alternatives to a 'Brexit clause'**

When asked which clauses organisations were including in their contracts in preference to a single 'Brexit clause', respondents identified:

- Rights of renegotiation or termination.
- Price adjustment provisions.
- Article 29 Working Party clauses.

One participant added that they would be looking to include 'key employee' and 'key staff' clauses in order to ensure that their organisation would continue to be able to access necessary skills.

### **Other effects of the Brexit vote**

Aside from contractual and employment considerations, respondents referred to a number of effects on their business resulting from the Brexit vote.

Several participants commented that they had experienced:

- A 'cooling-off' of interest in doing business from commercial partners in the EU.
- Negative effects of currency fluctuations, including increased costs of raw materials, a need to enter into additional hedging or requests to increase prices.
- Delay in projects.

Not all of the effects were negative: a few referred to a boost in their figures resulting from the depreciation in sterling following the vote because, for example, they report in another currency, or their biggest market is the US.

Around a third of those who commented, however, said that there had been little impact on their businesses so far. They were more concerned about potential future effects of the Brexit vote, and how they might affect access to their markets or suppliers. In the interim 'uncertainty' was a key concern.

## Futureproofing

We wanted to find out what organisations were doing in order to reduce this uncertainty.

We asked respondents what measures (other than contractual renegotiation) they were taking to protect their organisations and mitigate potentially negative consequences of the Brexit vote for their businesses. Were they seeking to preserve the status quo by expressly incorporating areas of EU law into their contracts? Were they reviewing their legal panels to make sure that they would have access to the expertise they would need post-Brexit? And were they looking to set up subsidiaries in the EU, if they did not have any already?

### Preservation of EU law

While 68.3% of respondents said that it was too early to say whether they would be incorporating specific provisions of EU law into new contracts, 14.2% said that they would be doing so.

Areas of EU law that participants were keen to preserve were:

- Data protection law (specifically GDPR).
- TUPE and employment law generally.
- The Payment Services Regulations.
- Market abuse regulations.

### Legal panel review

Some respondents (8.3%) said that they planned to review their legal panel to ensure that it would meet their needs post-Brexit. While a large number of participants had decided not to do so (36.7%) it is possible that many more organisations will be conducting such a review in future, as the remaining 55% said it was too early to say at this stage.

## Other measures

Thirty-two respondents indicated other steps that their organisations were taking, or were considering taking, to 'futureproof' themselves. The most common measures identified fell into 4 broad categories:

- Corporate restructuring, including setting up new subsidiaries within the EU or moving existing entities (mentioned by 28% of respondents).
- Operational changes and/or relocation of work to another existing part of the group, in order to accommodate changed lead times and mitigate the impact of an inability to rely on EU-guaranteed freedoms (mentioned by 21.9% of respondents).
- Staff reallocation and consideration of visa issues (mentioned by 9.4% of respondents).
- Technological measures, such as increasing reliance on digital solutions in order to rely less on people (mentioned by 3.1% of respondents).

However, 18.8% of respondents commented that it was too early to say at this stage what further steps they might be taking.

## Appendix - survey methodology

This survey was designed and the report compiled by Alice Southall, Editor in Practical Law's In-house team.

The survey went live to respondents on 5 April 2017 and was closed on 3 May 2017. It was publicised through marketing channels as well as Practical Law's website and subscriber updates, the Practical Law In-house blog and through LinkedIn. Respondents had the opportunity to be entered into a prize draw, subject to certain terms and conditions.

The survey was divided into four sections, dealing with:

- Perception of and planning for Brexit.
- Impact on contractual arrangements to date.
- Contracting for Brexit and futureproofing.
- Details about the respondent and their organisation.

Some key questions within each substantive section were compulsory, while others were not. Some questions were contingent on the answer to an earlier question; these were not compulsory. Percentage figures given represent the percentage of those who answered a particular question. Some questions (such as that about staff resources) permitted a respondent to choose multiple answers.

In total, 172 respondents answered the survey, 113 of whom answered every substantive compulsory question.

Certain respondents who had given permission to do so were contacted regarding their responses.

### About the respondents

- Almost all of the respondents were in-house lawyers, with almost 20% being General Counsel, and other senior roles being well-represented.



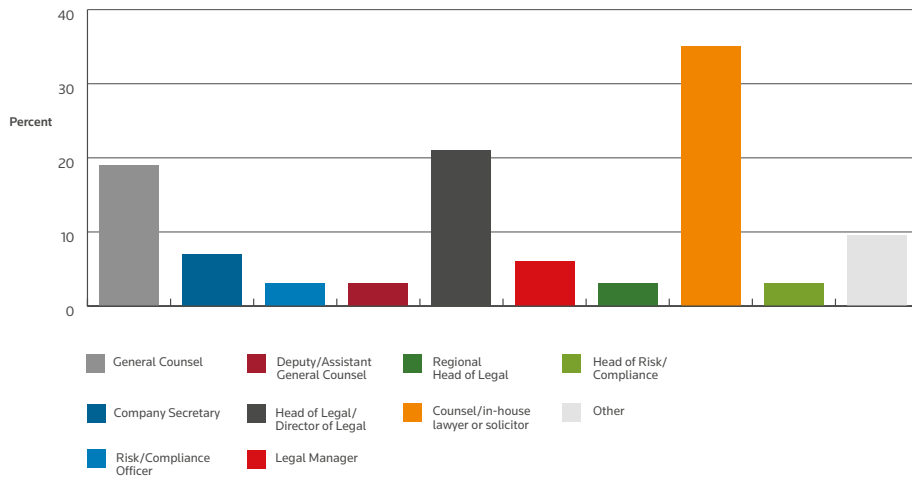


Fig. A. What is your title?

- Respondents work in a wide range of industries, with a quarter (24.8%) working in the banking and financial institutions sector. Other industries represented included:
  - Advertising
  - Chemicals
  - Construction
  - Energy
  - IT
  - Leisure and hospitality
  - Life sciences
  - Manufacturing
  - Media and telecoms
  - Pharmaceutical
  - Public sector
  - Transport
  - Retail
  - Utilities
  - Waste
- Organisations with headquarters within and outside the UK and EU were represented.

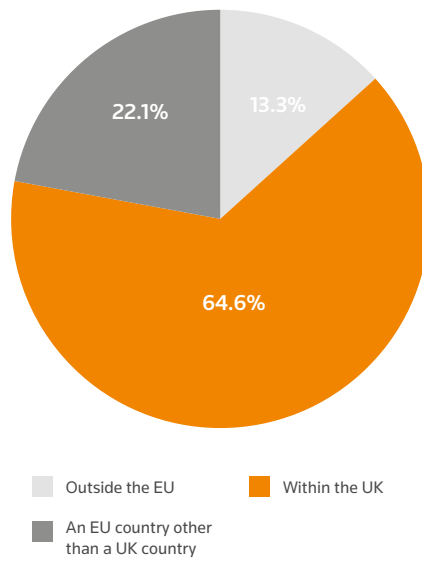


Fig. B. Where is your organisation headquartered?

- Three quarters of respondents (75.2%) work in 'large' organisations (with more than 250 personnel).
- A significant proportion of the business done by respondents' organisations is cross-border in nature:

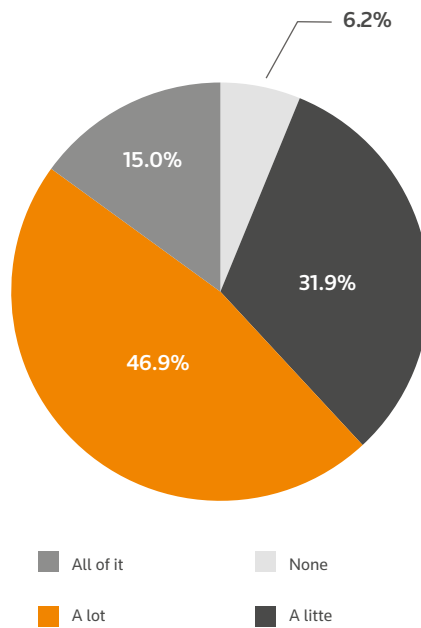


Fig.C. How much of your organisation's business is cross-border in nature?