



ASSOCIATION
OF COLLEGES

Brexit

College Readiness Pack

21 November 2019

College Readiness Pack

Association of Colleges

Version 3: 21 November 2019

Introduction

The UK is due to leave the European Union. The UK government and EU council have agreed a deal. This now needs to be ratified by the UK Parliament and European Parliament. On Saturday 19 October, the UK asked the EU for a Brexit extension to 31 January 2020, and a flexible extension was granted by the EU on 28 October. Whether there is a Brexit deal or not, there are a number of key issues for colleges to consider relating to travel, migration, customs, tax, licensing and other rules.

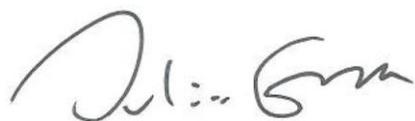
The impact on colleges is less than in some areas of national life. The vast majority of income comes from UK sources while most of their spending is mainly on UK-based staff not on supplies or services provided from the EU. 45 years in the EU has made a difference to our sector. There will be changes relating to the rights of EU nationals, access to publicly funded FE courses by EU nationals¹, teacher recruitment, food supplies, data protection and the regulation of services. Many of these changes will take time to come into effect but others will happen quickly. There may also be confusion. Many people have switched off listening to news about Brexit but may then assume that lots of things will change when it happens. Colleges will have a role in these cases in explaining, that contrary to what they believe, nothing has changed.

This pack is focused on helping those in leadership positions at colleges to understand what they need to do. By "leadership positions", we mean everyone from the chair of governors and the principal to course leaders and supervisors.

The pack is short and is focused on the issues that matter to colleges.

If you have questions on anything covered in this document or about no deal Brexit in general, please email us² on brexit@aoc.co.uk.

AoC's Preparing for Brexit [webinar](#) took place on Wednesday 16 October and ran through the key issues in this pack including data, travel, finance and people. Colleges were able to email in queries and the answers have been collated in the FAQ document which is listed at the back of the pack.



Julian Gravatt
Deputy Chief Executive

¹ "EU national" is used in this document as shorthand to describe anyone who is a national of one of the 27 EU countries. Most of the rules also apply to those living in the European Economic Area (EEA) countries and Switzerland, i.e.: Norway, Iceland, Liechtenstein and Switzerland

² This pack was produced with the assistance of Emma Meredith, Janette Donjon, Beth Bishop, Tahmina Begum and Sam Ayerst

Contents

Writing a plan in a day

- 1.1 Who needs to be done and by whom
- 1.2 A college specific risk assessment
- 1.3 Communications
- 1.4 Keeping up to date

People

- 2.1. The rules
- 2.2. College staff
- 2.3. College students

Data

- 3.1 GDPR
- 3.2. Contracts

Domestic consequences

- 4.1. Employers and apprentices
- 4.2. Fuel supplies and travel
- 4.3. Exams
- 4.4. Food supplies
- 4.5. Pharmaceuticals
- 4.6. Student residential accommodation
- 4.7. Animal health
- 4.8. Emergencies

Travel to the EU

- 5.1. Erasmus
- 5.2 Student exchanges

College finances

- 6.1. Funding from EU sources
- 6.2 Cashflow
- 6.3. Procurement

Appendices

1. Frequently asked questions
2. GDPR briefing note by Irwin Mitchell
3. No deal risk assessment
4. No deal continuity plan checklist
5. Further information

Section 1

Writing a plan in a day

1.1. What needs to be done and by whom

Colleges have prepared and kept all sorts of plans since the 1990s to manage risks, deal with emergencies and ensure continuity. This is something that insurance companies, auditors and the funding agency expect. ESFA expects every college to have a Business Continuity Plan and cites government guidance from 2014 as a model³. The task relating to a no-deal Brexit is:

- to ensure that the existing continuity plans take account of the Brexit issues.
- to do this efficiently, the task could be completed within a day in most colleges.
- to act promptly, i.e. before 31 January 2020

This task needs to be led by a senior member of staff who has:

- the authority and skills to ensure cross-college engagement and release any resources necessary
- a sound understanding of the issues
- sufficient time to oversee the planning process

Every college has people with different responsibilities and functions but typically the people who are involved should cover the following functions:

- Senior Curriculum Manager
- HR
- Student Services
- Estates
- Finance
- Contracts (if separate)
- International

1.2. A college-specific risk assessment

This guidance has been written for the majority of colleges whose work will be affected by Brexit but who have other, more immediate issues relating to teaching and training thousands of students. Every college should, nevertheless, carry out an assessment of the risks for their students, staff and activities. The assessment should look at whether the college has any higher risk factors, for example:

³ Home Office "Expect the Unexpected" advice 2014

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/376381/Expecting_the_Unexpected_Reviewed.pdf

- **Students:** A high number of students who are EU nationals, particularly if there is any evidence of concerns being expressed.
- **Staff:** A high number of members of staff who are EU nationals and any evidence of concerns being expressed.
- **Travel to the EU:** Large numbers of students involved in Erasmus student exchanges with one or more overseas student trips taking place in early November.
- **Domestic travel:** Campuses that are more vulnerable to possible travel disruption, for example because of a location next to a major port or because of the nature of the daily journey by students and staff.
- **Residential:** Students in residential accommodation managed by the college. This will create extra responsibilities if a no-deal Brexit results in shortages.
- **Animals:** Animals who are permanently on the college premises (for example in farms or stables).
- **Employers:** Large employers in the locality whose work might be negatively affected by a no-deal Brexit which may, in turn, result in apprentices being made redundant.
- **Capital projects:** Significant suppliers from the rest of the EU, for example as part of a time-critical capital project.

Colleges will need to put in place controls and counter-measures to address any significant risks that they may identify. The information in this pack may assist.

1.3. Communications

A plan is only any good if people know it exists and what they are expected to do about it. Colleges will already have arrangements in place for communicating their Business Continuity Plans. Deal or no-deal Brexit planning may raise significant issues so it would obviously make sense, once plans are made, to ensure that governors, managers, staff, key suppliers and other stakeholders know what they are. It is important not to over-communicate. There is a mountain of information about Brexit for those who are interested.

1.4. Keeping up to date

Events associated with Brexit change on a daily basis. The government started to plan publicly for a no-deal Brexit in August 2018 but stood down on planning in April 2019 when the UK and EU agreed an extension. It is impossible to predict what will happen next, but it is sensible to keep any Brexit-related parts of the college's business continuity plan up to date. The three best channels of communication for a college are likely to be:

- Local government (the local council for each campus)
- The UK government
- AoC

The UK government is running a nationwide information campaign. Online information is available via this website www.gov.uk/brexit

There are Brexit roadshows running in various locations. These can be booked via this website <https://registration.livgroup.co.uk/brexitbusinessreadinessevents/>

AoC's Preparing for Brexit [webinar](#) took place on Wednesday 16 October 2019 at 3:30pm and ran through the key issues in this pack including data, travel, finance and people. Colleges were able to email in queries and the answers have been collated in the FAQ document which is listed at the back of the pack.

Section 2

People

2.1 The rules

The first and most important Brexit-related issues relate to individuals and their families. Colleges engage with thousands of people each week, including the staff they employ directly or via contracts and the students and apprentices they educate.

The UK's exit from the European Union will bring major changes to individual rights and to the migration system but these changes come in the long-term.

In the short-term (for at least 12 months):

- very little changes⁴.
- there will be some visible changes at the UK border and tougher rules for those with significant criminal records.
- EU nationals will be able to cross the border as now and will continue to have the same rights as UK nationals to use the NHS, access education and other public services.
- Irish citizens' rights do not change at all.
- the Home Office will continue to encourage UK resident EU nationals to apply to the EU Settlement Scheme by December 2020 and will set up a new European Temporary Leave to Remain status for those arriving after the exit date.

Things are then scheduled to change in 2021. The Home Office needs to complete the EU Settlement Scheme process and to develop new IT systems. The government needs to secure Parliamentary approval for the removal of EU freedom of movement rules from UK law and for implementing a new immigration system. In the Immigration white paper published in December 2018, the UK government set out plans for new rules to take effect in 2021. The new Home Secretary has asked the Migration Advisory Committee to investigate two sets of changes⁵ to these plans so, at the time of writing, the next steps are unclear.

⁴ AoC summary of the Home Office's note on immigration arrangements for EU citizens moving to the UK after Brexit was published on 5 September 2019 <https://www.gov.uk/government/publications/no-deal-immigration-arrangements-for-eu-citizens-moving-to-the-uk-after-brexit/no-deal-immigration-arrangements-for-eu-citizens-arriving-after-brexit>

⁵ The Home Secretary asked the MAC to report on a different salary threshold for the skilled worker route and on the feasibility of an Australian points-based system

2.2 College staff

Almost every college employs at least one EU national while others employ dozens⁶. There will be many more people working in colleges who have spouses, partners, relatives, in-laws and close friends who are EU nationals. There will be yet more cases where someone has a relative (for example parents) living in an EU country whose personal circumstances change.

There are a number of issues relating to staff when it comes to a no-deal Brexit:

- Right to work checks: The existing right to work checks remain unchanged. Colleges need to avoid any new discrimination against EU, EEA and Swiss citizens⁷.
- Safer recruitment: UK agencies will lose access to EU data sharing on criminal records, but colleges must continue to carry out the same safer recruitment checks for applicants who have lived or worked outside the UK. Colleges should apply the same processes as they do when employing an individual from the rest of the world⁸.
- Regulation of immigration advice: Colleges can offer information on the rules but need to ensure they do not offer unregulated immigration advice⁹. The focus should be on signposting official advice.

The key actions to take with respect to all staff are:

- Reassurance: To provide reassurance about the short-term (“very little changes in the short-term”) while pointing out that change will come in the long-term.
- Support for individuals: To invite anyone who has concerns about their own position to talk to HR (or its equivalent), while ensuring that the HR person has looked at the Home Office’s Employer Guide to the Settlement Scheme¹⁰.

⁶ Estimates from AoC workforce surveys. The average college reports 4% of their staff as EU nationals

⁷ Right to work checks on EU citizens if the UK leaves with no deal, September 2019

<https://www.gov.uk/guidance/employing-eu-eea-and-swiss-citizens-and-their-family-members-after-brex>

⁸ Advice for FE and apprenticeship providers in England if the UK leaves the EU with no deal, gov.uk, August 2019. DfE’s Statutory guidance Keeping Safe in Education is available here

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>. Page 40 contains the safer recruitment advice for people who have lived and worked in the UK and provides a link to this Home Office website which explains how overseas criminal record checks can be carried out

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

⁹ Guidance on risks of unregulated immigration advice, gov.uk, June 2016

¹⁰ <https://www.gov.uk/government/publications/eu-settlement-scheme-employer-toolkit>

2.3. College students

FE funding rules were rewritten in the 1990s to enshrine equal treatment between UK and non-UK EU nationals. These changes extended the rules introduced in the 1980s that required a person to have three years ordinary residence in the UK to qualify for home status. The precise rules are in:

- 16 to 19 funding regulations, pages 13 to 17¹¹
- Adult education budget (AEB) regulations, pages 12 to 16¹²
- Apprenticeship funding rules for training providers, pages 62 to 66¹³

There are differences in the rules. 16 to 19-year-olds can be eligible for funding on the basis of UK or EEA nationality, if they are residing legally in the UK¹⁴, whereas AEB or apprenticeship eligibility does not have the additional nationality category.

On Brexit, ESFA's 2019-20 rules say that:

“once enrolled they [EU, EEA and Swiss nationals] will be eligible for funding for the full duration of their study programme.”

Ever since the referendum outcome in 2016, DfE ministers have sought to provide reassurance to higher education students about future funding before the start of the application cycle (i.e. 12 months before the start of the academic year). In the statement made in May 2019, the Universities and Science Minister Chris Skidmore also covered FE students. His statement said that:

“EU nationals who start a higher education course in England in the 2020/21 academic year will remain eligible for undergraduate and postgraduate financial support, Advanced Learner loans as well as FE and apprenticeships support, whether a deal for leaving the EU is in place or not.”

DfE officials advise us that this provides an effective assurance to those planning to start courses in 2020/21.

Brexit will bring changes but changes to student funding will follow the legislation on immigration. As explained earlier, the government needs to firm up its plans, to take legislation to Parliament and get approval from both Houses of Parliament for changes.

¹¹ <https://www.gov.uk/government/publications/advice-funding-regulations-for-post-16-provision>

¹² <https://www.gov.uk/government/publications/adult-education-budget-aeb-funding-rules-2019-to-2020>.

The adult education budget is devolved in 7 areas of England but these rules are the same across the country

¹³ <https://www.gov.uk/guidance/apprenticeship-funding-rules>

¹⁴ The exact text is in paragraph 40(c) as well as paragraph 38 of the 16-to-19 rules

The government does not currently have a majority in Parliament and the Home Office does not plan any major change to the rules until early 2021 at the earliest.

Section 3

Data

3.1 GDPR

Data transfer within the UK complies with the General Data Protection Requirements (GDPR) because the UK has adopted the EU directive via the 2018 Data Protection Act. There is no change for UK-based organisations who do not transfer any data into or out of the UK. Unfortunately, life in this area may not be simple. There will be no firm legal basis for data transfer between the UK and EU in the event of a no-deal Brexit because the EU will not have made an adequate decision. No deal makes UK a third country when it comes to UK-EU27 data transfer and so requires extra contractual clauses. AoC has provided a more detailed GDPR Brief Note which can be found in appendix 2.

3.2. Contracts

Colleges need to revise their contracts where they:

- Receive personal data from international partners including the EEA
- Operate in the European Economic Area (the EEA), which includes the EU¹⁵

Personal data is “any information that can be used to identify a living individual, including their name, their physical or IP address, or HR data such as staff working hours and payroll details”. Personal data is regularly used in the daily running of colleges including HR, student and business contracts, purchasing and marketing.

A no-deal Brexit requires colleges to review any contract covering receipt of personal data from the EU/EEA and the incorporation of Standard Contractual Clauses (SCC).

The Information Commissioner’s Office (ICO) has produced a checklist¹⁶ to help work out if these clauses are necessary and which clauses to include. SCC’s are standard sets of contractual terms and conditions which the sender and the receiver of the personal data both sign up to. They include contractual obligations which help to protect personal data when it leaves the EEA and the protection of GDPR.

It is the EEA sender of the personal data which must comply with GDPR rules, but UK receivers will want to assist senders in complying, to make sure data continues to flow.

Failure to act could result in loss of access to personal data.

¹⁵ No deal notice on using personal data after brexit: <https://www.gov.uk/guidance/using-personal-data-after-brexit#what-you-need-to-do-before-a-no-deal-brexit>

¹⁶ ICO toolkit is here <https://ico.org.uk/for-organisations/data-protection-and-brexit/keep-data-flowing-from-the-eea-to-the-uk-interactive-tool/>

Section 4

Domestic consequences

4.1 Employers and apprentices

Apprentices are full-time employees and could face redundancy, short-time working or shift changes following a no-deal Brexit. The first priority of any employer is survival and there will be cases where employers are forced to act to protect services to their customers. It is impossible to foresee what might happen, but it is worth all teaching and support staff that are involved with apprentices knowing they should be watching out for regarding changes in circumstances and understanding the key rules¹⁷:

- Redundancy: Where an apprentice is made redundant, the college should make reasonable efforts to find them a new employer but should record them as having left if an apprentice who is 6 months from their end date, does not find a new placement within 12 weeks. Colleges are allowed to complete an apprenticeship for those less than 6 months from completion so long as the remaining elements can be completed.
- End of training: Where a change in circumstance means an apprentice's training or assessment has stopped, colleges cannot claim any more funding from an employer's apprenticeship service account or government co-investment. The college must report the change of circumstance via the Individual Learner Record. The apprentice has employment rights in these circumstances.

If there is a large-scale redundancy involving lots of people in a locality, government agencies (including the ESFA) may act to provide continuity of funding for training outside the existing rules or support retraining. This cannot be relied upon by a college.

Colleges have large numbers of links with employers in their day to day work. This official Brexit information leaflet for small and medium sized companies may be something to pass onto them <https://www.gov.uk/government/publications/leaving-the-eu-advice-for-smes>

4.2. Fuel supplies and travel

The government published reasonable worst-case assumptions for a no-deal Brexit on 11 September¹⁸ which had been prepared on 2 August 2019. These address the possibility that there might be disruption at major junctions in the UK traffic system which may, in turn, affect fuel supplies. The document identifies a risk that blockages at

¹⁷ ESFA apprenticeship funding rules for providers, paras 257 etc

¹⁸ HMG Reasonable worst-case Operation Yellowhammer assumptions, 2 August 2019 published on gov.uk on 11 September 2019 <https://www.gov.uk/government/publications/government-response-to-humble-address-motion>

the Dartford Crossing might affect fuel supplies in London and the South East. Any disruption will take time to manifest itself at a college but institutions will be more vulnerable if their staff and students typically travel long distances each day to get to work and study. The obvious places to go for information are local authorities and public transport providers.

4.3. Exams

Colleges will be holding GCSE English and maths resit exams in the week commencing 4 November 2019. The awarding bodies coordinated by the Joint Council for Qualifications have decided to make no changes to the timetable or arrangements for these exams.

4.4. Food supplies

Government's reasonable worst-case assumption document made a number of predictions about what might happen in a no-deal scenario:¹⁹

- Supplies of some types of fresh food might decrease.
- There might also be disruption in the supply of key input ingredients, chemicals and packaging.
- This combination of factors would not cause a reduction in overall supply but might reduce availability and choice of products as well as result in rising prices.
- There might also be panic buying of some products.

The document stated that government the government and the food industry have been working on contingency plans but cannot anticipate all potential impacts to the agri-food supply chain so food is a risk area for colleges.

The key actions for colleges to take are:

- Managing food: Ensuring that there is a good understanding of the college's catering operations and food bought by the college. Colleges with contracted-out catering services need to talk to their supplier(s). Colleges who manage catering in-house or who run training restaurants may need to anticipate changes in menus. A key check will be that the college can continue to meet special dietary needs and manage allergies.

¹⁹ HMG Reasonable worst-case Operation Yellowhammer assumptions, 2 August 2019

- Monitoring impact on students: Ensuring that relevant staff monitor any impact of price rises on more vulnerable students (for example younger students living in low income families or adult students who are on benefit). Colleges have funding for free meals for 16-to-18-year olds from low income families which assumes a £2.41 funding rate. If they determine it is necessary to enhance the rate, then they have discretion to do so²⁰.

4.5. Pharmaceuticals

Government's reasonable worst-case assumption document²¹ predicted possible impact on the supply of pharmaceuticals but this is an area where the NHS system has put in a lot of work to avoid problems. Individuals are responsible for their own health but, again, this is an area where colleges should be vigilant to ensure they can protect staff and students.

4.6. Student residential accommodation

Colleges have enhanced responsibilities for students in residential accommodation, particularly younger or more vulnerable students. A no-deal Brexit does not raise any specific issues relating to student residences but issues relating to the status of EU nationals, food, pharmaceuticals and travel will be more acute for anyone living on the college's premises rather than home.

4.7. Animal health

Government's reasonable worst-case assumption document²² predicted that possible disruption to the supply of veterinary medicines might make it harder to reduce or prevent disease outbreaks. There is a whole set of official guidance via DEFRA, the Animal and Plant Health Agency, Royal College of Veterinary Surgeons etc.

4.8. Emergencies

There are lots of things that could cause major disruption to the work of a college. The table below was prepared by university managers and lists possible sources of disruption in higher education²³. Any of them could happen in a college; some colleges have had experience of several of them.

²⁰ ESFA free meals for 16-to-18-year olds in further education funding guidance, 2019-20

²¹ HMG Reasonable worst-case Operation Yellowhammer assumptions, 2 August 2019

²² HMG Reasonable worst-case Operation Yellowhammer assumptions, 2 August 2019

²³ Approaches to business continuity in universities, published by UCISA, August 2019 with contributions from 8 university professional organisations (AHUA, AMOSSHE, ARC, AUDE, BUFDG, JISC, SCONUL, UCISA; acronyms available on request)

Building fire Flooding Power outage Water supply failure Transport disruption Severe weather Medical epidemic, e.g. 'flu Industrial action Terrorism alert Exclusion from buildings because they are a crime scene	Denial of service attack on the network Unexpected network outage Ransomware infection Vermin infestation Legionella infection Adverse social media storm Loss of mass personal data	Damage caused by building & maintenance activities Discovery of asbestos HSE notifiable event Chemical incident Failure to renew contract with major monopoly supplier
---	--	--

Brexit could be a cause of further disruption. As well as to the impacts on travel, customs and rules, the government's August 2019 reasonable worst-case assumptions also said the following²⁴:

"Protests and counter-protests may occur across the UK may absorb a significant amount of police time. There may be a rise in public disorder and community tensions"

Emergencies require a different set of responses to other decisions in a college as this chart (again from the university sector business continuity guidance²⁵):

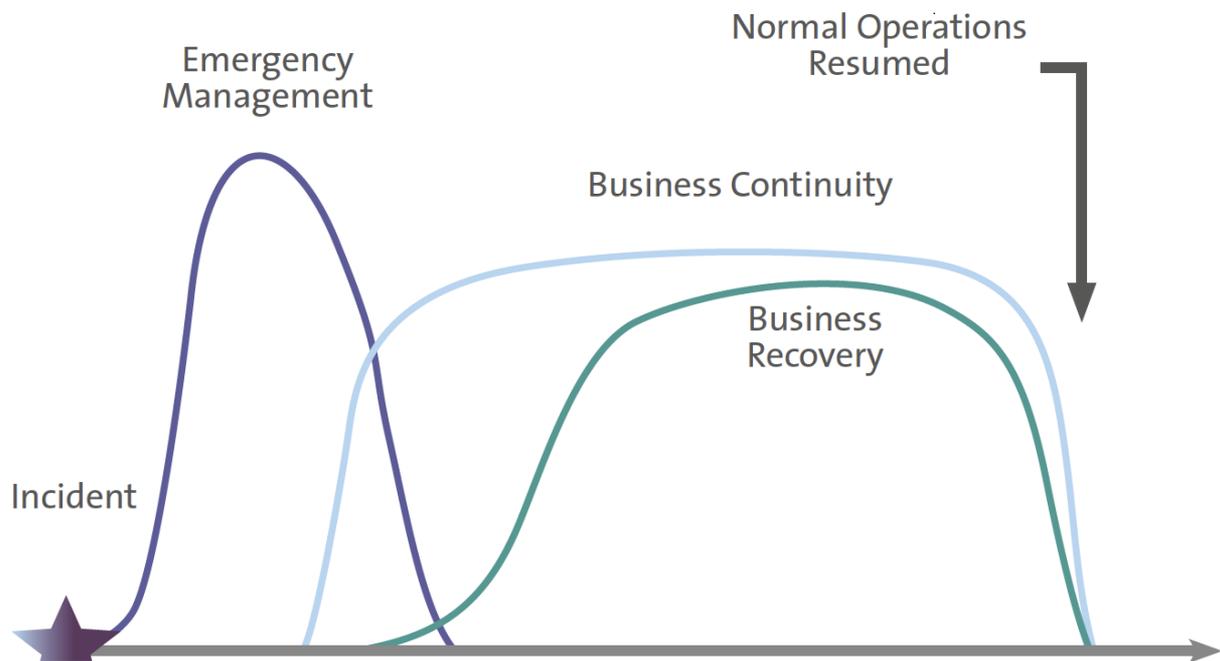
Approach	Description	Driver for action
Risk management	How do we prevent fires? How can we limit fire damage?	Concern for the short, medium and long-term viability of the organization
Emergency management	Get everyone out and call the fire and rescue service. Talk to media and students' parents.	Concern for the immediate welfare of those affected by the incident.
Business continuity	Find everyone places to eat, sleep and work.	Concern for the medium-term welfare of those affected by the incident, and the short-term viability of the organization
Business recovery	Repair the building or relocate and replace the lost possessions.	Concern for the medium-term viability of the organization.

The joint university professions document has the following memorable diagram to explain the concepts.

²⁴ HMG Reasonable worst case Operation Yellowhammer assumptions, 2 August 2019, Page 4

²⁵ Approaches to business continuity in universities, UCISA, August 2019

Another way to picture the relationships is illustrated in Figure 1, Incident Timeline.



Each winter, many colleges close for a day or two because of snow disruption. Colleges stayed open in September 2000 when petrol started to run dry but land-based colleges had to shut up shop in April 2001 when foot and mouth closed down large parts of the countryside. More recently, colleges have been affected by riots or terrorist incidents.

Colleges cannot anticipate all events but key points for action include:

- making sure their business continuity plan is up-to-date.
- clarity about who is authorized to make major decisions (for example of closing a campus)
- making sure contact information is up-to-date.

In some cases, the emergency services will be called and will take control of the situation.

Section 5

Travel to the EU

5.1. Erasmus

Erasmus+ is the European Union's scheme for education, training, youth and sport opportunities. It is best known for university student mobility but in the current 2014-2020 Erasmus+ programme cycle 100 colleges have benefited from funding and colleges have delivered over 17,000 mobility placements. Erasmus+ has been successful as it provides a mechanism for college students and staff to undertake short placements in Europe.

If the UK leaves the EU with a deal, [participation in Erasmus+](#) should continue as normal until the end of 2020. If the UK leaves the EU without a deal in place, UK applicants with successful Erasmus+ bids (and European Solidarity Corps bids) will be able to claim against the UK Government's guarantee. Colleges should [register their projects](#) for the Government's guarantee via the Cabinet Office Portal.

Whether the UK can take part in the 2020 Erasmus+ call will become clearer once the next steps in the Brexit process are agreed.

5.2 Student exchanges

Colleges organise dozens of student trips and exchanges each year. There is no reason for any of this to change but it would be sensible to ensure that a record is accessible to those managing the college's continuity plan.

Government advice anticipates changes to travel. Individuals should check their passport before they go to ensure there is more than 6 months' validity. Reciprocal health arrangement will lapse so travel insurance will need to be extended. Additional driving documents will be needed. Mobile phone charges might rise.

In addition to this, in August 2019, the government shared reasonable worst-case assumptions for a no-deal Brexit anticipated the possibility of increased immigration checks at the new UK/EU border, resulting in passenger delays at St Pancras, Cheriton (Eurotunnel) and Dover²⁶.

However, when it comes to air travel, the European Commission has said that UK airlines will still be able to operate flights between the UK and the EU. The UK government has offered similar assurances for EU airlines. Most airports have a live

²⁶ HMG Reasonable worst-case Operation Yellowhammer assumptions, 2 August 2019

flight status update and it would be worth checking your flight before you set off for the airport. In the event of no-deal, British citizens should allow extra time for passport control as they may no longer be able to use the EEA/EU passport lanes.

The key actions to take are:

- Updating trip policies and processes.
- Ensuring that trip coordinators are aware of the implications for passports, driving and travel times.

Section 6

College finances

6.1. Funding from EU sources

The UK will continue to participate in European Social Fund (ESF) programmes financed by the current EU Budget until their closure, if the UK leaves the EU with a deal. This means that all ESF programmes would be fully funded until the end of 2020. There is a government guarantee that would cover all ESF and other EU projects until the end of 2020, if there's a no-deal Brexit. Projects delivered through the guarantee would be managed largely following existing processes including appropriate audit, monitoring and evaluation arrangements that ensure that spending delivers good value for money and fits domestic strategic priorities. Recipients of funding would be notified of any changes by the appropriate managing authority.

6.2 Cashflow

Colleges already face a number of financial challenges as a result of upward pressure on staff costs, real-terms funding reductions, changes to rules and increased competition. Government agencies create added pressure on cashflow by being slow to make capital grant and apprenticeship payments. Brexit could result in additional short-term costs for colleges while slowing up income. College finance teams should model negative impacts over a three-to-six-month period and, if necessary, consider contingencies.

6.3. Procurement

Colleges have a web of contracts to supply everything they need.

Key actions for colleges:

- Supply chains: to ensure that the college has information on its suppliers and key contracts up to date and available. There are risks for colleges with larger capital projects.
- Customs declaration: to apply for an EORI number which will need to be communicated to suppliers for goods bought directly from the EU²⁷.

²⁷ <https://www.gov.uk/eori>

Appendix 1

Frequently asked questions

The questions in this document have come in from colleges via the webinar held on 16 October 2019 as well as via the brexit@aoc.co.uk email.

1. Do EU students doing voluntary work experience here, from abroad, need right to work checks?

Currently there are no checks required. These checks are only needed for paid employment. This may change in the future if the UK leaves the EU. There are currently separate restrictions on work experience for non-EU nationals studying in the UK.

2. Our apprenticeship and Adult Education Budget (AEB) funding is Education and Skills Funding Agency (ESFA) match funded. Does this mean our allocations will be significantly cut?

The current European Social Fund (ESF) programme runs until December 2020. If the UK leaves the EU before then without a deal or a transition arrangement, HM Treasury has guaranteed to maintain the level of funding. HM Treasury has already confirmed Department for Education's (DfE) 2020-21 budget but DfE hasn't explained what will be spent on individual programmes. What happens in 2021 and afterwards depends on the next spending review and who carries it out.

3. Are fuel shortages a realistic risk?

At the moment the Government is taking every possible precaution to avoid disruption. Fuel supplied could be affected if there is a no-deal Brexit in a scenario where the UK's transport infrastructure is disrupted. Should this happen, fuel supplies could be prioritised to the emergency services such as supplies for public transport and personal use; in this scenario college staff and students may struggle to go to college and colleges are advised to speak to their local authorities and local transport operators e.g. bus, tram, train to check the provision they have made for this situation.

4. If we have EU students at our colleges on an ID card (not a passport) and they leave the UK after a no deal Brexit, would they be able to come back?

Yes. We understand that in the short term the home office will want to ensure there is no disruption to EU nationals entering and leaving the UK. Students may need to expect longer queues or delays and it is a good idea for EU students to travel with their

enrolment letter and/or student ID card in case of any difficulties. However, if there's a no deal Brexit, the Government will look to phase out ID cards sooner rather than later, and the AoC will work with the Home Office to secure as much information as possible.

5. Can we apply for an Erasmus+ bid again in the 2020 call?

The Government position is that if the UK leaves with a deal then we will stay in the Erasmus programme as normal until the end of the programme in 2020. Beyond 2020, the position is still unclear as to our membership of Erasmus+. However, colleges are advised to register their Erasmus+ programme for the HMG guarantee if there's no Brexit deal. The guarantee will cover funding for successful Erasmus+ and ESC bids, if the UK leaves the EU without a deal. They can register through the cabinet office portal (see link in 6. below). More information is available on the [Erasmus+ website](#).

6. Where can colleges find the Government portal where current Erasmus+ projects should be registered in order to have them underwritten?

<https://www.gov.uk/guidance/register-to-claim-erasmus-and-esc-funding-from-the-government-guarantee>

7. Regarding the risk of disruption to medicines or medical supplies, are there any particular concerns/consistent themes in FE that we should be aware of?

We have ensured in our [Brexit College Readiness Pack](#), paragraph 4.5, page 15 that we cover this point and direct colleges to the comprehensive information available through the [NHS](#).

Please note this was last updated 22 October 2019

Appendix 2

Brexit briefing note: GDPR

One common misconception about Brexit is that when the UK exits the EU, GDPR will no longer apply in the UK. This isn't the case. The UK Government has written GDPR into UK domestic law (with only necessary changes to make it work in the UK); it's called the UK GDPR, and it has effect either from exit day (if there's a no deal exit) or at the end of the transition period (if the current deal goes through).

1. If the current deal passes

The UK and EU have agreed a revised Withdrawal Agreement that will begin the process of the UK leaving the EU. If it passes Parliament, there will be a transition period which will end on 31 December 2020, unless it is extended.

During the transition period, nothing much changes: GDPR will continue to apply just as it does today. This means colleges will still be able to:

- send personal data to the EEA and outside the EEA as before; and
- receive personal data from the EEA and outside the EEA as before.

It is just conceivable that an agreement as to the long-term relationship between the UK and the EU, which includes provision for data protection matters and/or an "adequacy decision" as to the protections provided by the UK GDPR, will be reached before the end of the transition period. At present, there is no evidence available as to what that might contain.

In the absence of further agreement, the default position after the transition period will be as described below for the "no deal" scenario.

2. If there's a no-deal

If there is a no-deal Brexit, the UK will become a third country from a data protection perspective. That means that, under EU law, the UK will be treated the same as any other non-EU/EEA country.

2.1 Sending personal data to EEA countries

The UK will recognise the "adequacy" of the data protection laws of EEA countries. That means that colleges will continue to be able to transfer personal data from the UK to the EEA in the same way as before Brexit.

2.2 Sending personal data to countries outside the EEA

Colleges will still need to comply with UK GDPR and introduce appropriate safeguards unless the personal data transfer is to a country with a European Commission (EC) approved adequacy decision. If the business receiving the personal data is part of the US Privacy Shield, then the college sending the personal data will have to ensure that business has updated its public compliance statement to include the UK as opposed to just the EEA.

2.3 Receiving personal data from EEA countries

Colleges will need to consider alternative mechanisms and safeguards in order to receive personal data from EEA countries. An example could be the use of the standard contractual clauses issued by the European Commission. However, those standard contractual clauses do not work for every scenario. As things stand at the moment, there are some scenarios where there will be no easy means of receiving personal data from EEA countries.

2.4 Receiving personal data from countries outside the EEA

Colleges will continue to be able to receive personal data from countries with an EC adequacy decision outside the EEA, except for Andorra. Colleges will still need to comply with UK GDPR and introduce appropriate safeguards when receiving personal data from countries outside the EEA without an adequacy decision.

3. Do you need an EU Representative?

Colleges will need to consider whether they need to appoint a representative in the EU/EEA.

This will be the case where a college is offering goods or services to individuals in the EU/EEA or is monitoring their behaviour (which is construed widely and can be just dropping cookies) unless the use of personal data is occasional, does not include large scale processing of special categories of personal data or criminal conviction data and is unlikely to result in a risk to the rights and freedoms of individuals.

Simply operating a generally accessible website will not typically be enough to trigger this obligation. However, if you actively solicit overseas students from countries in the EU/EEA or publish sections of your website aimed at overseas students from countries in the EU/EEA, then you may be subject to this requirement. You should consult your data protection officer or legal department for help with this, as which side of the line you fall is very fact-specific.

If you do have a representative, then they should be based in one of the EU countries where the individuals whose personal data is being processed are based. There is no reason in principle why this could not be an external organisation, such as a local law firm.

4. Do you need to update your data protection documentation?

In the event of a No Deal Brexit, colleges may also need to update your GDPR documentation.

Article 30 records may have to be updated to refer to personal data transfers outside the UK. Colleges may also need to update the lawful basis where that basis is compliance with law. If a college uses compliance with laws as their lawful basis and they are caught by both UK GDPR and GDPR, that college will have to change it to compliance with UK laws for UK GDPR and to a different lawful basis, e.g. legitimate interests, for GDPR as the only laws that are relevant are EU or member states' laws.

Privacy notices may need to be updated to refer to transfers outside the UK, the lawful basis may need to be changed where that basis is compliance with law and, if necessary, the privacy notice should refer to an EEA representative.

Data protection impact assessments will also have to be updated where there are transfers to EEA countries.

To summarise

- Prepare for both a no deal Brexit and a Brexit deal
- Understand your college's cross-border flows of personal data now
- Prepare draft standard contractual clauses if needed
- If dealing with a US Privacy Shield organisation, ensure their commitment will be updated to include the UK
- Consider whether your college needs a representative and who it could be
- Look at your college's Article 30 register, privacy notices and DPIAs – do they need to be updated?

Please note that this information was provided by Irwin Mitchell Solicitors on 24th October 2019.

Additional question asked on 21 November 2019

If a college works with partners in the EU who refer students to them, for example an education agent, can that education agent act as the EU representative that a college might need post-Brexit under GDPR rules? Furthermore, does the college require a representative in each EU country in which it operates?

Following Brexit, the UK will be outside the EU. If there is a deal, then it may well be the case that a representative is not required as it will be covered by the deal. If there is a

no-deal Brexit, then it is something that should be considered. In the advice set out below considers a no-deal Brexit.

In working out whether a representative is required you need to first consider whether the college will be caught by the extra-territorial provisions of GDPR and then whether a representative is required as the idea behind the representative provisions is to ensure that GDPR is enforced effectively outside the EU against organisations caught by GDPR.

If there is a no-deal Brexit, then the UK will not be a member state of the EU and GDPR will not apply to colleges by virtue of them being established in an EU member state (unless of course they are also established in e.g. France). They may, however, be caught by the extra-territorial effect of the GDPR. These provisions mean that organisations are caught by GDPR even if they are not established in a member state where:

they offer goods or services to individuals in the EU (regardless of payment); or
they monitor the behaviour of individuals in the EU.

If this is the case and a college is caught by GDPR the representative provisions need to be considered.

As a general rule, an organisation which is based outside the EU but caught by GDPR will require a representative unless exempt. The exemption states that a representative is not needed where the processing is occasional, does not include large scale processing of special categories of personal data or criminal conviction data and is unlikely to result in a risk to the rights and freedoms of individuals.

There therefore needs to be an analysis first of whether a college will be caught by the extra-territorial effect provisions and secondly whether it feels it can fall within the exemption to the need to appoint a representative.

If a representative is required, then GDPR doesn't require much formality around the appointment of a representative – it just says that it has to be in writing. There is, however, guidance which requires more formality and advises that a written appointment agreement is put in place. Please let me know if you need me to provide a link to the guidance.

With regard to who can be a representative, it can be a company or an individual, can be a group company or an external organisation but must be established in one of the EU countries where the individuals whose personal data is being processed are based. If there are a lot of individuals in one country rather than others, then as a matter of good practice the representative should be in that country. The job of a representative is to be the first point of contact for data subject rights such as subject access, to work with the organisation to maintain its Article 30 register and to co-operate with the relevant data protection authority.

Whilst appointing a representative doesn't affect the liability of the organisation appointing them, the concept was introduced to ensure the effective enforcement of GDPR outside the EU and so enforcement action can be taken against the representative. This may mean that organisations are not that keen to be a representative.

Appendix 3

College no-deal risk assessment

Every college should carry out an assessment of the no-deal risks for their students, staff and activities but the vast majority will have more immediate issues relating to the day-to-day challenges of teaching and training thousands of students.

The first point is to carry out an assessment to determine whether the college has any higher risk factors.

Risk	College
<u>Students</u> : A high number of students who are EU nationals, particularly if there is any evidence of concerns being expressed.	
<u>Staff</u> : A high number of members of staff who are EU nationals and any evidence of concerns being expressed.	
<u>Travel to the EU</u> : Large numbers of students involved in Erasmus student exchanges with one or more overseas student trips taking place in early November.	
<u>Domestic travel</u> : Campuses that are more vulnerable to possible travel disruption, for example because of a location next to a major port or because of the nature of the daily journey by students and staff.	
<u>Residential</u> : Students in residential accommodation managed by the college. This will create extra responsibilities if a no-deal Brexit results in shortages.	

Risk	College
<u>Animals</u> : Animals who are permanently on the college premises (for example in farms or stables).	
<u>Employers</u> : Large employers in the locality whose work might be negatively affected by a no-deal Brexit which may, in turn, result in apprentices being made redundant.	

Please note this was last updated 21 October 2019

Appendix 4

Emergency pack checklist

HM Government's Business Continuity Plan Toolkit recommends that organisations prepare for incidents by putting together an "Emergency Pack" in advance. This is a pack of items that will help you implement your plans.

Items that they suggest for the pack are:

Documents

- ✓ Business Continuity Plan – your plan to recover your business or organisation
- ✓ List of employees with contact details – include home and mobile numbers, and even e-mail addresses. You may also wish to include next-of-kin contact details.
- ✓ Lists of customer and supplier details
- ✓ Contact details for emergency glaziers
- ✓ Salvage organisations and building contractors
- ✓ Contact details for utility companies
- ✓ Building site plan (this could help in a salvage effort), including location of gas, electricity and water shut off points
- ✓ Latest stock take list
- ✓ Insurance company details.
- ✓ Financial and banking information
- ✓ Engineering plans and drawings
- ✓ Local authority contact details
- ✓ Headed stationery

Equipment

- ✓ Computer back up tapes / USB memory sticks or flash drives
- ✓ Spare keys / security codes
- ✓ Torch and spare batteries
- ✓ Hazard and cordon tape
- ✓ Message pads and flip chart
- ✓ Marker pens (for temporary signs)
- ✓ General stationery (pens, paper, etc.)

- ✓ Mobile telephone with credit available, plus charger
- ✓ Dust and toxic fume masks
- ✓ Disposable camera (useful for recording evidence in an insurance claim).

Notes

Make sure this pack is stored safely and securely off-site (in another location). Ensure items in the pack are checked regularly, are kept up to date, and are working. Remember that cash / credit cards may be needed for emergency expenditure. This list is not exhaustive, and there may be other documents or equipment that should be included for your organisation.

Please note this was last updated 21 October 2019

Appendix 5

Further information

Government and many other organisations have prepared Brexit-ready documents to support their members. Below is a list of those organisations and the links to their Brexit webpages:

[UK Government](#)

[No deal implications for colleges](#)

[Get ready for Brexit](#)

[English UK](#)

[Universities UK](#)

[UK NARIC](#)

www.aoc.co.uk

Association of Colleges

2-5 Stedham Place, London WC1A 1HU

T: 020 7034 9900

E: enquiries@aoc.co.uk

 @AoC_info

 Association-of-Colleges