

Brexit and UK Database Rights

The 'Draft Agreement on the Withdrawal of the UK' jointly published by the UK and the European Commission indicates that the UK and the EU have agreed that some database rights will continue in the UK post Brexit.

The holder of a database right in respect of the UK that arises before the end of the transition period shall maintain an enforceable right in the UK for a term at least equal to the remaining term of protection of the right in the EU. The level of protection will be the same as under the Database Directive 96/9/EC. A provision has been agreed that the protection will continue for as long as the holder complies with the entitlement provision of Article 11 of the directive and is: a national of a member state of the EU; a resident of a member state; or a company or firm formed in or having a principal place of business in a member state. In addition UK nationals; a UK residents; companies or firms formed in or having a principal place of business in the UK, are deemed to comply with the requirements of Article 11.

It is likely therefore that the UK will enact suitable legislation to provide equivalent protection to the Database directive and that EU nationals, residents and companies will continue to have their database rights in the UK and that UK nationals, residents and companies will continue to have a database right at least in the UK for up to 15 years from the end of the transition period.

It is not clear yet whether the UK will enact legislation continuing to protect database rights after the end of the 15 year period or whether the EU will agree to extend rights under the Database directive to UK nationals, residents and companies as members of a third country. Therefore at present it would appear that after the end of the transition period UK nationals (unless they have their habitual residence in the EU) and companies/firms formed in accordance with UK law will no longer be able to obtain a sui generis database right in respect of databases in the EU.

However the agreement to provide protection for Database rights is encouraging and provides database rights holders with an assurance that any rights that arise before the end of the transition period will continue to be protected.

If you have any questions please speak to your usual attorney.