



## DEBATE PACK

Number CDP-2018-0255, 19 November 2018

# Provision of legal services after the UK leaves the EU

## Westminster Hall, Wednesday 21 November 2018, 4.30pm

A Westminster Hall debate on Provision of legal services after the UK leaves the EU is scheduled for Wednesday 21 November 2018 at 4.30pm. The Member leading the debate is Jonathan Djanogly MP.

Jonathan Djanogly chairs the All Party Parliamentary Group on Legal and Constitutional Affairs. The APPG published a report [The effect of Brexit on legal services](#) on the 22 October 2018. This debate will consider the report.

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# 1. Background

As with many aspects of the UK economy, the UK's withdrawal from the European Union will have implications for the legal sector.

The [Mutual Recognition of Professional Qualifications \(MRPQ\) Directive](#), the [Lawyers' Services Directive](#) and the [Lawyers' Establishment Directive](#) provide reciprocal arrangements between EEA states for the recognition of legal qualifications.

The Lawyers' Establishment Directive creates arrangements for European lawyers to register to practice permanently in another EEA state as a Registered European Lawyer (REL).

Freedom of movement allows lawyers to move to other EEA states without the need for a visa.

The [Draft Withdrawal Agreement \(November 2018\)](#) contains provision to allow reciprocal arrangements to continue through the transition period. This would allow EEA lawyers to continue to register as RELs in the UK until 2020 (or longer if the transition period is extended).<sup>1</sup> The Law Society has published a summary of the aspects of the draft Withdrawal Agreement which relate to the legal sector.<sup>2</sup>

The Law Society of England and Wales has raised concerns that a 'no deal' Brexit would result in the loss of reciprocal arrangements for the recognition of qualifications for lawyers.<sup>3</sup> They have also argued that, owing to more difficult access to talent and wider economic implications, a 'hard Brexit' could result in the loss of £3bn for the sector by 2025.<sup>4</sup>

The House of Commons Justice Committee has been optimistic about the prospects for the legal sector post Brexit. They have said:

The implications of Brexit for the legal services sector give cause for concern, but not hyperbole. Most of the sector's strengths are unabated, and sensible discussions between the UK and EU ought to protect many of the advantages of their existing cooperation. However, we recommend that the Government should consider and promote the legal services sector in the context of its expected post-Brexit trade recalibration and the pursuit of new deals; it should outline steps it will take to protect and provide opportunities for the sector.<sup>5</sup>

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<sup>1</sup> [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 14 November 2018, Article 28 and 29

<sup>2</sup> Law Society, [UK government publishes draft Withdrawal Agreement](#), 16 November 2018

<sup>3</sup> Law Society, [New hoops for UK legal sector in wake of no-deal Brexit](#), October 2018

<sup>4</sup> Law Society, [Growth in legal sector halved if Britain crashes out of EU. Law Society forecasts](#), August 2018

<sup>5</sup> House of Commons Justice Committee, [Implications of Brexit for the justice system. Ninth Report of Session 2016-17](#), HC 750, March 2017, paragraph 42

## What if there is a 'no deal' Brexit?

In the event of a 'no deal' Brexit the Draft Withdrawal Agreement (November 2018) will not apply.

The Government has issued a 'service technical notice' on [Providing services including those of a qualified professional if there's no Brexit deal](#). This states that should the UK leave the EU without a deal the reciprocal arrangements that currently exist under various EU directives would no longer apply.<sup>6</sup> This would result in the end of the REL scheme:

Registered European Lawyer status – which allows EEA lawyers to practise permanently in the UK under their existing title - will cease on the exit date. From exit day, EEA lawyers will be treated in the same way as other lawyers qualified in any other third country jurisdiction.<sup>7</sup>

EEA lawyers would therefore be subject to the rules that currently apply to lawyers from third countries if they wished to practice in the England and Wales. Scotland and Northern Ireland have separate regulatory system for recognizing the qualifications third country lawyers.<sup>8</sup>

The Bar Standards Board and the Solicitors Regulatory Authority have both issued information for lawyers on the implication of the Government's 'service technical notice':

- Bar Standards Board, [BSB information for lawyers from the European Economic Area after Brexit](#), October 2018
- Solicitors Regulation Authority, [Ethics guidance: Government's Technical Notice on the impact of a 'no deal' EU exit scenario on EU lawyers practising in the UK](#), October 2018

## 1.1 Legal and Constitutional Affairs APPG report

The APPG on Legal and Constitutional Affairs (to which the Law Society acts as secretariat) has published a report on [The effect of Brexit on legal services](#). The report echoes the concerns about Brexit that have already been raised by the Law Society. The report concludes:

Securing the right future relationship with the European Union is of utmost importance.

A no deal scenario would be devastating to the legal services sector, and should be avoided at all costs.<sup>9</sup>

The report makes ten recommendations to Government:

1. The Government should ensure that mutual market access is retained, as currently envisaged, in any transitional arrangements.

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<sup>6</sup> Department for Business, [Energy & Industrial Strategy, Guidance: Providing services including those of a qualified professional if there's no Brexit deal](#), 12 October 2018

<sup>7</sup> Ibid

<sup>8</sup> Ibid, see also: Law Society Scotland, [FAQs on practice rights in the EU post-Brexit](#), [last accessed 16/11/2018]

<sup>9</sup> APPG on Legal and Constitutional Affairs, [Report The effect of Brexit on legal services](#), 22 October 2018, p4

2. The Government should retain mutual market access as far as possible in any future relationship with the European Union.
3. The Government should ensure that UK lawyers are able to continue to serve their clients post-Brexit on a fly-in fly-out basis.
4. The Government should ensure that any future relationship with the EU includes a mechanism for UK lawyers to practise EU law via the mutual recognition of professional qualifications and law firm structures.
5. The Government should seek to secure rights of audience in EU courts such as the CJEU and the EUIPO.
6. It is vital that following Brexit, the Government provides for the ability of the legal sector to easily recruit skilled individuals from outside the UK.
7. The Government should ensure that our immigration system does not block lawyers from continuing to provide services in the EU.
8. The Government and the EU should agree on the draft withdrawal agreement as soon as possible to ensure a transition period which provides legal certainty.
9. Any transitional agreement should replicate the current legal framework as far as possible to ensure legal certainty and prevent businesses and individuals from having to adapt to changes in their rights and obligations twice – once during a transitional phase and once upon implementation of a new UK-EU agreement.
10. A 'no deal' scenario should be avoided at all costs.<sup>10</sup>

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<sup>10</sup> Ibid

## 2. News and blogs

Law Society

[UK government publishes draft Withdrawal Agreement](#)

16 November

Scotsman

[Scottish Legal Review: what will Brexit bring?](#)

1 November 2018

Law Society

[New hoops for UK legal sector in wake of no-deal Brexit](#)

15 October 2018

Solicitors Regulation Authority

[SRA statement: Government technical notice of the implications of a 'no deal' EU exit for the legal sector](#)

12 October 2018

Law Society Gazette

[No-deal Brexit would halt European lawyer scheme overnight, says SRA](#)

12 October 2018

Law Society

[Growth in legal sector halved if Britain crashes out of EU, Law Society forecasts](#)

22 August 2018

Law Society Gazette

[Society warns of £3bn bill for 'no-deal' Brexit](#)

22 August 2018

Financial Times [Subscription]

[Brexit touted as opportunity for legal sector](#)

7 December 2017

Financial Times [Subscription]

[London seeks protection for legal services after Brexit](#)

23 November 2017

Independent

[Brexit free movement restrictions would ruin Britain's £26bn legal services industry, country's top lawyers warn](#)

1 February 2017

EJ Legal

[Brexit's effect on the legal profession](#)

Undated

Lawyer Portal

[Impact of Brexit on law firms](#)

Undated

## 3. Parliamentary Business

### 3.1 Debates

[Leaving the EU: Justice System](#)

HC Deb 29 March 2018 c425-48WH

[Leaving the EU: Legal Services](#)

HC Deb 28 March 2018 c369-76WH

### 3.2 Parliamentary Questions

[Legal Profession](#)

**Asked by: Nigel Dodds**

To ask the Secretary of State for Exiting the European Union, what assessment he has made of the effect of the terms of the draft Withdrawal Agreement, published in March 2018 on market access in the EU for UK lawyers.

**Answered by: Robin Walker | Department for Exiting the European Union**

We have made rapid progress on the details of the Withdrawal Agreement and reached agreement on much of the legal text, including on citizens' rights. As part of this, we have agreed to continue recognising qualifications for residents and frontier workers if their qualifications have been recognised, or are in the process of being recognised, before the end of the implementation period. This includes lawyers practising under host state titles.

There are a number of issues which the Commission deemed to be outside the scope of the negotiations on the Withdrawal Agreement, including important rights such as home title practise for lawyers. Talks on these areas will continue in our negotiations with the EU on the future economic partnership.

The Government is undertaking a wide range of ongoing analysis in support of our EU exit negotiations and preparations. The Government is examining all areas of the UK economy, including legal services, and seeking input from a wide range of stakeholders.

**11 July 2018 | Written question | 160110**

[Legal Profession](#)

**Asked by: Alex Sobel**

To ask the Secretary of State for Exiting the European Union, what discussions he has had with his European counterparts on UK lawyers being able to practice in the EU after the UK leaves the EU.

**Answered by: Robin Walker | Department for Exiting the European Union**

Ministers and senior officials from across Government have been engaging extensively with member states and our partners in the EU institutions to negotiate the best deal for the UK and the EU. The Ministry of Justice in particular has been engaging with its European counterparts on the practise rights of UK lawyers. We also continue to welcome Ministers from across Europe to the UK on a regular basis.

DExEU Ministers are working closely with colleagues across Government to ensure that we continue to discuss the implications of leaving the EU with a broad range of stakeholders, including the legal sector. For example, we work closely with BEIS who co-chair the government-industry Professional and Business Services Council and DEXEU Ministers met with the Law Society in April this year.

The Prime Minister has been clear that we are seeking the broadest and deepest possible partnership with the EU – covering more sectors and co-operating more fully than any Free Trade Agreement anywhere in the world today. We don't want to discriminate against EU service providers in the UK and we wouldn't want the EU to discriminate against UK service providers. We want to agree an appropriate labour mobility framework that enables UK and EU businesses and professionals to travel, and provide services in person and over the phone or internet. This will support the ability of UK lawyers to practise in EU Member States after EU exit.

We also want UK professional qualifications, including UK legal titles, to continue to be recognised across the EU in the future, and vice versa. The March European Council agreed guidelines for negotiations on our future relationship, which reference the desire of the EU27 to include ambitious provisions on the recognition of qualifications. This is a useful starting point for the next stage of negotiations on the future economic partnership.

The Government will support the legal services sector to ensure that it continues to prosper after the UK leaves the EU.

**17 May 2018 | Written question | 143880**

[Leaving the EU: UK Legal System](#)

Oral questions

HC Deb 6 March 2018 c156-7



## 4. Organisations and further reading

[No-deal Brexit guidance: providing legal services in the EU](#), Law Society, 8 November 2018

Justice Committee, [Follow-up into implications of Brexit for the justice system](#), 23 October 2018

Justice Committee, [The implications of Brexit for the justice system: follow-up](#), 23 October 2018, HC 1648, Q 1-101

[APPG on Legal and Constitutional Affairs report: The effect of Brexit on legal services](#), Law Society, 22 October 2018

Department for Business, Energy and Industrial Strategy, [Providing services including those of a qualified professional if there's no Brexit deal](#), 12 October 2018

Solicitors Regulation Authority, [Ethics guidance: Government's Technical Notice on the impact of a 'no deal' EU exit scenario on EU lawyers practising in the UK](#), 12 October 2018

Justice Committee, [The implications of Brexit for the justice system: Government Response to the Committee's Ninth Report of Session 2016-17](#), HC 651, 15 December 2017

Justice Committee, [Implications of Brexit for the justice system](#), HC 750, 22 March 2017

Section 4, Legal services

Law Society of Scotland, [Brexit](#)  
Information, publications, policy

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