



House of Commons
Justice Committee

**The implications of
Brexit for the justice
system: Government
Response to the
Committee's Ninth
Report of Session
2016–17**

**Third Special Report of Session
2017–19**

*Report, together with formal minutes
relating to the report*

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicectee and in print by Order of the House.

Committee staff

The current staff of the Committee are Rhiannon Hollis (Clerk), Danielle Nash (Second Clerk), Gemma Buckland (Senior Committee Specialist), Nony Ardill (Legal Specialist), Claire Hardy (Committee Specialist), Christine Randall (Senior Committee Assistant), Su Pachanathan (Committee Assistant) and Liz Parratt (Committee Media Officer).

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Third Special Report

We have received the Government’s Response to the previous Justice Committee’s Ninth Report of Session 2016–17, [Implications of Brexit for the Justice System](#), HC 750. The response came in a letter dated 1 December 2017 to the Chair of the Committee from Rt Hon David Lidington MP, Lord Chancellor and Secretary of State for Justice. We publish this letter as an Appendix to this Special Report.

Appendix: Government Response

Further to my letter of 22 August, please find enclosed the government’s response to your predecessor committee’s report “The Implications of Brexit for the Justice System”. I apologise for the delay in responding, but I understand that my officials were able to brief you on the Government’s position in civil judicial co-operation in September before the Committee was reconstituted, which I hope you found useful.

Since the committee published its report, the Government has triggered Article 50 and has begun negotiations with the European Union. In addition to this, the Government has published a series of papers which sets out its position on its vision for our future relationship with the EU, including the Future Partnership paper on providing a cross border civil judicial cooperation framework which was published on 22 August 2017. The Prime Minister has also set out proposals for a time-limited implementation period where the UK and EU continue to have access to one another’s markets on current terms.

As we exit the European Union, the Government wants to establish a deep and special partnership with the EU on justice matters. For criminal matters, we want to continue to cooperate across a range of tools, measures and agencies and continue the facilitation of operational business across borders. We believe that the UK and the EU should work together to design new, dynamic arrangements as part of our future partnership that would allow us to continue and strengthen our close collaboration on criminal justice.

For civil matters, an effective framework of civil judicial cooperation will provide confidence and certainty to families, business and individuals, ensuring they can continue to settle cross-border disputes efficiently and effectively in the future. The current rules, on which we hope to model a new agreement, provide a legal route to resolving often difficult situations. To achieve this type of cross-border dialogue and cooperation we want to agree a clear set of coherent, common rules about which country’s courts will hear a case in the event of a dispute, which country’s law will apply to resolve it, and how judgments can be recognised and enforced across borders.

You will see in our response to the committee’s recommendations detailed below and in our Future Partnership paper published in August that we also remain committed to participating in the 2005 Hague Convention on Choice of Court Agreements and the 2007 Hague Convention on Recovery of Maintenance. Similarly, we will seek to continue to participate in the Lugano Convention that, by virtue of our membership of the EU, forms the basis for the UK’s civil judicial cooperation with Norway, Iceland and Switzerland. Additionally, it is our intention to convert the Rome I and II Regulations into domestic law.

Can I take this opportunity to thank the Committee for its thoughtful report and look forward to its successor committee's ongoing contribution as we complete the task of the UK's successful exit from the European Union.

The Committee's recommendations are in bold, with the government's response immediately afterwards.

1. We welcome the Government's signals of intent in relation to future UK-EU cooperation on criminal justice, which will be of critical importance in the context of modern crime. We recommend that the Government prioritise it accordingly in exit negotiations. The seriousness of the matter and the degree of mutual interest give weight to the suggestion that this aspect of negotiations be separated firmly from others. The security and safety of the UK's citizens and residents is too precious to be left vulnerable to tactical bargaining. (Paragraph 18)

Response

The Government recognises the Committee's view on the importance and mutual benefit in continuing UK-EU cooperation on criminal justice. The UK will continue to work with the EU to preserve UK and European security, and to fight terrorism and uphold justice across Europe.

The UK is clear that our geographical proximity to our European neighbours, the volume of cross-border movement between us, our shared values, and the high degree of alignment in the scale and nature of the threats we face call for a new more ambitious model of cooperation. The UK will therefore be approaching negotiations on the future partnership with the EU as an opportunity to build on what we have already achieved through decades of collaboration, integrated working, and joint systems and procedures. Lastly the UK is unconditionally committed to maintaining Europe's security.

2. Brussels IIa and the Maintenance Regulation are improvements over their default alternatives. They are not without fault: races to issue resulting from Brussels IIa's divorce provisions are particularly undesirable. Nonetheless, mutual recognition and enforcement of judgments in family cases is of demonstrable value in resolving cross-border instances of child abduction and non-payment of maintenance. (Paragraph 24)

3. **We recommend that the Government should seek to maintain the closest possible cooperation with the EU on family justice matters, and in particular to retain a system for mutual recognition and enforcement of judgments.** (Paragraph 25)

Response

It is vital that families can have emotionally difficult and sensitive issues resolved in a way that is fair and speedy.

As set out in the Future Partnership Paper 'Providing a Cross-Border Civil Judicial Cooperation Framework', published on 22 August, the Government is seeking an agreement with the EU that allows for close and comprehensive cross-border cooperation in civil and family matters, reflecting closely the substantive principles of the current framework. This would provide a range of rules and mechanisms for parents to seek to

settle disputes around parental responsibility, residence and contact. These rules would minimise the potential for parallel proceedings, establishing clearly which courts should hear a case and allow judgments and court orders from one country to be recognised and enforced in another.

The Government recognises the usefulness of the rules laid out in the Brussels IIa and Maintenance Regulations in relation to cross-border family disputes.. As the Committee notes, these conventions build on existing international agreements which provide a degree of cooperation with third countries. Brussels IIa contains rules that complement the 1980 Hague Convention on Child Abduction and this Convention will continue to apply to child abductions whether or not there is a continued relationship with the EU on Brussels IIa, as will the 1996 Hague Convention. In addition, the Hague 2007 Convention, which the Government has said that it wishes to continue to participate in, covers recognition and enforcement of maintenance decisions. There is also the Lugano Convention 2007 which contains jurisdiction and recognition and enforcement rules that apply to maintenance decisions as between EU Member States and Norway, Iceland and Switzerland, in which the Government is also seeking to participate.

We recognise the value to families and individuals of the various Hague Conventions and it is our intention to remain an active member of the Conference which operates these, while recognising they are in some areas more limited in their scope than the equivalent EU instruments. For example, while the 1996 Hague Convention covers most areas that are within the scope of Brussels IIa, including rules on jurisdiction and recognition and enforcement of judgments in children matters, it does not include jurisdiction or recognition rules on divorce. The UK participates in the 1970 Hague Convention on Recognition of Divorce, but this contains only rules on recognition of divorce and not jurisdiction and only some Member States are parties.

The UK will therefore seek an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation on a reciprocal basis, which reflects closely the substantive principles of cooperation under the current EU framework.

4. We recommend that protecting the UK as a top-class commercial law centre should be a major priority for the Government in Brexit negotiations given the clear impacts on the UK economy of failure to do so. Protecting court choices and maintaining mutual recognition and enforcement of judgments are central to this objective: the Government should aim to replicate the provisions of Brussels I Recast as closely as possible, perhaps using the EU-Denmark agreement as a blueprint. As a minimum, it must endeavour to secure membership of Lugano II and the 2005 Hague Convention in its own right. Rome I and II should be brought into domestic law.

The Government must also address the potential liabilities for non-performance of contractual duties that financial institutions may face as a consequence of Brexit. (Paragraph 32)

Response

As set out in the Government's Future Partnership paper, the UK wants an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation on a reciprocal basis, which reflects closely the substantive principles of cooperation under

the current EU framework. As we legislate for our withdrawal from the EU, it is also our intention to incorporate into domestic law the Rome I and Rome II rules on applicable law in contractual and non-contractual matters. This will provide a coherent legal framework for UK and EU businesses to trade and invest with confidence across border and support the protection of individual rights in cross-border situations.

It is also the Government's intention to continue to participate in those Hague Conventions to which we are already a party and those which we currently participate in by virtue of our membership of the EU (such as the 2005 Hague Convention on Choice of Court Agreements). Similarly, we will seek to continue to participate in the Lugano Convention that, by virtue of our membership of the EU, forms the current basis for the UK's civil judicial cooperation with Norway, Iceland and Switzerland.

The Government has been actively engaging with the UK regulators and with the financial services sector to understand how the UK's exit from the EU could impact financial services firms and their customers, including through the effect of withdrawal on existing contractual relationships.

In its November Financial Stability Report, the Financial Policy Committee set out its judgement that the largest identified risks to the continuity of outstanding cross-border contracts relate to over-the-counter derivatives and insurance contracts. Both UK and EU financial services firms and their customers could be affected. The Government is considering all options for mitigating risks to the continuity of outstanding cross-border financial services contracts.

5. The end of the substantive part of the CJEU's jurisdiction in the UK is an inevitable consequence of Brexit. If the UK and the EU could continue their mutually-beneficial cooperation in the ways we outline earlier without placing any binding authority at all on that Court's rulings that could be ideal. However, a role for the CJEU in respect of essentially procedural legislation concerning jurisdiction, applicable law, and the recognition and enforcement of judgments, is a price worth paying to maintain the effective cross-border tools of justice discussed throughout our earlier recommendations. (Paragraph 35)

Response

When the UK leaves the EU, it will no longer be a Member State and the EU Treaties will cease to apply in the UK. In leaving the EU, we will therefore bring an end to the direct jurisdiction of the Court of Justice of the European Union (CJEU) in the UK.

As set out in our future partnership paper on Enforcement and Dispute Resolution, there are a number of precedents which can be looked at in the interests of managing the risk of divergence in agreements, and ensuring that disputes can be resolved, without requiring the direct jurisdiction of the CJEU. These include, but are not limited to joint committees, and reporting and monitoring requirements.

As the Government's Future Partnership Paper on civil judicial cooperation points out, where appropriate, the UK and EU will need to ensure future civil judicial cooperation takes into account regional legal arrangements, including the fact that the CJEU will remain the ultimate arbiter of EU law within the EU.

6. The legal services sector underpins many areas of UK economic activity. Its ability to continue to facilitate these in the EU will diminish without protection of existing practising rights there for UK lawyers. There is also clear evidence of reciprocal benefit. We recommend the Government include achieving this protection in its Brexit negotiating strategy. (Paragraph 40)

7. 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. (Paragraph 42)

Response

The Government agrees with the Committee that the UK legal services sector has a vital role in underpinning many areas of UK economic activity. It also agrees that London along with Leeds, Edinburgh and other regional legal hubs will continue to provide unrivalled access to high quality legal advice, contract drafting and dispute resolution services. As set out above, the Government is seeking a future partnership with the EU modelled on the existing close and comprehensive relationship that we enjoy. Beyond this, EU Exit presents an opportunity to enhance the sector's global reputation and to secure new access agreements. The Government's strategy to achieve this will focus on securing the freest trade deal possible in services between the UK and the EU, and setting the right framework for future trade policy and negotiations.

EU negotiating priorities for legal professionals are the subject of ongoing discussion with the EU Commission. Stakeholder engagement is a central element of our plan to build a national consensus around our negotiating position; throughout the Exit process the Government has conducted extensive engagement with the legal sector. The Ministry of Justice helped establish the sector-led Brexit Law Committee (with membership drawn from the Bar Council, Law Society, Magic Circle firms, the City of London Law Society, TheCityUK, City of London Corporation and the judiciary) as a platform for the sector to discuss EU exit and raise concerns about issues affecting the continued competitiveness of the market with government. This, in addition to the government-industry Professional and Business Services Council - co-chaired by BEIS - and its Mutual Market Access Working Group, considers the potential effect of EU Exit on the sector; including key issues such as reciprocity and mutual recognition of professional qualifications (MRPQ).

The Government, the legal services sector and the judiciary are working together closely and joining up our efforts to promote UK legal expertise, UK dispute resolution services and English law. On 5 October Lord Keen launched the 'Legal Services are GREAT' campaign in Singapore. The campaign will target stronger links with emerging and established markets across the world and cement the UK's reputation as the world's pre-eminent legal centre. It will also highlight the strengths of English law and embed and extend the reach of our legal services to ensure the UK remains the number one place to

litigate, resolve disputes and do business. Lord Keen continued to promote the campaign in Australia, at the International Bar Association Conference. A domestic launch is planned for later this year.

The Government will continue to make the most of the opportunities presented by engagement with international partners, both at home and abroad, to promote UK legal services and English law. The Government is confident that our legal services' proven track record of success and resilience will see them prosper during and after EU Exit.

8. Continued criminal justice cooperation is a critical justice priority for Brexit negotiations: it impacts upon the safety of citizens, of both the UK and the rest of the EU. Cross-border solutions are required to combat the growth of transnational crimes. Other priorities must include the need to protect vital mechanisms in international commercial law, such as respect for choices of court and law and for mutual recognition and enforcement of judgments. The essential health of the legal services sector and attractiveness of UK courts and law will provide considerable resilience. Key also to this, and to access to justice for ordinary people and small firms, is retention—to the highest degree possible—of cross-border practising rights. Finally, mutual recognition and enforcement in family law is also crucial in resolving disputes such as child abduction cases with appropriate haste.

9. **We recommend that the four principal aims of the Government's approach to justice matters in Brexit negotiations be:**

- (1) **Continuing cooperation on criminal justice as closely as possible;**
- (2) **Maintaining access to the EU's valuable regulations on inter-state commercial law;**
- (3) **Enabling cross-border legal practice rights and opportunities; and**
- (4) **Retaining efficient mechanisms to resolve family law cases involving EU Member States and the UK. (Paragraph 44)**

10. **It is not merely the actuality but also the possibility of adverse outcomes from Brexit negotiations that can damage the UK legal sector, with the uncertainty in the sector remarked upon by many witnesses—especially within the commercial field. The Government did not wish to disclose its negotiating position before triggering Article 50, and we did not press it to. Nevertheless, we urge the Government to recognise that providing more information from that point would reduce—and therefore mitigate the risks of—this uncertainty. (Paragraph 46)**

11. **Transitional arrangements are needed in each sector we discuss, and their absence creates uncertainty. We ask the Government to ensure, as a matter of priority, that it seek to agree transitional arrangements for criminal, civil and family law cooperation with the EU, to come into effect upon Brexit. (Paragraph 47)**

Response

With regards to criminal justice cooperation, as detailed in the Security, Law Enforcement and Criminal Justice Future Partnership Paper which was published on 18 September,

the Government acknowledges when we leave the EU, the legal framework that currently underpins cooperation between the UK and the EU on security, law enforcement and criminal justice will no longer apply to the UK. As part of a deep and special partnership, it will be in our mutual interest to agree new arrangements that enable us to sustain cooperation across a wide range of these structures and measures, reflecting the importance of preserving the extensive collaboration that currently exists between the UK and the EU. The paper further states that the aim should be to transition to the new relationship as swiftly as possible, but also ensure legal certainty about cooperation that continues during an interim period, should one be required.

In terms of civil judicial co-operation, the Government's Future Partnership paper sets out the Government's position on a future relationship with the EU in this area clearly. We believe that international judicial cooperation and mutual recognition benefit all parties. Cross-border commerce, trade and family relationships will continue long after we have left the EU. Where disputes arise, these will also continue to need to be settled. Cooperation on the civil judicial mechanisms and procedures which underpin these relationships is essential, and the best way to deliver that cooperation is through a close and comprehensive agreement between the UK and EU, that sets out coherent common rules.

However, in the event that we do not agree an arrangement for future civil judicial cooperation with the EU, it will be important to have reached a common view on the general principles that would govern how ongoing cooperation in this area could be wound down. Both the EU and the UK Government have published their general principles for ongoing cooperation in the context of separation, without prejudice to the ongoing negotiations on the future partnership.

For the legal services sector, the Prime Minister has been clear that we are going to make the most of the opportunities presented by us leaving the EU, doing business right across the globe. As she noted in her speech in Florence on 22 September, our legal system is respected around the world. It is open and trusted and supported by a world class market in legal services. Our law is recognised as fair and transparent, with English judgments recognised and enforced in many international jurisdictions. We need to make sure that this continues and leaving the EU gives us even more opportunities to do so. We want to have the most competitive legal services framework in the world, that will attract businesses to this country and that is fair and just.

Finally, in terms of an implementation period, we recognise that citizens, consumers, families and businesses in both the UK and in EU Member States need to be able to plan ahead. The Prime Minister has set out the need to build a bridge from our exit to our future partnership, to allow business and people time to adjust, and to allow new systems to be put in place. The UK Government is proposing an implementation period of around two years where the EU and UK continue to have access to one another's markets on current terms and take part in existing security measures. This should be agreed as early as possible, so as to provide certainty.