



# Exiting the European Union: an update for lawyers

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## Introduction



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We recognise that people working in legal services, and those considering a career in law, may feel uncertain about how they will be affected by the consequences of the result of the EU referendum. This report sets out some of the issues we are considering and monitoring closely. It is the first in what is likely to be a series of updates in which we will provide you with the latest information and practical advice.

We want to assure you that there has been no immediate change to our regulatory framework as a result of the EU referendum. It is too early to tell what the UK's future trading relationship with the EU will look like, particularly as formal negotiations are yet to begin. But understanding the possible consequences as the situation becomes clearer will be important for all businesses.

Our [Risk Outlook 2016/17](#) sets out key risks in the legal market and discusses how they can be managed. This report is about managing risks associated with uncertainty. We can not tell firms how to manage change, or indeed how to take advantage of opportunities as they present themselves. But where we can provide support we will.

We understand that many of you will have real concerns about the future competitiveness of legal services in England and Wales. Over the last few years people working in legal services have had unprecedented opportunities to innovate: creating new business structures, serving global and domestic clients in new ways and taking advantage of new technology. This has, in part, been helped by more proportionate and flexible regulation. But there is still much more we can do to help. We are committed to continuing to reform our regulation by reducing bureaucracy and increasing the flexibility available.

The uncertainty that has followed the EU referendum result does not change the need for reform. Reforms to open up the market to enable innovation and increase competition will help the sector grow and attract inward investment as well as being good for consumers, whether businesses or members of the public. Modern and proportionate regulation is essential for the vibrant and competitive international and UK legal market of the future.

## Current position<sup>1</sup>

The Government has established the [Department for Exiting the European Union](#) which is responsible for overseeing negotiations to leave the EU and establishing the future relationship between the UK and EU. It has also set up the [Department for International Trade](#) which is responsible for promoting UK trade.

There is no set date for when the UK will leave the EU. The formal process of exiting the EU will not begin until the Government invokes Article 50 of the Treaty of Lisbon. This will begin a period of negotiations between the UK and other EU member states. Negotiations can last up to two years but this period can be extended with the unanimous consent of the other members of the European Council.<sup>2</sup>

The Government have confirmed that the UK will not invoke Article 50 in 2016.<sup>3</sup> The Prime Minister has also stated that the UK would not seek an “off the shelf” model for its future relationship with the EU. There appears to be a clear preference for an agreement which means “controls on the numbers of people who come to Britain from Europe but also a positive outcome for those who wish to trade goods and services”.<sup>4</sup>

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1. As of 13 September 2016.

2. [Article 50, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community](#), 13 December 2007, 2007/C 306/01

3. [UK will not invoke Article 50 this year, Government Lawyer says](#), uk.reuters.com, July 2016 and [May throwing full weight behind winning best Brexit deal](#), uk.reuters.com August 2016

4. [Britain to seek unique deal with the EU, including immigration curbs](#), uk.reuters.com August 2016



## Potential consequences for lawyers

The impact on lawyers and law firms will depend on the outcome of the formal negotiations, particularly in respect of the movement of people, goods and services. The Government has confirmed its preference for a bespoke agreement, but until negotiations begin, we are unlikely to know the details of any deal.

There has been no confirmation as to whether the UK would seek to remain a member of the European Economic Area (EEA) or trade with the EU under World Trade Organisation (WTO) Rules, if a bespoke agreement is not achieved.

We do not know what the UK's future trading relationship with the EU and other nations will be. But we are developing a modern approach to regulation that is more flexible, more liberal and able to cope with a changing world.

Our initial analysis shows there are a number of areas of legal regulation that have the potential to be affected by the UK exiting the EU. One of these

is the impact on the practising rights of lawyers but we have also considered some wider market impacts, such as the extent to which the EU will influence UK law in future.<sup>5</sup>

### Practising rights of lawyers and firms in the EU

At present solicitors can practise across the EU with few constraints. Similarly, European lawyers can practise freely in the UK. Whether these rights will change as a result of the UK exiting the EU will depend on the outcome of negotiations on access to the single market, free movement and future immigration policy.

### Solicitors currently working in the EU

Many solicitors practise in EU member states by using the European Lawyers Directives<sup>6</sup> which provide temporary rights of practice, and permanent rights to establish themselves as Registered European Lawyers (RELs), or to acquire

EU legal titles. Many UK law firms also have branch offices, or separate practices within EU member states by virtue of the rights conferred by the single market. These rights may well be affected in future but at the moment, there has been no change to the status of solicitors working in the EU.

We know many solicitors will be concerned about whether in future they will have the right to argue before EU tribunals such as the European Court of Justice (ECJ). That right is currently acquired through being a qualified lawyer of an EU member state. When formal negotiations begin we will monitor the impact on solicitors working in the EU very closely. We will provide solicitors with up to date information when it is available.

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5. It is likely that there will be a range of other impacts on regulation of legal services. Here we highlight practising rights and some wider market impacts only.

6. Establishment of Lawyers Directive 98/5/EC and The Lawyers' Services Directive (temporary provision) 77/249/EC

### Solicitors seeking to qualify in other EU member states

It has been reported that 319 UK-based solicitors have been admitted to practise in the Republic of Ireland this year, more than six times the 51 applicants last year.<sup>7</sup>

It appears that the main driver for this is a concern that solicitors in England and Wales will not be permitted to argue before the European Courts, such as the ECJ when the UK exits the EU.

We cannot give specific advice to individuals about career choices. But we want to provide assurance that the rights of solicitors of England and Wales to practise in the EU have not changed since the referendum result.

### Lawyers of EU member states working in England and Wales

EU lawyers can practise law in England and Wales in many different ways.

European lawyers can practise English and Welsh law on a temporary basis<sup>8</sup> or on permanent basis through establishment<sup>9</sup> as a REL. They can carry out the reserved legal activities<sup>10</sup> (subject to the special limitations of the Directives<sup>11</sup>) under their home title. Similarly, EU law firms can carry out reserved work in England and Wales with authorisation.

EU lawyers can acquire the solicitor title through the Qualified Lawyer Transfer Scheme (QLTS). Lawyers that are qualified in the EU, EEA or Switzerland and seeking to qualify via Directives 2005/36/EC (Recognition of Professional Qualifications) and 98/5/EC (Establishment of Lawyers Directive) may be entitled to exemption from some or all of the assessments.

It is also important to note that EU nationals, who are not lawyers, can practise non-reserved areas of English and Welsh law without being subject to any legal services regulation. And an EU law firm can carry out non-reserved activities as an Exempt European Practice (EEP) without being authorised and regulated in England and Wales.

There will be no change to the status of EU lawyers working in England and Wales until the future of the UK's relationship with the European Union is clarified. We will monitor the situation closely and provide updates as soon as possible.

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7. [Huge rise in UK Lawyers enrolling in Ireland](#), thetimes.co.uk, 11 August 2016

8. Lawyers' Services Directive (temporary provision) 77/249/EC

9. Establishment of Lawyers Directive 98/5/EC

10. The reserved legal activities are exercising rights of audience, conducting litigation, preparing certain documents relating to probate and conveyancing, acting as a notary, and administering oaths.

11. Collectively the Lawyers' Services Directive (temporary provision) 77/249/EC and the Establishment of Lawyers Directive 98/5/EC.



## Wider impacts on the international and domestic market

There are a range of other impacts we are considering and these include:

### Education and training

Some people may have concerns about the status of EU law as a compulsory subject for law students. There will be no changes to the academic requirements in relation to EU law for either the Qualifying Law Degree, Common Professional Examination or Legal Practice Course for the coming academic year. We have written to training providers confirming this.

We also understand that many firms will be considering EU nationals for training contracts. The law regarding recruitment from across the EU has not changed as a result of the EU referendum. There has been no announcement on the UK's negotiating position in respect of free movement of people.

Our work on developing a Solicitors Qualifying Exam is continuing and we will consult further on the details of this assessment this autumn. High professional standards are one of the reasons legal services in England and Wales are held in such high regard globally. We believe that having a consistent standard of assessment for all people who want to become solicitors will be good for the domestic and international market.

### The UK as a gateway to Europe

We know that many international law firms choose England and Wales, and specifically London, as a gateway to the EU single market. These firms will want certainty about their future operations and we are actively speaking to them to better understand their needs.

### EU influence on UK law

The principle of Primacy means that when there is conflict between European law and the law of member states, European law prevails.<sup>12</sup> The future of the principle of Primacy in relation to UK law is likely to form a key part of the negotiations.

In the event that the UK no longer has Ministers of the European Parliament, EU Commissioners and sitting Judges in the ECJ, it will no longer have an influence on the design and implementation of EU law. However, the extent to which EU law will continue to influence UK law will depend on our future relationship with the EU.

In the event that the UK does not remain in the EEA and its relationship with the EU is defined by a specific agreement, WTO rules or other agreements, the extent to which EU law will influence UK law is unknown. If the UK were to remain in the EEA and become members of European Free Trade Association (EFTA), the applicable judicial system for resolving disputes on EU law would be the EFTA Court. This Court is subject to provisions that ensure its jurisprudence largely corresponds with ECJ judgements.<sup>13</sup>

12. Please see [Declaration 17, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community](#), 13 December 2007, 2007/C 306/01 and the case of *Costa/ENEL*, 15 July 1964, Case 6/641 ECJ.

13. For more information please see [www.eftacourt.int/](http://www.eftacourt.int/).

## Data protection

In the event that the UK exits the EU it may be the case that data protection law is affected. As the position becomes clearer over time, law firms should consider:

- where their data is held
- whether any data is subject to the [Privacy Shield](#), which is a framework that protects the flow of personal data between the EU and USA
- what steps they need to take to ensure compliance with data protection law.

The Information Commissioners Office (ICO) [website](#) is a useful resource to keep up to date with any developments in data protection legislation.

On the UK's decision to withdraw from the EU, the ICO issued the following statement:

“

Over the coming weeks we will be discussing with Government the implications of the referendum result and its impact on data protection reform in the UK.

With so many businesses and services operating across borders, international consistency around data protection laws and rights is crucial both to businesses and organisations and to consumers and citizens. The ICO's role has always involved working closely with regulators in other countries, and that will continue to be the case.

Having clear laws with safeguards in place is more important than ever given the growing digital economy, and we will be speaking to government to present our view that reform of the UK law remains necessary.

– **Christopher Graham, Information Commissioner (now former)**  
1 July 2016

# Checklist

The following checklist sets out some of the issues law firms may wish to consider over the coming months and years:

## ✓ Entering the market

There has been no change in approach to our authorisation of firms, including those with branch offices or related businesses in the EU.



### Getting authorised

To find out more about being authorised by the SRA to carry out legal services please visit our [website](#).

We continue to encourage an innovative and competitive legal market. Our [SRA Innovate](#) initiative provides support for new ideas, services and delivery channels. It is open to existing firms and new entrants, alternative business structures (ABS) and traditional law firms.

## ✓ People

We have received queries from RELs and others asking about any imminent changes to our regulations that may affect them. As it stands there is no impact on the ability of RELs to practise. Similarly, the regulatory position of Exempt European Lawyers (EELS) and Registered Foreign Lawyers (RFL) has not changed.

There has been no change to the employment rights of UK citizens working in other EU member states. It has been reported that protecting UK citizens' rights to work in EU countries will be a key issue in formal negotiations.<sup>14</sup>

It is important that law firms keep their staff informed of issues relevant to them and provide support where necessary. The wellbeing of legal professionals is central to the ongoing maintenance of an efficient legal market.

## ✓ Clients

Solicitors are likely to play a key role in ensuring that the public interest lies at the centre of any future legal framework we agree with the EU and wider world. Many individuals and businesses will be looking to solicitors for advice and support over the coming months and years. It will be important to take steps to understand the emerging needs of clients and consider the best ways of meeting these.



### Registering as a REL

Find out about how to register as a REL or RFL please visit our [website](#).

14. [Theresa May: EU citizens' rights depend on fate of Britons abroad](#), theguardian.com, 2016



## ✓ Planning ahead

Planning for the future can help law firms mitigate risk and take advantages of opportunities.

Forward planning does not have to be time consuming and it can be a helpful way of identifying opportunities. For example, a simple Strengths Weaknesses Opportunities Threats (SWOT) analysis can help most businesses manage change.

We understand that uncertainty can be damaging for all businesses, particularly political or economic uncertainty. We can provide support to law firms planning for their future.

For specific advice on current regulatory requirements we have a [professional ethics helpline](#). They are also able to provide advice about our [Overseas Rules 2013](#) to law firms considering international expansion.



### SRA Innovate

For law firms that have identified an opportunity to do something different.

Contact us through our [SRA Innovate](#) initiative.



### Small firms

For smaller firms we have a dedicated [small firms team](#) that can help with regulatory issues and compliance.



## Actions we are taking

We recognise there is a lot of uncertainty about whether the competitiveness of the legal market will be affected by the UK exiting the EU. We are taking steps to reform our regulation to open up the market, increase competition and focus on high professional standards.<sup>15</sup> We think that these reforms will make our legal sector even more attractive and ensure that solicitors and law firms are well placed for the future.

We have created a [hot topic](#) webpage to provide the latest updates on the UK exiting the EU and will continue to produce papers and resources to help solicitors and law firms manage any changes ahead.

At this year's compliance officer conference in October we will run a session about the UK exiting the EU which will touch on many of the issues raised in this report.

We are also talking to the Government and a range of stakeholders including solicitors, other regulators, the Law Society, the Council of the

Law Societies and Bars of Europe and other international bodies. These discussions will intensify as the possible consequences become clearer.



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15. Please see [Looking to the future: flexibility and public protection](#) for more information on our regulatory reforms.

## Useful resources



[Department for Exiting the European Union](#)

[Department for International Trade](#)



[Compliance and supervision for small firms](#)

[Your health, your career initiative](#)

Provides support, guidance and links to other organisations to help solicitors with professional or personal problems.



[SRA contact centre 0370 606 2555](#)

[Professional ethics helpline 0370 606 2577](#)