

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT SERVICES OF LAWYERS AND LAWYER'S
PRACTICE (REVOCATION ETC.) (EU EXIT)
REGULATIONS 2019

Wednesday 16 January 2019

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

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| † Austin, Ian (<i>Dudley North</i>) (Lab) | † Heaton-Jones, Peter (<i>North Devon</i>) (Con) |
| † Champion, Sarah (<i>Rotherham</i>) (Lab) | † Jones, Mr David (<i>Clwyd West</i>) (Con) |
| † Efford, Clive (<i>Eltham</i>) (Lab) | † Lopez, Julia (<i>Hornchurch and Upminster</i>) (Con) |
| † Fitzpatrick, Jim (<i>Poplar and Limehouse</i>) (Lab) | † Milling, Amanda (<i>Cannock Chase</i>) (Con) |
| † Foxcroft, Vicky (<i>Lewisham, Deptford</i>) (Lab) | † Qureshi, Yasmin (<i>Bolton South East</i>) (Lab) |
| † Frazer, Lucy (<i>Parliamentary Under-Secretary of State for Justice</i>) | Rashid, Faisal (<i>Warrington South</i>) (Lab) |
| † Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>) (Lab) | † Rowley, Lee (<i>North East Derbyshire</i>) (Con) |
| † Garnier, Mark (<i>Wyre Forest</i>) (Con) | † Whittingdale, Mr John (<i>Maldon</i>) (Con) |
| † Hands, Greg (<i>Chelsea and Fulham</i>) (Con) | |
| | Claire Cozens, <i>Committee Clerk</i> |
| | † attended the Committee |

Ninth Delegated Legislation Committee

Wednesday 16 January 2019

[MR ADRIAN BAILEY *in the Chair*]

Draft Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019

2.30 pm

The Parliamentary Under-Secretary of State for Justice (Lucy Frazer): I beg to move,

That the Committee has considered the draft Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Bailey. The draft statutory instrument forms part of the Government's preparations should we leave the EU without a deal. The Committee should be aware that the Government have been hoping for a deal, but preparing at the same time for no deal, and, as part of those preparations, publishing a number of technical notices to outline the implications of a no-deal exit for citizens and businesses.

On 12 October the Government published a technical notice titled "Providing services including those of a qualified professional if there's no Brexit deal". That notice set out the implications of a no-deal exit for professionals in scope of the two EU directives on lawyers' services and lawyers' establishment. The draft instrument makes changes to the arrangements in England, Wales and Northern Ireland relating to those directives, and it remedies deficiencies in the relevant retained EU law arising from our withdrawal from the EU. Scotland will introduce its own legislation on the matter.

It is important to set out the current application of the EU directives. The lawyers' services directive allows specified lawyers to provide regulated services in a member state other than the one in which they qualified—termed a host state—without the need to register with a host state regulator. Lawyers provide services under their existing professional title, which is otherwise termed their home state professional title. The directive clarifies the regulatory rules that are applicable and the conditions for providing those services in a host state.

The lawyers' establishment directive allows specified lawyers in one member state to practise reserved legal activities on a permanent basis in another member state under their home state professional title, and the conditions for doing so. It also allows lawyers who are practising in another member state to be admitted to the profession in that member state after three years of practice in the law of that member state, without having to go through the usual qualification routes. European lawyers practising in the UK under the establishment directive must be registered with a UK regulator as registered European lawyers. As registered European lawyers, they have the right to own legal businesses without a UK-qualified lawyer.

The question that therefore arises is: what will change if we leave the EU without a deal? The answer is that the lawyers' services directive and the lawyers' establishment directive will no longer apply to the UK, and there will be no system of reciprocal arrangements under which EU and European Free Trade Association lawyers, including UK nationals holding EU and EFTA qualifications, can provide regulated legal services and establish on a permanent basis in the UK, and likewise for UK lawyers in the EU. It is the deficiency in the retained EU law caused by that lack of reciprocity that we are seeking to remedy.

First, I should say that EU and EFTA-qualified lawyers who have already successfully transferred into the English, Welsh or Northern Irish qualification will be able to retain their qualification and practice rights, but arrangements will be different in the future. In the event that the UK leaves the EU without a deal, our services trading relationship with the EU will be governed by World Trade Organisation rules. The general agreement on trade in services prohibits signatory states from giving preferential market access to any other signatory state in the absence of a comprehensive free trade or recognition agreement between them.

We therefore need to fix the deficiencies in the relevant retained EU law caused by the lack of reciprocal arrangements with the EU, while meeting our international obligations. As such, we will revoke the legislation that currently implements the EU framework, and EU and EFTA lawyers will be treated in the same way as other third-country lawyers.

The draft statutory instrument will helpfully provide a transition period to allow registered European lawyers time to comply with the new regulatory position. The transition period will run from exit day until 31 December 2020. It will allow registered European lawyers and those in the process of achieving registered European lawyer status by exit day to practise in the same way as they do now, but with time to adjust. The arrangement will also allow EU and EFTA lawyers with ownership interests in regulated legal businesses in England, Wales or Northern Ireland to adjust their regulatory status.

In conclusion, if we leave the EU without a deal, there will be a deficiency in retained EU law implementing the two lawyers' directives, because of a lack of reciprocity. This statutory instrument fixes that deficiency. We take the upholding of international obligations very seriously, and it is our international duty to comply with such rules. In the event of no deal, aligning the rights of EU and EFTA lawyers with those of third-country lawyers will allow them to continue to access our world-leading services market, while ensuring that the UK complies with its international obligations.

2.36 pm

Yasmin Qureshi (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Mr Bailey. I have indicated to the Minister, the Government Whip and the Chair that we will not be pressing this statutory instrument to a vote. I thank the Minister for her courtesy in ringing me to talk about it last week.

The Opposition have some observations about the statutory instrument and its effects. The legal services sector is in a unique position in the European Union. It is widely established that a series of European directives have created a single market in legal services, unlike in other service sectors. Lawyers and law firms benefit

from a simple, predictable and uniform system that allows them a temporary or permanent presence in other EU member states, with little scope to introduce national variations. This allows United Kingdom lawyers to service the cross-border needs of businesses and individuals, both from satellite offices in the European Union and through fly-in, fly-out services from their London offices. That is a daily business practice for many firms.

Since this liberalisation, the UK legal sector has become a major exporter to the European Union, with 36 of the top 50 UK law firms having at least one office in another country in the European Union or European economic area, or Switzerland. UK law firms have a presence in 26 of those 31 countries. That has meant that the legal sector has contributed significantly to our economy. In 2017 alone it was worth more than £26 billion to the UK economy—equivalent to 1.5% of UK GDP—and it employed in excess of 380,000 people. The latest statistics show that the legal services sector was responsible for a net export of £4 billion. There is no precise figure for how much of that trade is to the EU, but we are aware that 55% of the UK's business services exports go to the European Union, and legal services make up a significant amount of UK business services.

A no-deal Brexit would have a significant impact on the ability of UK lawyers to operate in the European Union, and it would lead to World Trade Organisation rules being applied. Progress in developing rules on services at the World Trade Organisation has been very slow. Although it is outside the scope of the statutory instrument, I remind Members that there is a concern that a no-deal situation will have the following consequences for UK law firms and lawyers. Without a future partnership agreement, world-leading law firms in the UK could face significant restrictive regulations on the provision of temporary and permanent services in the European Union 27 countries. Lawyers would face more than 30 different regimes, depending on each European Union and EFTA member state, many of which impose restrictions and limit practice rights for third-country lawyers and law firms.

For example, there are restrictions on practice areas. In most European member states, it is not possible to practise local state law as a third-country lawyer without holding local qualifications. The WTO schedules of commitments under legal services include only home country and public international law. Crucially, European Union law is not treated as a type of public international law, and so is excluded from the scope of the schedules. UK lawyers will therefore not be able to advise on areas such as competition, internal markets and trade. In most member states, it would not be possible, save for a few exceptions, for a third-country lawyer to represent their client in the domestic courts.

Another big consequence is a restriction of modes of practice. Most European Union member states do not permit fly-in, fly-out services by third-country lawyers. If those services are lost, the profession's ability to continue to advise European clients, represent those with cases involving more than one European Union member state and continue to play a leading role in global investigations will be jeopardised. Fly in, fly out is excluded from the WTO commitments, and each member state imposes its own rules and regulations. For example, France, Germany and Luxembourg require

compulsory membership of professional bodies in relation to commercial presence. There are strict rules prohibiting local lawyers from partnering with non-EU lawyers in, for example, Spain and Sweden. There are restrictions on company structure or commercial presence, such as restrictions on foreign investment in law firms or an imposition of a certain legal form on third-country law firms, in, for example, France, Spain, Portugal and Poland.

One of the main issues is that most member states do not allow third-country nationals even to re-qualify in their national legal profession, as that is available only to EU, EEA or Swiss nationals. Again, that will have a big impact on UK lawyers and legal services, and our economy. Our world-leading services, which are rightly recognised across the world, will be seriously impacted.

Those are just some of the consequences. There have been at least two Westminster Hall debates on those and other issues relating to legal matters arising from Brexit. One was on 29 March last year and the other was on 21 November, and I had the pleasure of responding to both from the Opposition Front Bench. The issues I mentioned today were spoken about in detail or alluded to in those debates, and we asked the Government a number of questions. What are the Ministry of Justice and the Government doing to deal with the problems that we will have if we leave the European Union? So far, it seems that no protocols, no agreements, no treaties and no memorandums—no nothing—have been negotiated by the Ministry of Justice or the Government for legal services. There is a grace period until 2020, but nobody knows what will happen after that. Our legal services will be impacted.

This is not new. I am sure these issues have been raised by other hon. Members prior to 2018—I have been dealing with them since last year. I and other hon. Members who were present in the Westminster Hall debates that I have mentioned raised these points then. The Ministry of Justice has had to introduce a statutory instrument to deal with the revocation of all the previous legislation and the things that allowed essentially seamless movement of legal services across borders.

Although lawyers who have already qualified will keep their rights, that is not a great concession because if someone is already qualified in a particular country, it will be difficult to take that back. I know—as does the Minister, who was a practising lawyer as well—that at some point we are going to require another country's legal jurisdiction. Different countries have different rules. Europe has what we call the continental system, which is a statutory-based codification, and that is a different ball game from trying to practise in common-law jurisdictions, which are very different. It can be an absolute nightmare, and a difficult and lengthy process, to re-qualify in other jurisdictions—and that leaves aside the fact that in some jurisdictions, someone who is not an EU, EEA or Swiss national cannot practise at all. Once we are out of the European Union, we will not be a member of any of those, so we will not be able to practise in many European countries. I do not know why the Department has not grasped the impact of that particular provision on our legal services.

I hope that the Minister and others in the Department are listening. I wish they would get together and sort something out, so that our lawyers can practise across the European Union, the EEA and Switzerland.

2.46 pm

Lucy Frazer: I thank the hon. Lady for the comments that she made at the beginning of her speech. It is always a pleasure to liaise with her, on these matters as on so many others. She was right to identify the importance of the legal services sector to our country, in terms of not only the amount that the sector brings to the economy, but the number of jobs that it provides. It is one of our country's most successful industries, providing jobs up and down the country, and we in the Government and the Ministry of Justice absolutely recognise that.

We absolutely agree with the hon. Lady that it would be beneficial to have a future partnership with the EU, with continued reciprocal rights. That is why my Department and the Government more broadly have spent a considerable amount of time negotiating those matters in a future partnership with the EU over the previous months; that is why the Government put the deal that would have enabled a future relationship with reciprocal rights before the House last night; and that is why I voted for it. I hope that hon. Members will see that in the absence of a deal we need this statutory instrument to allow us to comply with our international obligations, including aligning and adhering to rules on

reciprocal arrangements, while preserving the ability to promote the attractiveness of our leading legal services market.

Clive Efford (Eltham) (Lab): I wonder what the Minister thinks about the situation in the House at the moment. Does she believe that there is a majority among Members of Parliament to leave the European Union with no deal? Rather than passing all this legislation, does she not think it would be more beneficial for the country if the Government were just to rule out using the option to leave with no deal? That would put the minds of a lot of businesses and industries at rest—

The Chair: Order. The hon. Gentleman is straying rather a long way from the detail of these particular regulations. I applaud him for his initiative and ingenuity, but I call the Minister.

Lucy Frazer: I, too, applaud the hon. Gentleman. I will end by saying that I commend the draft regulations to the Committee.

Question put and agreed to.

2.49 pm

Committee rose.