

**Written evidence submitted by Professor Paul James Cardwell, School of Law,
University of Strathclyde, Glasgow.**

I am a Professor of Law, specialising in the external relations of the European Union and with a particular focus on migration.¹ I have previously submitted published evidence to Parliamentary inquiries relating to Brexit and external relations,² and sanctions.³ I was a graduate student in Law at Nagoya University, Japan, 1999-2000. In 2000-2001 I was a *stagiaire* (trainee) at the Delegation of the European Commission (now the Delegation of the EU) in Tokyo, Japan. During my academic career I have published several pieces on EU-Japan relations, in particular on regulatory reform.⁴ In addition to my published work on migration, I have recently completed a paper – currently undergoing peer-review – comparing the trajectories of UK and Japanese migration law and policy with a Japanese colleague at Keidanren (the Japan Business Federation).

1. In this submission, I have focussed my comments on the following point in the call for evidence: **In what ways does CEPA differ from the Japan-EU Economic Partnership Agreement (JEEPA)?**
2. **My evidence relates to the migration and mobility aspects of the JEEPA and CEPA.**
3. Neither JEEPA nor CEPA have a significant impact on domestic immigration law. No party to either agreement has been required to make substantial changes to domestic law, and each retains the right to apply domestic immigration law (including visas, residency

¹ My institutional webpage with further details of my publications can be found here:

<https://www.strath.ac.uk/staff/cardwellpauljamesprofessor/>

² <https://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries1/parliament-2017/britains-diplomatic-relationship-with-europe-17-19/publications/>

³ https://publications.parliament.uk/pa/cm201719/cmselect/cmfaaff/1703/170312.htm#_idTextAnchor044

⁴ Cardwell, PJ, ‘The EU-Japan relationship: from mutual ignorance to meaningful partnership?’ (2004) 2(2) *Journal of European Affairs* 11-18; Cardwell, PJ, ‘Overcoming the Challenge of Regulatory Reform: Contemporary Japan-EU Relations’ (2005) *Electronic Journal of Contemporary Japanese Studies* (2005)

<http://japanesestudies.org.uk/articles/2005/Cardwell.html>; Cardwell, PJ, ‘Regulatory reform in Japan 1994-2010 and the influence of the European Union’ in T. Iles and P. Matanle (eds.), *Researching Twenty-First Century Japan: New Directions and Approaches for the Electronic Age* (2012, Lanham, MD).

permits etc) to nationals seeking entry from Japan to EU Members States, or Japan to the UK, and vice versa.

4. Given the lack of impact of JEEPA on UK immigration law, this aspect is unaffected by Brexit and its consequences in terms of the UK-Japan bilateral relationship. Much of the content of JEEPA, insofar as it relates to migration and mobility, has been written across to CEPA.
5. The only aspects of note which relate to migration and mobility in JEEPA and CEPA are the provisions on short-term stays for business purposes, as a means of fulfilling the general aims of both agreements ‘to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties’ (Article 1(1) CEPA and JEEPA).
6. Both agreements state clearly - and employ the same wording - that there is no effect of the agreement for those ‘seeking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis’ (Article 8.1 (3)) or on border control Article 8.1 (4)).
7. The more detailed annexes (8-B-III, 8-B-IV and 8-C) of CEPA differ from JEEPA only insofar as they do not need to note the different rules applied on entry and length of stay for Japanese nationals by the different EU Member States (since EU Member States retain the legal competence over their national immigration policies). The instances where the UK is mentioned in these aspects of JEEPA appear to be transferred in the same terms to CEPA.
8. The Secretary of State stated in Parliament that professional and business mobility is ‘improved’ in CEPA.⁵ The Department for International Trade report, ‘The United Kingdom’s Future Trading Relationship with Japan’ states that CEPA improves on JEEPA from a UK perspective in the following terms:
 - a. There are improvements made to the level of commitments taken by the UK and Japan in the EU-Japan Agreement. In addition to the existing EU-Japan Agreement commitments, the UK and Japan have improved commitments on the temporary movement of highly skilled professionals. Definitions of the intra-corporate transferee and investor categories have been improved for both the UK and

⁵ HC Deb (2019-2020) 680, col. 25, of 14 September 2020.

Japan. Japan has expanded the scope of their intra-corporate transferee category, and the investor definitions have been amended to focus on investment in UK industry and jobs, rather than the amount of capital. In addition to those in the EU-Japan Agreement, the UK has taken new commitments for Japanese investors who are coming to the UK to establish a new company or running an existing branch, and for the entry and temporary stay of the partners and dependent children of intra-corporate transferees. The EU's obligation to process visa applications in 90 days has been amended for the UK to match Japan's commitments (para 103, at pages 23-24).⁶

9. The UK impact assessment also claims improvement in terms of mobility of natural persons for business purposes (on pages 8 and 24)⁷ to capitalise on the improving environment for in trade in services since 2017.
10. The provisions that this relates to can be found in Article 8-21 of JEEPA and Article 8-21 of CEPA on investors. The wording differs and is more extensive in CEPA than JEEPA.
11. JEEPA states:

(e) 'investors' means natural persons who establish an enterprise, and develop or administer the operation of that enterprise in the other Party in a capacity that is supervisory or executive, and to which that person or the juridical person employing that person has committed, or is in the process of committing, a substantial amount of capital." (Article 8-21(e)).

12. The equivalent Article 8-21 in CEPA is longer:

(e) 'investors' means:

(i) for the United Kingdom, senior employees of an enterprise headquartered in Japan who are establishing a branch or subsidiary of that

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929175/UK-Future-Trading-Relationship-with-Japan-accessible.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929059/final-impact-assessment-UK-Japan-comprehensive-economic-partnership.pdf

enterprise in the United Kingdom and who are natural persons of Japan that will be responsible for the entire or a substantial part of the enterprise's operations in the United Kingdom, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; and

(ii) for Japan, natural persons of the United Kingdom who will engage in one of the following activities during their temporary stay in Japan:

(A) activities to invest in business in Japan and manage such business;

(B) activities to manage business in Japan on behalf of a person other than that of Japan who has invested in such business; or

(C) conduct of business in Japan in which a person other than that of Japan has invested.”

13. Although in CEPA the section is more detailed, it is not clear what is captured within this definition beyond what is contained in JEEPA. JEEPA refers to the requirement for ‘a substantial amount of capital’ which is missing from CEPA, although it is implied from the emphasis on ‘senior employees’ and content of the section that there may be little material difference between the two. It does not seem that there are significant numbers of individuals in investment who will find entry to Japan or the UK more easily than they would under JEEPA.

14. Furthermore, although business mobility and the emphasis on investment and mobility of natural persons is highlighted as an advantage of CEPA over JEEPA, the DIT report⁸ notes (at para 121) that “Changes relating to investment are not expected to have significant economic impact.”

15. In conclusion, the provisions of JEEPA and CEPA on migration and mobility are very similar and there is unlikely to be any change for the UK – either positive or negative –

⁸ At footnote 5, supra.

from these provisions when considered in isolation. Nevertheless, it is significant that the emphasis placed on inward investment to the UK as an advantage of CEPA continues the facilitation of short-term business mobility that was covered in JEEPA.