

Key points

- Our survey of small and medium law firms paints a broadly positive picture, with over 70% believing that they are fairly, very or totally prepared for the end of transition.
- Large international firms are subject to a wider range of issues due to having branches throughout the EU. While we are confident that the largest UK law firms have contingency plans in place to deal with the changes, they all face significant issues, additional costs and a reduced ability to service EU-based clients from January 2021 onwards – and we are aware that the conditions they are planning for are likely to change with little warning.
- Both groups are extremely concerned by the lack of surety on civil judicial co-operation, particularly the enforcement of judgments, which it is not possible to adequately prepare for.
- Unless otherwise agreed by the UK, EU and EFTA states, there will be an enforcement gap between the current Brussels I regulation and Lugano arrangements after the end of transition, even if the EU agrees to UK accession to Lugano. Such a gap would harmfully impact business, consumers, and lawyers. Therefore we continue to advocate the speedy adoption and implementation of the Lugano Convention, and any measure that hastens this.

1. The Law Society of England and Wales (the Law Society) is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law.
2. Our legal services market is the second largest in the world, and the largest in Europe. Legal services support around 552,000 full time employees, and the sector was worth almost £60bn (GVA) in 2018. England and Wales remains an open jurisdiction and the proud home of over 200 foreign firms and over 2000 registered foreign lawyers from nearly 100 separate legal jurisdictions. Our members make a net contribution of £4.29 billion to the UK balance of trade and play a vital facilitatory role in wider international trade.
3. In general, it is extremely difficult for solicitors and firms to undertake significant preparation before knowing the intricacies of the future relationship. This is particularly difficult for technical areas, e.g. intellectual property law.

How law firms and lawyers in England and Wales are affected

4. There are three key pieces of EU legislation that affect the legal profession: the Lawyers' Services Directive of 1977, the Lawyers' Establishment Directive of 1998 and the Recognition of professional qualifications Directive 2005. The Directive on Services in the Internal Market, which regulates the provision of services in the EU, also touches on the legal profession.
5. The EU legal services framework, which applies to all EU/EEA/Swiss qualified lawyers, has allowed English solicitors and law firms to:
 - advise their clients across the EU/EEA/Switzerland on all matters of concern to them and in all types of law, including English law, EU law and the law of the host state.
 - have their qualifications recognised and to requalify under these rules with few barriers compared to non-EU lawyers.
 - employ local lawyers in a different member state and retain the ability to form partnerships with lawyers from all EU/EEA states and Switzerland.
 - establish a permanent presence in EU/EEA states and Switzerland using any legal form available in the UK and the EU, including the UK limited liability partnership (LLP).
 - have all communications with their EU clients and vice versa protected by the EU legal professional privilege (LPP) when in private practice at EU level, i.e. they cannot be disclosed to the EU institutions or bodies without the permission of the client.
 - represent their clients in the Court of Justice of the European Union (CJEU), domestic courts and other fora (such as arbitral proceedings and alternative dispute resolution mechanisms).
6. As of January 2021, the EU Lawyers Directives will no longer apply to the UK. As no EU-UK free trade deal will replicate the Directives, UK solicitors and law firms will be treated as third-country lawyers and law firms and lose the rights listed at the point above. This also means that instead of dealing with a single set of rules valid throughout the EU, EEA and Switzerland, UK solicitors and law firms will be subject to 31 different regulatory regimes – one for each of the 27 EU member states and 4 EFTA countries. Some of these regimes are quite liberal in terms of market access by third-country lawyers, others are quite restrictive, others sit somewhere in the middle.
7. Almost all practice areas will be affected in some way.

Preparedness of small and medium firms

8. In September the Law Society surveyed 224 small and medium sized firms on their preparedness for the end of transition. Of these, 19 firms had 11 partners or more, and 205 had fewer than 11 partners. Over 100 were sole practices, and over 80% of responders had four partners or fewer.
9. The main findings on preparedness were that are that:
 - Almost 90% of firms had considered how the end of the transition will affect their firms' ability to practice.

- Over 75% believed that their business will not be affected very much or at all by the end of transition, with less than 5% saying they will be affected a great deal.
 - Over 70% believed that they are fairly, very or totally prepared for the end of transition.
 - Over 60% of these firms used Law Society's guidance and resources to prepare for the end of transition – see annexe 1 for details.
 - Just over 50% of the larger firms, and 63% of those with fewer than eleven partners, currently provide advice on EU law or the law of a member state.
10. The biggest area of concern was enforcement of judgments post-transition. This is an area that affects law firms of all sizes, and not one that can be adequately prepared for without surety on civil judicial co-operation measures beyond the end of transition.

Preparedness of large and international firms

11. There are more than 233 branch offices of UK law firms and more than 1700 individual solicitors of England and Wales based in EU/EEA member states.
12. Most of the 50 largest English and Welsh firms by revenue have several branch offices across the bloc. Compared to the smaller firms mentioned above, they have more options to continue servicing EU-based clients through the EU qualified lawyers based in one or more of these offices, and also larger teams dedicated to risk assessing and Brexit contingency planning; but they are also subject to a wider range of issues compared to law firms that do not have branch offices in the bloc.
13. While we are relatively confident that the largest UK law firms have contingency plans in place to deal with the changes, they all face significant issues, additional costs and a reduced ability to service EU-based clients from January 2021 onwards. We have detailed some of these issues below, but a prime concern (shared with SMEs) is the enforcement of judgments after the end of transition.
14. While firms can prepare for third country arrangements at a specific point in time, the example of Irish qualifications shows how febrile these arrangements are without the certainty of EU rules. Firms will continually need to adapt to such changes in future.

Fly-in-fly-out services

15. Under the Directives, solicitors of England and Wales have had the right to provide temporary legal services throughout the EU and EFTA member states. This is often known as fly-in-fly-out (FIFO) provision of legal services because most typically a solicitor will fly into a jurisdiction in order to meet with a client to provide legal services before returning home.

16. We have found that many solicitors are unaware that their ability to provide temporary legal services in EU/EEA member states without restriction was actually a right as a European lawyer under the Directives and that their ability to FIFO is no longer guaranteed after the transition period. While some jurisdictions do explicitly allow temporary provision of legal services by foreign lawyers, and others explicitly prohibit it, FIFO is often not explicitly regulated in many jurisdictions and so a foreign lawyer might be operating in a legal grey area.
17. Solicitors will also have to be aware that they will no longer benefit from professional privilege in EU/EEA jurisdictions when they do provide FIFO advice.

EU Legal Professional Privilege

18. After the end of the transition period, UK lawyers who have not requalified as EEA lawyers will be treated as third country lawyers. Third country lawyers practising in the EU have not been held to be covered by legal privilege.
19. The fact that non-EU lawyers based in the EU, or involved in cross-border EU proceedings, have experienced this difficulty has led to the emergence of a number of practical solutions which will be relevant to UK lawyers post-2020 (assuming they have not sought to requalify as EEA lawyers).
20. In particular, it has become common practice for non-EU lawyers based in the EU to co-operate with EU lawyers when providing legal advice, so that EU counterparts or colleagues can consequently sign off on any issued guidance or advice to clients.
21. This solution is well suited to law firms that employ both EU and non-EU lawyers, as many of the largest UK firms do. However, it may result in higher costs for firms or clients if mandates require work from more lawyers than before as a result of these new arrangements.

Irish qualifications and connected issues

22. The issues connected with coverage by EU legal professional privilege and the will to retain other rights associated with EU qualifications in order to continue advising EU clients has led thousands of English and Welsh solicitors to requalify in Ireland as Irish solicitors.
23. Ireland was particularly suited because solicitors whose first place of qualification is England and Wales, or Northern Ireland, can requalify as Irish solicitors by applying for a certificate of admission, without having to sit the Qualified Lawyers Transfer Test in Ireland.
24. However, on 11 November 2020 the Law Society of Ireland announced that, following a review of its regulatory framework, "Irish qualified solicitors who are based in England and Wales and are seeking a practising certificate from the

Society will not be entitled to a practising certificate”¹; in addition, “Irish qualified solicitors who wish to practise as an REL in another EU Member State will be issued with alternative certification attesting to their registration/enrolment as a solicitor instead of a practising certificate”².

25. This announcement by the Law Society of Ireland has disrupted the Brexit contingency plans of many English and Welsh solicitors and law firms. For years, the Law Society of Ireland had issued practising certificates to the many Irish solicitors based in England and Wales and across the EU, whether their first qualification was the Republic of Ireland or whether they were UK lawyers who had requalified in Ireland.
26. The Law Society of England and Wales has subsequently sought clarification from the Law Society of Ireland on this decision.
27. The Law Society has done considerable research on the regulation of the temporary and permanent presence of third country lawyers and law firms in each of the EU/EEA jurisdictions, producing 31 detailed country papers. This research has been continuously refreshed in light of new information obtained in discussions with our counterparts in those countries and feedback from individual members and law firms practising there. We have also distributed detailed focused guidance on other Brexit related issues.

Limitations to legal structures: UK Limited Liability Partnership issue

28. Under the EU Directives, any English and Welsh law firm can use any legal form available in the UK to operate its EU branches, including Limited Liability Partnerships (LLP), which is the form of partnership most commonly used by UK firms.
29. Once the Directives no longer apply to the UK, many EU countries will no longer recognise the UK LLP as a legal structure, and therefore English law firms currently operating their EU branches through that structure will have to move their assets to a different one. This will have considerable costs for them and may have liability and tax implications.

Civil judicial co-operation and enforcement of judgments

30. For all businesses, it is critical that the legal status of their transactions and contractual relationships is sound and enforceable, regardless of the terms of the underlying trade. A clear and certain dispute resolution framework is required for business to continue.
31. The Brussels I regime provided such a framework, however, it will no longer be in place at the end of the transition period. The lack of availability of this framework

¹ <https://www.lawsociety.ie/News/News/Stories/practising-certificates-and-solicitors-outside-the-jurisdiction/.X7vfcsj7TD5>

² Ibid.

means that national rules would apply for dispute resolution. This presents the possibility of two or more courts having jurisdiction, or none, and in any event the parties need have recourse to courts in different countries to enforce the judgments.

32. The Lugano Convention on the Jurisdiction and Recognition and Enforcement of Civil and Commercial Judgments is the solution to address this problem. We are pleased that the UK has applied to accede to the Convention, and we hope the EU will accept it, as the EFTA states have already done.
33. Time is now running short on implementing the Lugano Convention in the UK's own right ahead of the end of transition. We are concerned, however, that unless otherwise agreed by the UK, EU and EFTA states, there will be a gap between the current Brussels I regulation and Lugano arrangements. During this gap national law is applied.
34. Any measure to ensure the Lugano Convention is in place as soon as possible would be of benefit not just to lawyers, firms and the legal sector, but all businesses and consumers across the UK and EU who wish to enter into agreements across borders.

For further information, please contact:

Sam Lamont
Public Affairs Adviser

November 2020

Annex 1 – the Law Society’s resources to support solicitors to prepare for the end of the transition

1. In general, it is extremely difficult for solicitors and firms to undertake significant preparation before knowing the intricacies of the future relationship. This is particularly difficult for technical areas such as intellectual property law. Nonetheless, in the approach to all previous Brexit deadlines and the end of transition, the Law Society has provided resources to better allow our members to prepare.
2. During the transition period, these have included:
 - [A ten-step checklist](#), sent to all firms, detailing key points to consider and actions to take when preparing.
 - Country-by-country guides on how practice rights will be affected in key European jurisdictions – [Belgium](#), [France](#), [Germany](#), [Greece](#), [Italy](#), [Spain](#), [Switzerland](#), [the Netherlands](#), and [the Republic of Ireland](#).
 - Specific end of transition guidance on:
 - [The impact of the end of free movement of people](#)
 - [Trade in legal services](#)
 - [Registered European lawyers](#)
 - [Practice rights for EU/EFTA lawyers in the UK](#)
 - [Practice rights for UK lawyers in the EEA and Switzerland](#)
 - [EU data flows](#)
 - [EU legal professional privilege](#)
 - [Civil judicial co-operation and the taking of evidence](#)
 - [Civil judicial co-operation and the service of documents](#)
 - [Civil judicial co-operation and rules on jurisdiction](#)
 - [Civil judicial co-operation and alternative dispute resolution](#)
 - [Civil judicial co-operation and enforcement of foreign judgments](#)
 - [Civil judicial co-operation and choice of court agreements](#)
 - [Private family law](#)
 - [Public children law](#)

With further pieces to come when there is surety on the post-transition state of affairs.

 - Webinars on:
 - [Registered European lawyers](#)
 - Immigration and movement of people (recording currently unavailable)
 - Data (recording currently unavailable)
 - [Family law](#)
 - [Cross-border civil and commercial judgments](#)
 - [Intellectual property](#)
 - A dedicated email helpline, Brexit@lawsociety.org.uk.
2. The Law Society has done considerable research on the regulation of the temporary and permanent presence of third country lawyers and law firms in each of the EU/EEA jurisdictions, producing 31 detailed country papers. This research has been continuously refreshed in light of new information obtained in

discussions with our counterparts in those countries and feedback from individual members and law firms practising there.

3. We have engaged in a programme of meetings with the 50 largest law firms with operations in Europe for detailed discussions to help with their Brexit transitions in the markets in which they operate. In addition to meetings with individual firms, we have engaged with law firms through several Brexit related webinars and roundtables.
4. We also continue to promote guidance and information from other sources, including the Government's transition checker tool and business readiness bulletin.

November 2020