

# **The implications of Brexit for the justice system**

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**Written submission on behalf of the Legal Services Board**

**November 2016**

## Executive summary

- The LSB, as the oversight regulator of legal services in England and Wales, is taking steps, on the basis of the information currently available, to understand the implications of Brexit for the work we do.
- The legal services sector makes a significant economic contribution currently.
- The impact of Brexit on legal services providers who compete in the international market may have implications for others in the sector. This is because the success of different parts of the sector is linked. All parts of the sector rely on the effective application of the rule of law and the high professional standards that make the England and Wales legal jurisdiction attractive to businesses outside those countries.
- Effective regulation plays an important role in ensuring the overall success of the legal services sector, so regulation will need to respond to changes in the sector and the economy more broadly.
- We will continue to undertake our oversight role and discharge our statutory functions as needed, in response to any post-Brexit changes. We consider that further improvements to legal services regulation must continue at the same time as the sector responds to Brexit, to help ensure that the sector is as productive and competitive as it can be, both domestically and internationally.
- We seek to drive improvements in legal services regulation under the current legislative framework. We consider that such progress could be enhanced by the promised Ministry of Justice consultation on full independence for the legal services regulators, as announced in HM Treasury's competition plan in November 2015. In addition, as set out in our vision for legislative reform published in September 2016<sup>1</sup>, we consider there would be benefit in an independent wider review of the legislative framework for the regulation of legal services.

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[http://www.legalservicesboard.org.uk/news\\_publications/LSB\\_News/PDF/2016/20160909LSB\\_Vision\\_For\\_Legislative\\_Reform.pdf](http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2016/20160909LSB_Vision_For_Legislative_Reform.pdf)

## Submission

1. The LSB is the independent body that oversees the regulation of legal services in England and Wales. We hold to account regulators for the different branches of the legal profession. We also drive change in pursuit of a modern and effective legal services sector that better meets the needs of consumers, citizens and practitioners.
2. Our submission is of particular relevance to the third element of the Committee's terms of reference, namely the implications of Brexit for the legal services sector in England and Wales and the wider UK economy.
3. In examining the possible impact of Brexit on the legal services sector, it is useful to consider a baseline in terms of its current economic contribution. The legal services market has grown substantially since 2007 despite challenging times for the wider economy. UK wide legal sector turnover grew from a post crisis low of £27bn in 2009 to an all-time high of £32bn in 2015. As part of this growth, there has been significant growth in net exports of legal services. For the UK as a whole, net exports of legal services grew by £980m in real terms between 2007 and 2014<sup>2</sup>.
4. There is of course a wide range of different sizes and types of legal service provider. For example, our analysis shows that the ten largest solicitors' firms accounted for 17% of the total revenue of all solicitors' firms (of which there were around 10,000) in 2014/15<sup>3</sup>. The clients of the largest firms and the firms that are exporting legal services will be very different to those of smaller firms, as will be the type of legal services those clients require. However, despite these differences, we believe that the impact of Brexit on the legal services sector as a whole needs to be considered because the success of different parts of the sector is linked. For example:
  - An effective domestic legal services sector with its well-established and demonstrable rule of law and high professional standards is likely to be a vital element of the attractiveness of the England and Wales jurisdiction internationally.
  - All types of legal service provider depend on effective education and training in order to access qualified staff.
  - Practising certificate fee and compensation fund contribution structures for some professional groups take into account the size and/or turnover of firms, to ensure that the burden imposed on smaller firms is more manageable.

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<sup>2</sup> Office for National Statistics data as set out in the LSB report *Evaluation: Changes in the legal services market 2006/07 - 2014/15* <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report11.pdf>

<sup>3</sup> LSB report *Evaluation: Changes in the legal services market 2006/07 - 2014/15* <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report11.pdf>

5. Effective regulation plays an important role in ensuring the overall success of the legal services sector. It is therefore vital that regulation responds to changes in the sector and the economy more broadly.
6. We will continue to discharge our statutory functions as needed, including in relation to approval of any alterations to regulatory rules that, in due course, may be necessary in response to post-Brexit developments.
7. We are in regular communication with the frontline legal services regulators and the representative bodies about the implications of Brexit for the legal services sector. We are aware that the Solicitors Regulation Authority, for example, published an update for lawyers in September on exiting the European Union, and has said that it will continue to monitor the situation and provide regular updates through its Risk Outlook. We know that some of the key issues arising include cross-border practising rights, the impact that any changes in 'passporting' rights for UK financial services companies may have on their UK suppliers of legal services and the extent of future EU influence on UK law.
8. We may need to take into account the impact on the profession if the number of Registered European Lawyers currently working in the sector changes. Under the Legal Services Act, we must also assist in the maintenance and development of standards in relation to (i) the regulation by approved regulators of authorised persons and (ii) the education and training of authorised persons. As the law changes, these standards may need to change as well.
9. We will also continue to act as an agent of positive change in the sector. We consider that further improvements to legal services regulation can continue at the same time as the sector responds to Brexit. Indeed, it is more important than ever that the legal services sector functions as effectively and efficiently as possible, within a modern and fit-for-purpose regulatory framework that protects the public interest. This will help ensure that the legal services sector is as productive and competitive as it can be, both domestically and internationally.
10. Our work contributes directly to improving legal services regulation, including:
  - Assessing the performance of the frontline regulators;
  - Approving changes to regulatory rules;
  - Approving practising certificate fees and emphasising the need for the frontline regulators to increase the transparency of their costs;
  - Issuing guidelines to help the regulators understand what we expect them to do, including in relation to helping increase diversity in their regulated communities;
  - Facilitating cross-regulator collaboration to reduce regulatory burdens, as well as championing improvements in ABS licensing processes<sup>4</sup>;

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<sup>4</sup> The Ministry of Justice (MoJ) held a consultation on amendments to the Legal Services Act to remove barriers to competition around ABS licensing earlier this year. We hope the results of this consultation, and the MoJ's decision, will be published soon.

- Building an evidence base through research about consumers, providers and the impact of the Legal Services Act, for example current research on barriers to investment in ABS;
- Unlocking regulatory data with a view to encouraging comparison websites to enter the legal services sector;
- Understanding how vulnerable consumers access legal services to help regulators and professional bodies respond appropriately;
- Identifying the benefits and risks associated with expansion of some frontline regulators' scope of regulation and the consequential increase in some practitioners' ability to choose their regulator; and
- Fostering a public debate on what a better regulatory framework might look like, including in relation to securing full regulatory independence.

11. Our work is focussed on achieving improvements in legal services regulation and we seek to maximise progress under the current legislative framework. We published our vision for legislative reform of legal services regulation on 12 September 2016<sup>5</sup>. We consider that further progress could be made through the promised Ministry of Justice consultation on full independence for the legal services regulators, as announced in HM Treasury's competition plan in November 2015. In addition, as set out in our vision document, we also consider there would be benefit in an independent wider review of the legislative framework for the regulation of legal services.

12. We are firmly of the view that the need to respond to the implications of Brexit should not inhibit progress on wider reforms. Those reforms are both necessary and should also support the international standing of the England and Wales legal services sector. The sector's international strength is supported by many factors including the stability and certainty of English law, the independence of the legal profession and the quality of decisions by our Courts.

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