

The impact of Brexit on the Irish legal system

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1. The relationship between Ireland and UK

UK and Ireland have always had very strong ties. The law legal system is one of them, since both countries have common law legal systems and UK judgments frequently become a judicial precedent applied by the Irish courts.

2. The chronology of Brexit

On 23rd June 2016 the UK referendum took place where the UK voted to leave the European Union (51.9% voted in favour, i.e. 1.25 million votes). On 29th March 2017, the UK communicated to the European Council its intention to withdraw from the EU under Art. 50 of the Treaty. At that time, negotiations were focusing on three main issues: (i) citizens' rights, (ii) financial settlement, (iii) status of the Irish border (i.e. the "backstop"). On the latter issue, the arrangement was that there would be no border within the island of Ireland, but there would be a border down the Irish sea. On 24th January 2020 the UK and the EU sign a withdrawal agreement and on 31st January 2020 the UK left the EU, provided that the parties had also entered into a transitional agreement up to 31st December 2020.

3. Threats and opportunities

UK has always been an ideological partner of Ireland at EU level and it will be a challenge for Ireland not being able to count on this partnership anymore. With respect to the legal system, Ireland is going to be the main common law jurisdiction left in the EU (both Malta and Cyprus have common law as well as civil law elements).



Brexit may lead to EU legislation being drafted or interpreted in a substantially different way from what the common law principles would dictate, leaving Ireland much more isolated. In addition, it is likely that there will be pressure over Ireland to untie itself from the UK judicial precedents and to move towards principles enshrined in civil law systems.

4. The legal profession

Since 2016, over 4,500 solicitors qualified in England and Wales joined the Irish Rolls of Solicitors. Everyone in the legal profession was worried about what would happen at the end of the transition period on 31st December 2020.

Recently, a reciprocal agreement has been reached between the Law Society of Ireland and the Solicitors Regulation Authority in England and Wales, providing that:

1. an Irish-qualified solicitor may be registered in the Rolls of Solicitors in England and Wales without having to sit any additional exams;
2. similarly, solicitors qualified in England and Wales can apply to be admitted to the Irish Rolls of Solicitors without having to sit additional examinations.

The latter situation though did not apply even before this arrangement being entered into. Indeed, the system was unbalanced since Irish Solicitors had to sit an additional exam in English Property Law and Conveyancing in order to qualify as solicitors in England and Wales, where on the contrary English solicitors just paid a fee of approximately £ 300 to be registered as Irish solicitors. However, what is important now is that the reciprocal arrangement makes collaboration between legal professionals in the two countries even easier than before Brexit.

The Irish Law Society president, Mr Cahill, said that “**Brexit has been shown to be a catalyst for new business in Ireland, with several UK firms setting up bases here**, investing and providing training contracts for aspiring solicitors. **The opportunity to reinstate and develop these agreements will benefit solicitors on both sides of the water.** [...] Many solicitors have clients who, as emigrants in the past, have properties and business interests in the UK and Ireland, and are used to and perfectly comfortable dealing with their solicitors on both sides of the Irish sea.”

TAG: Brexit, legal system, Ireland

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