

New government position paper – Enforcement and dispute resolution

This latest Government position paper begins with a phrase we have heard time after time “new deep and special relationship.” This is a most unfortunate term, although at least it makes the point that we don’t want to make enemies of EU-27. Our relationship will certainly be “new” as we will no longer be a member state but “deep and special”? We voted for a looser relationship to enable us to be closer to the rest of the world. It is hard to imagine that in a decade or so, if Brexit is managed successfully we will be any closer to the EU than to our friends in the Commonwealth, for instance. The EU, in other words, will not be particularly special even if we naturally want to work closely with it.

The paper attracted much comment over the future role of the European Court of Justice. Upon its publication, the Government was accused of back-tracking over its commitment to end the jurisdiction of the European Court of Justice upon Brexit. Even the Prime Minister felt obliged to make a statement confirming that this was still the Government’s intention.

The paper says little about one contentious issue – the desire of the EU that its citizens resident in the UK will remain subject to EU law after Brexit. This is a most unreasonable request and flies in the face of our Common Law principle – that the law is the law for everyone from the monarch downwards. Historically, the scope of our Common Law has applied to non-nationals either resident in or visiting the country. We do not hear of the governments of, for example, India, Saudi Arabia, Switzerland or the USA wanting an arrangement whereby their citizens remain subject to the laws

of their home country while they reside in the UK, nor would these countries grant UK citizens living abroad the right to be governed by UK law. The EU's claim to "extra-territoriality" is exactly the same as that which the nineteenth century Imperial powers imposed on China. Under their terms, Citizens of the European states could not be tried by Chinese courts but only in the courts established by the European powers in China. Given that the UK's legal systems are better than those found in much of Continental Europe, the EU's demand should be resisted

As an aside, if the UK rebuffs the EU on the grounds that the same legal system applies to everyone resident in the country,* it does pose the question about the legitimacy of the Sharia courts operating in the UK, which do not have any formal legal status but in reality, make decisions which have a profound impact on the lives of women and children in particular.

The paper leaves open the nature of cooperation between the legal authorities in the UK and the EU in the event of international disputes. It quotes examples of international legal bodies already in existence, including the EFTA court, interestingly enough. The UK government has thus far shown no inclination that it wants to re-join EFTA, but such a move could be helpful in enabling us to take advantage of an existing body which works closely with the ECJ while remaining independent of it.

Like the previous papers, detail is rather limited and although these papers have been produced in theory to guide the next round of Brexit talks which are due to start next week, this topic isn't going to be discussed any time soon. We need not have agreed with the EU's demand for progress on the rights of EU citizens living within the EU, the exit fee and the Irish border issues before moving onto discussing the wider Brexit settlement, but David Davis did so.

Consequently, as has been pointed out elsewhere, this paper is really only for domestic consumption only.

*** Obviously, Scotland and Northern Ireland have different legal systems to England and Wales**