



**Recommendation by the Bar European Group
to the Bar Standards Board
on the retention of the study of EU Law
for professional qualification as a barrister**

The Bar European Group

The Bar European Group (BEG) is a specialist bar association of the Bar of England and Wales with a representative on the Bar Council. Its membership consists of barristers engaged in the practise of European law, including European Union Law ("EU law"), retained EU law, Withdrawal Agreement law and the law of the EU-UK Trade and Co-operation Agreement, as well as European private international law (the Brussels regime). It is regularly consulted by the Bar, the Ministry of Justice, the Law Commission and the House of Lords Select Committee on issues concerning European law. BEG has been asked to respond to the suggestion that EU law should no longer be a mandatory requirement for qualification to practise in England and Wales.

The status quo

We note that the BSB web-page provides:

"The UK has now left the institutions of the European Union and is now in a period of transition until 31 December 2020 whereby European Union law and regulations will continue to apply as though the UK were still a member state. For the purposes of the academic component of Bar training, the Law of the European Union will continue as one of the foundation subjects for the foreseeable future. Should this position change, we will update this Manual and communicate our position more widely."

Discussion and recommendation

The current position is that EU law forms one of the seven 'foundations of legal knowledge' in the Bar Standards Board, Academic Component of Bar Training, Part 2A. The other six 'foundations of legal knowledge' are: Criminal Law; Equity and Trusts; Obligations 1 (Contract); Obligations 2 (Tort); Property/Land Law; and Public Law (Constitutional Law, Administrative Law and Human Rights Law). Save in exceptional circumstances, all seven of these subjects must be passed at 40% or above and no more than three attempts to pass may be made.

The Bar European Group considers that it is crucial that EU law remain as one of the 'foundations of legal knowledge', albeit that it would be appropriate for its title to be changed to "Retained EU law", as well as for its content to be modified to deal with the new status of EU law in the UK as applicable through the [European Union \(Withdrawal\) Act 2018](#) ("WA 2018").

This would reflect the fact that EU law, as it applied to and within the UK up until 31 December 2020 (the end of the transition period) is converted by the WA 2018 into domestic law as 'retained EU law': section 6(7) WA 2018. There are several categories of retained EU law, each with its own nuance and complexity: (i) EU-derived domestic legislation (section 2), (ii) direct EU legislation (section 3), (iii) saved directly effective rights (section 4), (iv) retained case law (section 6), and (v) retained general principles of law (section 6).¹

Together, these categories of 'retained EU law' make up what the BSB currently requires be studied as one of the foundations of legal knowledge. The change brought about by the UK's departure from the EU is that EU law now applies through a new structure, the WA 2018 (rather than, as was previously the case, through the EC Act 1972). This new structure brings with it its own complexities. Lawyers will need to understand not only EU law but how to determine which EU laws, principles and cases apply, how and when they apply, as well as which laws and principles either do not need to be or cannot be applied. Further, EU law frameworks often provide distinct regulatory procedures, legal proceedings and remedies. These have been incorporated into domestic law and will continue to do so post Brexit until they are amended or repealed by Parliament.

Accordingly, it remains as essential for those qualifying for the Bar of England and Wales today, as it was prior to 31 December 2020, to study EU law. Without having done so, they will simply not be able to navigate the legislation, case law and general principles of EU law that remain an integral part of the UK legal order. A lawyer who started to practise without this foundational knowledge would be put in a position where they risked failing to address crucial legislation and principles applicable to their client's situation. They would not be in a position to guide their clients or the courts on core issues and would be put at risk of making serious errors.

Secondly, barristers are often asked to advise UK (and other) clients who conduct business, trade with, study, live, marry, contract, suffer damage in EU Member States. On occasions, EU law issues will arise. Whilst some of these issues will require specialist advice, BEG considers that no one should be called to the Bar of England and Wales without the foundational bases in EU law that would enable them, at the very least, to identify the relevant issues even if only to ascertain that they do not have the professional expertise to provide the relevant advice. The capacity to do that can be described as 'foundational', in the same way that it is foundational to be able to identify a problem as one of contract or of tort.

Thirdly, there will be a significant number of issues that arise for individuals and businesses under the Withdrawal Agreement between the EU and the UK. In the coming years there are likely to be additions and possibly changes, which lawyers will need to keep abreast of. Whilst again it is true that many of these are likely to require specialist advice, any lawyer practising in the United Kingdom should nonetheless have sufficient legal academic education to be able

¹ A very good outline of the position is provided by Jack Williams here: [Retained EU Law: a Guide for the Perplexed](#).

to navigate and identify the issues. Removing EU law from ‘foundations of legal knowledge’ entails a real risk that clients will be put at risk of not being advised as to the existence of an issue (because the lawyer is not in a position to identify it) or being given the wrong advice on the issue (because the lawyer does not have the requisite foundations of legal knowledge).

Fourthly, UK companies may still find themselves the subject of antitrust investigation by the EU Commission if their conduct has an effect on competition and consumers within the EU single market – with the prospect of follow-on class actions in Europe under the new EU Omnibus Directive. Again, whilst a specialist area, lawyers need to be aware of the existence of such potential liabilities if they are properly to advise business clients.

Finally, the UK was a member of the EU for nearly half a century. A very great deal of domestic case law (as well as legislation) is based on EU law. To be able to understand this law, every lawyer needs to have a basic grounding in EU law.

For the foreseeable future, the concept: ‘foundations of legal knowledge’ for a barrister qualified to practise in England and Wales, undoubtedly therefore includes EU law. Legal education providers will of course need to modify their courses to take account of the changes that have taken place since the UK left the EU.

BEG therefore urges the BSB to retain as mandatory the study of EU law in the manner suggested.

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