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Not quite anyone's guess: Brexit, forensic science and legal medicine

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A few months before 29th March 2019 - the date when the UK is due to leave the EU ('Brexit') - the nature of the future UK-EU relationship is highly uncertain. Some of the consequences of the new relationship – whatever form it takes - for legal cooperation and everything (including forensic science and legal medicine) that underpins it can be anticipated. Further analysis, however, of the scope and significance of Brexit for the professional and academic scientific and clinical work covered by this journal is needed urgently. This commentary ends with an invitation to its readers to join a new academic and professional network (including professional corporate bodies and NGOs) intended to help facilitate this.

What will happen from March 2019 onwards?

On 29th March 2019 (assuming that the negotiating timetable is not extended) we could see:

- a) Brexit without a withdrawal agreement ('no deal Brexit');
- b) a 'blindfold' Brexit' (continuing negotiations to settle what the future relationship should be);
- c) a treaty setting out the new UK-EU relationship; or, as the least likely outcome,
- d) no Brexit (this remains on the table, in principle for the Labour Party, or, if the Government concludes that Brexit is unnegotiableⁱ).

None of these outcomes will heal the divisions within British society caused by the 2016 Referendum and its aftermath.

The fiscal prospects of Brexit are also worrying. A robust analysis of government data against four post-Brexit relationship options suggests that the weekly net fiscal loss will be equivalent to 9%-44% of current weekly NHS spending. (The range indicates how losses will rise in proportion to divergence from the EU.)ⁱⁱ

Legal cooperation between the UK and EU member states will certainly change with Brexit. 'No deal' would mean the abrupt termination of all cooperation, including in many or all current proceedings still dependent on such assistance. The withdrawal (or transition) period or periods consequential to outcomes b) and c) would freeze much of the present cooperation arrangements until the end of 2020 or at least until something more bespoke and longer-term could be put in place. Even in a more benign scenario for criminal justice cooperation (my main focus) there may well be reduced UK benefits (e.g. significant restrictions on the extradition to the UK) and less participation (e.g. in Europol information sharing). Longer-term, even for an orderly Brexit or even no Brexit at all, there will be a reckoning for the excesses of past British exceptionalism,ⁱⁱⁱ for example, probably (also hopefully) an end of the opt-out from legal aid in UK-EU criminal justice cooperation.

The issues that will determine the future UK-EU relationship are also clear. These are the foundations on which the Common Market metamorphosed into EU and the long-term consequences of Westminster's abject failure on the Irish Home Rule issue: tariffs (the Customs Union), regulatory standards and migration (the Single Market) and Ireland (the EU external

border). The transformation from the Common Market to the EU, however, was paralleled by an unprecedented achievement (probably more by accident than design) in how individual states can effectively cooperate to protect security and well-being. Within criminal justice this has not compromised distinctly national approaches to substantive, evidential and procedural law.

How the principle issues are resolved or not ('no deal') will have significant consequences for the future of UK-EU criminal justice cooperation, including aspects of forensic science and legal medicine that underpin it. A wider analysis of legal cooperation quickly reveals many other issues, for example, in family law^{iv} and with traceability and authenticity information needed for food safety.^v

The possible loss or reduction in EU legal cooperation

The politics of Brexit - especially talk of 'retaking control of [UK] borders'- frequently misrepresents its consequences for the continued protection of security and well-being in the UK. More restrictive immigration rules will not reduce the scale of cross-border movement. When the UK joined the Common market its resident population exceeded by three times the total number of cross-border movements (excluding those in Ireland). Today that situation has been more than reversed.

Offending by nationals from other EU member states is proportionately lower than the size of this group within the UK population.^{vi} The challenge, therefore, has been and will continue to be that of identifying a small group of criminals within the overwhelmingly law-abiding and tax-paying crowd travelling to the UK from (other) EU states. Speedy and efficient EU information sharing (e.g. forensic bioinformation and, also for safeguarding purposes, criminal records) is critical for this,^{vii} but continued UK access to such systems will decline in proportion to the extent of divergence from the Single Market.

Brexit is also likely to increase the risk of increased harm and crime relating to (not necessarily by) migrant workers and residents. Immigration controls are enforced primarily at access to employment, housing and public services. As the capacity and reach of UK public services is reduced by fiscal austerity and the 'hostile environment' intensifies, these and other host society problems will make it easier for criminals, including unscrupulous employers and landlords, to exploit vulnerable post-Brexit migrants within the black economy.^{viii} This is likely to bear disproportionately on women. The fear of deportation already results in many women not reporting crimes of sexual and domestic violence to the police or seeking support.^{ix} Also within prisons, the loss of EU pre-trial bail and a slowing-down of post-conviction transfers home, the prospects for women from other EU member states - many with underlying physical and mental health problems - are likely to worsen.^x

Brexit, forensic science and legal medicine

A key objective must be to prevent the professional isolation of UK forensic science and legal medicine, as well as ensuring that the UK, like Norway and Switzerland, can continue to benefit from advances achieved through EU organised and funded research. This is important not just for responding to crimes and risks with an external element, but also for the general quality of scientific and clinical legal casework.^{xi}

The greatest challenge posed by Brexit will be in the extent to which it will amplify current organisational and funding problems. The sustainability of high quality forensic science and legal medicine is already at risk, for example, from succession planning problems in forensic pathology or

forensic science procurement practices that are incapable of distinguishing between cost and value. Much of the concern arises from the decline in funding. The underlying cause, however, is organisational fragmentation: narrowly focused public service priorities and responsibilities with little or no space for independent clinical, scientific and legal influence over resource allocation and policy making, or even a balanced consideration of the bigger picture. Brexit will aggravate these problems by simultaneously increasing public spending retrenchment and generating new demands. Sometimes the effect could be paradoxical. For example, companies and scientists forced out of criminal justice may find new opportunities – particularly under more extreme versions of Brexit – in new and extensive regulatory science and public health checks on imported and exported goods. The net effect of such public expenditure reallocation, while helpful for some companies and individuals, however, is likely to reduce overall social welfare and protection from harm.

Conclusions and an invitation

The scope and significance of the impact of Brexit on forensic science and legal medicine needs to be identified more fully and analysed in greater detail. This is needed to inform greater concerted engagement by professionals and academics with Parliament and government officials. Two university research centres (one at Northumbria and the other at Aston) have come together with colleagues based at RUSI (the Royal United Services Institution) to create a network to facilitate such activity. The network will be concerned with protection from harm in a very broad sense and will support the maintenance or rebuilding of UK-EU legal and security cooperation after 29th March 2019. Please contact the network if you wish to join us.^{xii}

ⁱ Howarth J, Brexit has become unnegotiable: Theresa May has a constitutional duty to admit that truth <http://blogs.lse.ac.uk/brexit/2018/09/25/brexit-has-become-unnegotiable-theresa-may-has-a-constitutional-duty-to-admit-that-truth/>; 2018 Accessed 4 October 2018.

ⁱⁱ Portes J, Putting a price on Brexit', In: Our Global Future *Too high a price? The cost of Brexit – what the public thinks*, <http://ourglobalfuture.com/reports/too-high-a-price-the-cost-of-brexit-what-the-public-thinks/>; 2018 Accessed 4 October 2018.

ⁱⁱⁱ Weyembergh A, Consequences of Brexit for European Union criminal law. *New Journal of European Criminal Law* 2017; 8: 284–99. <https://doi.org/10.1177/2032284417721286>.

^{iv} Justice Committee, *Implications of Brexit for the justice system* (HC 2016-17, 750). <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/750/750.pdf>; 2017 Accessed 5 October 2018.

^v Johnson D, Wilkinson J, Check the menu: Five years after the 'Horsemeat Scandal', food fraud remains a threat <https://shoc.rusi.org/informer/check-menu-five-years-after-horsemeat-scandal-food-fraud-remains-threat>; 2018 Accessed 5 October 2018.

^{vi} Johnson D, Ludwig A, Younger B, McCloskey M, *The Prüm Implementation, Evaluation and Strengthening (P.I.E.S.) of Forensic DNA Data Exchange: Northumbria University Final Report*. <http://nrl.northumbria.ac.uk/23383/>; 2015 Accessed 4 October 2018.

^{vii} Wilson TJ, Criminal Justice and Global Public Goods: The Prüm Forensic Biometric Cooperation Model, *The Journal of Criminal Law* 2016 303–326. <https://doi.org/10.1177/0022018316668450>.

^{viii} Solivetti LM, *Immigration, Social Integration and Crime*, Abingdon and New York: Routledge; 2010.

^{ix} *End Violence Against Women. Women living in a hostile environment*.

<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/FINAL-living-in-a-hostile-environment-for-Web-and-sharing-.pdf on 04.10.18>; 2018 Accessed 4 October 2018.

^x Prison Reform Trust and Hibiscus. *Still No Way Out: Foreign national women and trafficked women in the criminal justice system*.

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Still%20No%20Way%20Out%20full%20report.pdf> 2018 Accessed 5 October 2018.

^{xi} Wilson T, Carr S, AFSJ and Forensic Science. In: Carrapico H, Niehuss A, Berthelemy C, *Brexit and Internal Security: Political and Legal concerns in the context of the future UK-EU Relationship*. London: Palgrave; forthcoming.

^{xii}Details at <https://shoc.rusi.org/juest-network>.