



What effect will Brexit have on law in England? IOSH – November 2016

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**VOTE
REMAIN** 
ON JUNE 23RD
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Context

Vote Leave's reasons for voting leave

- The Vote Leave website – article 6 June 2016 :
 - The Eurozone crisis means that we will be paying the bills for the Eurozone's failure
 - The EU will cost us more and more
 - If we stay we will give away control of immigration permanently
 - The EU's official plan is not to change direction, it is to take even more powers from Britain
 - The EU and rogue European Court are dangerous for our security

Article 50

- <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M050&from=EN>
- "You invoke Article 50 in the early part of next year (and) you have two years to pull it off. I don't actually think you need to spend the full two years but let's see how we go."



EUR-Lex

EU law in the UK

What are EU laws?

Treaty on the Functioning of the European Union, art 288:

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

- *A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.*
- *A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.*
- *A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.*
- *Recommendations and opinions shall have no binding force.*

Supremacy of EU law

- Case 106/77 *Amministrazione Delle Finanze Stato (Italian Finance Administration) v Simmenthal S.p.A.* [1978] ECR 629 (please see Latin glossary at the end of this reading list)
- Case C-213/89 *R v Secretary of State for Transport ex p Factortame Ltd* [1990] ECR 1-2433
- Case C-409/06 *Winner Wetten GmbH v Bürgermeisterin der Stadt Bergheim* [2010] ECR 1-8015

How do EU laws become law in England?

- An EU regulation is law as soon as it is made
- Individuals and companies can use it immediately
- The government can't enforce it until it has passed an enforcing SI
- A Directive doesn't become law until it is transposed into an SI
- Therefore:
 - The contents of a regulation remain EU law, but enforceable and applicable in England
 - The contents of a directive become English law

What will happen at Brexit

- EU Directives which have been transposed into English law:
 - Are part of English law and
 - Will continue to apply
- EU Regulations:
 - Were never part of English law and
 - Will cease to apply and
 - Cannot be applied by the enforcing SIs because you can't enforce something which is not law

Converting EU law to English law

- Directives are already part of English law
- Regulations are not part of English law
- Government plans a Grand Repeal Bill
- This will import EU regulations into English law
- Then over the coming years (millennia?) we will review them and get rid of the ones we don't like
- However, it is not as simple as that...

What will the UK's
relationship with
the EU be

Models for Brexit - outline

- Membership of the EEA
- Comprehensive free trade agreement with the EU
- Swiss-style ad hoc arrangement
- Join the EU Customs Union
- Trade with the whole world including the EU under World Trade Organisation rules



“Access” to the
internal market

Article 26 TFEU

1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.
2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.



The EEA

What is EEA law – art 7

Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows :

- a. An act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;
- b. An act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.

Principles of the EEA: art 1 EEAA

In order to attain the objectives ... the association shall entail:

- a. the free movement of goods;
- b. the free movement of persons;
- c. the free movement of services;
- d. the free movement of capital ...



Status of EU law
after Brexit

If the UK is part of the internal market

- It will be a signatory to the EEA agreement
- All EU legislation incorporated into the EEA agreement will be binding on the UK (or will it?)
- All EU legislation which is pending incorporation will not be binding on the UK (at least via the EEA)
- All EU legislation which is not EEA relevant will never be binding (at least via the EEA)

The significance for health and safety

- All health and safety laws in the EU are secured by directives
- All those directives have EEA relevance
- Most have been adopted by the EEA
- If the UK remains in the internal market, all health and safety law will continue to apply

If the UK is not part of the internal market

- EU Directives which have been transposed into English law:
 - Are part of English law and
 - Will continue to apply
- EU Regulations:
 - Were never part of English law and
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 - Cannot be applied by the enforcing SIs because you can't enforce something which is not law



How could the
effect of UK laws
be continued?

Converting EU law to English law

- Directives are already part of English law
- Regulations are not part of English law
- Government will need to enact a law that says EU regulations should have the same status in English laws as Directives
- But:
 - What about cross-references to other regulations or directives?
 - Should earlier decisions of the Court of Justice of the EU continue to apply?

Dynamic legislation

- Some cross-references to EU legislation are static:
 - They refer to an EU directive as it was at the date of the English SI which transposes it
 - They refer to an EU regulation as it was at the date of the English SI which enforces it
- Some cross references are dynamic:
 - They refer to a piece of EU legislation as it is from time to time

Examples of dynamic references

- Pesticides (plant protection products)
 - “Regulation 1107/2009” means Regulation (EC) No 1107/2009 ... concerning the placing of plant protection products on the market ... of which Articles 30(3) and 52(4) and Annexes I to V of that Regulation are to be read **as amended from time to time.**’
- Biocides
- REACH
- CLH

Consequences of dynamic cross-referencing

- In order to ensure that the UK's regulation remains up to date, it will need to replicate the science carried out by the ECHA, the EFSA and similar bodies
- But:
 - They are the corporate effort of 28 countries
 - The government is committed to reducing public spending
- Or, we would need to sign up to someone else's (USA?)
- But:
 - The UK is committed to taking back control
 - What would such a move say for the UK's sovereignty?

Major issues

- Continued membership of the internal market implies continuation of health and safety law
- Continued membership of the internal market is incompatible with the aims of the Leave campaign
- Ending membership of the single market:
 - Puts all health and safety law at a risk of a “pick and mix” approach
 - Will mean a hideously complex approach to untangling legislation which may be at odds with the aims of the Leave campaign

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