



Department  
for Exiting the  
European Union

# Legislating for the United Kingdom's withdrawal from the European Union

Cm 9446





# Legislating for the United Kingdom's withdrawal from the European Union

Presented to Parliament  
by the Secretary of State for Exiting the European Union  
by Command of Her Majesty

March 2017



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## Foreword from the Prime Minister



The Government's first objective as we negotiate a new deep and special partnership with the European Union is to provide business, the public sector, and everybody in our country with as much certainty as possible as we move through the process.

This clarity will help people to plan effectively, recruit appropriately and invest as necessary while the negotiations continue and the new partnership we will enjoy with the European Union is being formed.

We have already been able to provide some clarity and reassurance in certain sectors. For example, last year the Government acted quickly to give certainty about farm payments and university funding. And we have also pledged to put the final deal that is agreed between the UK and the EU to a vote in both Houses of Parliament before it comes into force.

Our decision to convert the 'acquis' – the body of European legislation – into UK law at the moment we repeal the European Communities Act is an essential part of this plan.

This approach will provide maximum certainty as we leave the EU. The same rules and laws will apply on the day after exit as on the day before. It will then be for democratically elected representatives in the UK to decide on any changes to that law, after full scrutiny and proper debate.

This White Paper explains how we will legislate for this approach by introducing a Great Repeal Bill at the start of the next parliamentary session. This Bill will, wherever practical and appropriate, convert EU law into UK law from the day we leave so that we can make the right decisions in the national interest at a time that we choose.

The Great Repeal Bill is an important part of our plan to deliver a smooth and orderly Brexit that commands the confidence of all. The task ahead may be significant, but I am confident we can make it a success. This White Paper is an essential step along the way.

A handwritten signature in black ink, which appears to be 'T. May', written in a cursive style.

**Rt Hon Theresa May MP**  
**Prime Minister**



# Foreword from the Secretary of State for Exiting the European Union



On 23 June 2016 the United Kingdom made the historic decision to leave the European Union. In implementing that decision, we will build a great, global trading nation that is respected around the world and is strong, confident and united at home.

At the heart of that historic decision was sovereignty. A strong, independent country needs control of its own laws. That, more than anything else, was what drove the referendum result: a desire to take back control. That process starts now.

To achieve this, the Great Repeal Bill will repeal the European Communities Act 1972 on the day we leave the EU. The UK Parliament will unquestionably be sovereign again. Our courts will

be the ultimate arbiters of our laws. In achieving this, we will be delivering on the outcome of the referendum.

But taking back control does not require us to change everything overnight – and we will not do so. Rather, we will provide for a smooth and orderly exit. The Great Repeal Bill will convert EU law as it applies in the UK into domestic law on the day we leave – so that wherever practical and sensible, the same laws and rules will apply immediately before and immediately after our departure. It is not a vehicle for policy changes – but it will give the Government the necessary power to correct or remove the laws that would otherwise not function properly once we have left the EU.

This substantial task of delivering a functioning statute book must be completed before we leave the EU – but the need to act at speed cannot be at the expense of ensuring the appropriate levels of parliamentary scrutiny.

As we leave the EU, we have an opportunity to ensure that returning powers sit closer to the people of the United Kingdom than ever before. In some areas where the existence of common frameworks at EU level has also provided common UK frameworks, it will be important to ensure that this stability and certainty are not compromised.

Examples of where common UK frameworks may be required include where they are necessary to protect the freedom of business to operate across the UK single market and to enable the UK to strike free trade deals.

Decisions will be required about whether a common framework is needed and, if it is, how it might be established. We will work closely with the devolved administrations to deliver an approach that works for the whole of the United Kingdom. But what is clear is that the outcome of this process will be a significant increase in the decision-making power of each devolved administration. As we bring powers back from Brussels, we will put them into the hands of democratically elected representatives in the United Kingdom.

I hope that people across the country will welcome the Bill's pragmatic but principled approach to maximising certainty, providing clarity and allowing for parliamentary scrutiny as we leave the EU.

A handwritten signature in black ink, appearing to read 'David Davis', with a stylized, sweeping underline.

**Rt Hon David Davis MP**  
**Secretary of State for Exiting the European Union**

# Chapter 1: Delivering the referendum result

**1.1** On 1 January 1973 the United Kingdom joined the European Economic Community, which has since evolved to become today's European Union (EU). A condition of EU membership is that community law, which is now EU law, be given effect in domestic law. The European Communities Act 1972 (ECA) is the principal piece of legislation that gives effect to EU law in the UK and the legislation which makes EU law supreme over UK law.

**1.2** After joining the European Economic Community, the UK adopted a number of subsequent treaties which were designed to establish greater political and economic integration between member states. In 1987, the Single European Act set a date for completion of the single market by the end of 1992, providing for the free movement of goods, persons, services and capital. In 1993, the Maastricht Treaty established the EU and created its three pillar structure, with the European Economic Community being the first pillar, the common foreign and security policy the second pillar and cooperation in justice and home affairs the third pillar.

**1.3** Further changes were made by the Treaty of Amsterdam (1999) and the Treaty of Nice (2003). Following the expansion of the EU to include its current 28 member states, the Lisbon Treaty in 2009 renamed and amended the original treaties and collapsed the three pillar system into a single European Union.

**1.4** Although the UK adopted the above EU treaties, the UK negotiated significant caveats to certain areas of EU membership. For example, during the Maastricht process the UK negotiated opt-outs, which exempted the country from Economic and Monetary Union and therefore the adoption of the Euro. The UK also secured a special status under the Treaty of Amsterdam, which safeguarded the UK's decision not to adopt the borders elements of the Schengen Agreement and certain other justice and home affairs matters, while the Lisbon Treaty saw the UK negotiate an opt-in process for individual police and criminal justice cooperation measures.

**1.5** On 23 January 2013 the then Prime Minister announced his intention to negotiate a new settlement on the terms of the UK's membership of the EU, followed by a pledge to subsequently hold an in-out referendum on the UK's membership of the EU.

**1.6** On 17 December 2015 the European Union Referendum Act 2015 – backed by an overwhelming majority of MPs – received Royal Assent. The Act made provision for holding a referendum in the United Kingdom and Gibraltar on whether the UK should remain a member of the EU. The Government committed to honouring the result. The referendum was then held on 23 June 2016.

**1.7 The result – by 52% to 48% – was a clear instruction from the people of the United Kingdom to leave the EU.**

**1.8** The Prime Minister was clear that there would be no unnecessary delays in invoking Article 50 of the Treaty on European Union, which began our formal negotiations to leave the EU. The European Union (Notification of Withdrawal) Act 2017 was passed into law on 16 March and gave the Prime Minister the legal authority to notify under Article 50. This notification was then given on 29 March.

**1.9** Article 50 is the only legal route by which we can leave the EU. It sets out that the UK has two years to negotiate a withdrawal agreement with the EU, after which our membership of the EU will end unless an extension is agreed with the European Council.

**1.10** The UK remains a full member of the EU and all the rights and obligations of EU membership remain in force until exit. The Government will continue to negotiate, implement and apply EU law during this period.

**1.11** The Article 50 process gives effect to the UK's withdrawal as a matter of EU law. However, new primary legislation is needed to ensure that the domestic statute book reflects the UK's withdrawal from the EU, and to ensure an orderly transition from EU membership. **We need to be in a position to repeal the ECA on the day we leave the EU.**

**1.12** In order to achieve a stable and smooth transition, the Government's overall approach is to convert the body of existing EU law into domestic law, after which Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of that law to keep, amend or repeal once we have left the EU. **This ensures that, as a general rule, the same rules and laws will apply after we leave the EU as they did before.**

**1.13** **If the Great Repeal Bill did not convert existing EU law into domestic law at the same time as repealing the ECA**, the UK's statute book would contain significant gaps once we left the EU. There are a large number of EU regulations and many other EU-derived laws which form part of our law which, if we were to repeal the ECA without making further provision, would no longer apply, creating large holes in our statute book.

**1.14** Simply incorporating EU law into UK law is not enough, however. A significant amount of EU-derived law, even when converted into domestic law, will not achieve its desired legal effect in the UK once we have left the EU. For example, legislation may refer to the involvement of an EU institution or be predicated on UK membership of, or access to, an EU regime or system. Once we have left the EU, this legislation will no longer work. Government must act to ensure that the domestic statute book continues to function once we have left the EU.

**1.15** That said, it is neither possible nor desirable for all of the changes that will be needed to domestic law to be made in the Great Repeal Bill itself. This is for a number of reasons, including that the nature and timing of many of the necessary changes do not lend themselves to inclusion in primary legislation. Also, some of the changes will be to devolved law and would be better made by devolved institutions. As such, the Great Repeal Bill will create a power to correct the statute book where necessary, to rectify problems occurring as a consequence of leaving the EU. This will be done by secondary legislation.

**1.16** It is also important to recognise that the timing of the Great Repeal Bill and associated secondary legislation will run in parallel to the negotiation process under Article 50. This means undertaking the legislative process necessary to correct the statute book while

the negotiations are underway. There is much that can be taken forward during those negotiations, but some legislation will necessarily need to await their conclusion. The approach outlined in this White Paper is designed to give businesses, workers, investors and consumers the maximum possible certainty as we leave the EU: but it also needs to provide the flexibility necessary to respond to all eventualities of the negotiation process.

**1.17** The House of Lords Constitution Committee published a report on 7 March 2017 that stated “further amendments to domesticated EU law (i.e. the body of EU law that will be made part of UK law after Brexit) will be needed in order to implement the final withdrawal agreement. While the Government will need to get the separate approval of Parliament to this agreement, it may well choose to use powers granted under the ‘Great Repeal Bill’ to prepare some of the necessary changes to domesticated EU law to take effect on Brexit-day”.<sup>1</sup>

**1.18** We agree with the Committee that the Great Repeal Bill should also provide the Government with a further limited power to implement the contents of any withdrawal agreement reached with the EU into our domestic law without delay, where it is necessary to do so in order that we are ready to begin a new partnership from exit.

**1.19** This is a separate process from that by which the Government will bring forward a motion on the final agreement to be voted on by both Houses of Parliament before it is concluded. Any new treaty that we agree with the EU will also be subject to the provisions of the Constitutional Reform and Governance Act 2010 before ratification.

**1.20** The Government is confident that the UK can reach a positive agreement about our future relationship with the EU in the time available under Article 50. However, we have also been clear that no deal for the UK is better than a bad deal for the UK. The Great Repeal Bill would also support the scenario where the UK left the EU without a deal in place, by facilitating the creation of a complete and functioning statute book no longer reliant on EU membership.

**1.21** The Great Repeal Bill will not aim to make major changes to policy or establish new legal frameworks in the UK beyond those which are necessary to ensure the law continues to function properly from day one. Therefore, the Government will also introduce a number of further bills during the course of the next two years to ensure we are prepared for our withdrawal – and that Parliament has the fullest possible opportunity to scrutinise this legislation.

**1.22** For example, we will introduce a customs bill to establish a framework to implement a UK customs regime. The requirement for a UK customs regime cannot be met merely by incorporating EU law – and would benefit from the intensive parliamentary scrutiny given to primary legislation. Similarly, we will introduce an immigration bill so nothing will change for any EU citizen, whether already resident in the UK or moving from the EU, without Parliament’s approval. This is in line with our overall approach to the Great Repeal Bill – not to make major policy changes through or under the Bill, but to allow Parliament an opportunity to debate our future approach and give effect to that through separate bills. New legislation will be required to implement new policies or institutional arrangements that go beyond replicating current EU arrangements in UK law.

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<sup>1</sup> ‘The ‘Great Repeal Bill’ and delegated powers’, Lords Select Committee on the Constitution, 9th Report of Session 2016-17, 7 March 2017, page 13, <https://www.publications.parliament.uk/pa/ld201617/ldselect/ldconst/123/123.pdf>

## Summary of main provisions

**1.23** In summary, therefore, the Great Repeal Bill will put the UK back in control of its laws; maximise certainty for businesses, workers, investors and consumers across the whole of the UK as we leave the EU; and ensure accountability for the powers contained in the Bill.

**1.24** To achieve this, the Great Repeal Bill will do three main things:

- a. First, it will **repeal the ECA** and return power to UK institutions.
- b. Second, subject to the detail of the proposals set out in this White Paper, the Bill will **convert EU law** as it stands at the moment of exit into UK law before we leave the EU. This allows businesses to continue operating knowing the rules have not changed significantly overnight, and provides fairness to individuals, whose rights and obligations will not be subject to sudden change. It also ensures that it will be up to the UK Parliament (and, where appropriate, the devolved legislatures) to amend, repeal or improve any piece of EU law (once it has been brought into UK law) at the appropriate time once we have left the EU.
- c. Finally, the Bill will **create powers to make secondary legislation**. This will enable corrections to be made to the laws that would otherwise no longer operate appropriately once we have left the EU, so that our legal system continues to function correctly outside the EU, and will also enable domestic law once we have left the EU to reflect the content of any withdrawal agreement under Article 50.

**1.25** Chapter 2 sets out the Government's approach to the repeal of the ECA and the conversion of EU law into UK law. Chapter 3 considers the powers in the Bill to make secondary legislation. Chapter 4 looks at the interaction between the Bill's provisions and the devolution settlements, while Chapter 5 looks at the impact on the Crown Dependencies and Overseas Territories.

**1.26** The Government welcomes feedback on this White Paper. Comments can be sent to [repeal-bill@dexeu.gov.uk](mailto:repeal-bill@dexeu.gov.uk).

## Chapter 2: Our approach to the Great Repeal Bill

### Repeal of the European Communities Act 1972

**2.1** The ECA gives effect in UK law to the EU treaties. It incorporates EU law into the UK domestic legal order and provides for the supremacy of EU law. It also requires UK courts to follow the rulings of the Court of Justice of the European Union (CJEU).

**2.2** Some EU law applies directly without the need for specific domestic implementing legislation, while other parts of EU law need to be implemented in the UK through domestic legislation. As explained later in this White Paper, domestic legislation other than the ECA also gives effect to some of the UK's obligations under EU law.

**2.3** As a first step, it is important to repeal the ECA to ensure there is maximum clarity as to the law that applies in the UK, and to reflect the fact that following the UK's exit from the EU it will be UK law, not EU law, that is supreme. The Bill will repeal the ECA on the day we leave the EU.

### Converting EU law into UK law

**2.4** Simply repealing the ECA would lead to a confused and incomplete legal system. This is because, as described above, some types of EU law (such as EU regulations) are directly applicable in the UK's legal system. This means they have effect here without the need to pass specific UK implementing legislation. They will therefore cease to have effect in the UK once we have left the EU and repealed the ECA, leaving large holes in the statute book. To avoid this, **the Bill will convert directly-applicable EU laws into UK law.**

**2.5** By contrast, other types of EU law (such as EU directives) have to be given effect in the UK through national laws. This has frequently been done using section 2(2) of the ECA, which provides ministers, including in the devolved administrations, with powers to make secondary legislation to implement EU obligations. Once the ECA has been repealed, all of the secondary legislation made under it would fall away. As this would also leave a significant gap in the statute book, **the Bill will also preserve the laws we have made in the UK to implement our EU obligations.**

### What does the Great Repeal Bill convert into UK law?

The Bill will ensure that, wherever possible, the same rules and laws apply on the day after we leave the EU as before.

This means that:

- the Bill will convert directly-applicable EU law (EU regulations) into UK law (paragraph 2.4);
- it will preserve all the laws we have made in the UK to implement our EU obligations (paragraph 2.5);
- the rights in the EU treaties that can be relied on directly in court by an individual will continue to be available in UK law (paragraph 2.11); and
- the Bill will provide that historic CJEU case law be given the same binding, or precedent, status in our courts as decisions of our own Supreme Court (paragraphs 2.12 to 2.17).

**2.6** There is no single figure for how much EU law already forms part of UK law. According to EUR-Lex, the EU's legal database, there are currently over 12,000 EU regulations in force (this includes amending regulations as well as delegated and implementing regulations).<sup>2</sup> In terms of domestic legislation which implements EU law such as directives, research from the House of Commons Library indicates that there have been around 7,900 statutory instruments which have implemented EU legislation. This figure does not include statutory instruments made by the devolved administrations which will also observe and implement EU obligations in areas within their competence.<sup>3</sup> In addition, research from the House of Commons Library indicates that out of 1,302 UK Acts between 1980 and 2009 (excluding those later repealed), 186 Acts (or 14.3%) incorporated a degree of EU influence.<sup>4</sup>

**2.7** Our approach of converting EU law into domestic law maximises certainty and stability while ensuring Parliament is sovereign. For the purposes of this paper we are calling this body of law 'EU-derived law'. The Government considers that, unless and until domestic law is changed by legislators in the UK, legal rights and obligations in the UK should where possible be the same after we have left the EU as they were immediately before we left.

**2.8** EU regulations will not be 'copied out' into UK law regulation by regulation. Instead the Bill will make clear that EU regulations – as they applied in the UK the moment before we left the EU – will be converted into domestic law by the Bill and will continue to apply until legislators in the UK decide otherwise.

<sup>2</sup> EUR-Lex search run on 28 March 2017: [http://eur-lex.europa.eu/search.html?qid=1490700962298&VV=true&DB\\_TYPE\\_OF\\_ACT=allRegulation&DTC=false&DTS\\_DOM=EU\\_LAW&typeOfActStatus=ALL\\_REGULATION&type=advanced&lang=en&SUBDOM\\_INIT=LEGISLATION&DTS\\_SUBDOM=LEGISLATION](http://eur-lex.europa.eu/search.html?qid=1490700962298&VV=true&DB_TYPE_OF_ACT=allRegulation&DTC=false&DTS_DOM=EU_LAW&typeOfActStatus=ALL_REGULATION&type=advanced&lang=en&SUBDOM_INIT=LEGISLATION&DTS_SUBDOM=LEGISLATION)

<sup>3</sup> 'Legislating for Brexit: Statutory Instruments implementing EU law', House of Commons Library Research Paper 7867, 16 January 2017, page 6, <http://researchbriefings.files.parliament.uk/documents/CBP-7867/CBP-7867.pdf>

<sup>4</sup> 'How much legislation comes from Europe?', House of Commons Library Research Paper 10/62, 13 October 2010, page 19, <http://researchbriefings.files.parliament.uk/documents/RP10-62/RP10-62.pdf>

## The EU treaties

**2.9** The treaties are the primary source of EU law. A substantial proportion of the treaties sets out rules for the functioning of the EU, its institutions and its areas of competence. While much of the content of the treaties will become irrelevant once the UK leaves the EU, the treaties (as they exist at the moment we leave the EU) may assist in the interpretation of the EU laws we preserve in UK law.

**2.10** For example, in interpreting an EU measure it may be relevant to look at its aim and content, as revealed by its legal basis as found in the treaties. In interpreting workers' annual leave entitlement, the legal basis of the Working Time Directive was found to be relevant.<sup>5</sup> The court found that member states could not adopt national rules under which workers' rights to paid annual leave depended on their having completed a minimum period of employment with the same employer. Had the court not looked to original treaty provisions giving rise to the Working Time Directive, it may have given the directive an alternative meaning. Once we have left the EU, our courts will continue to be able to look to the treaty provisions in interpreting EU laws that are preserved.

**2.11** Equally, there are rights in the EU treaties that can be relied on directly in court by an individual, and the Great Repeal Bill will incorporate those rights into UK law. The text box overleaf on workers' rights gives an illustration of why this is important in practice.

## Case law of the Court of Justice of the European Union (CJEU)

**2.12** The Government has been clear that in leaving the EU we will bring an end to the jurisdiction of the CJEU in the UK. Once we have left the EU, the UK Parliament (and, as appropriate, the devolved legislatures) will be free to pass its own legislation.

**2.13** The Great Repeal Bill will not provide any role for the CJEU in the interpretation of that new law, and the Bill will not require the domestic courts to consider the CJEU's jurisprudence. In that way, the Bill allows the UK to take control of its own laws. We will, of course, continue to honour our international commitments and follow international law.

**2.14** However, for as long as EU-derived law remains on the UK statute book, it is essential that there is a common understanding of what that law means. The Government believes that this is best achieved by providing for continuity in how that law is interpreted before and after exit day. To maximise certainty, therefore, the Bill will provide that any question as to the meaning of EU-derived law will be determined in the UK courts by reference to the CJEU's case law as it exists on the day we leave the EU. Everyone will have been operating on the basis that the law means what the CJEU has already determined it does, and any other starting point would be to change the law. Insofar as case law concerns an aspect of EU law that is not being converted into UK law, that element of the case law will not need to be applied by the UK courts.

**2.15** For example, CJEU case law governs the calculation of holiday pay entitlements for UK workers: failure to carry across that case law would be to create uncertainty for workers and employers. Similarly, CJEU case law has over the past four decades clarified what is and is not subject to VAT, and failing to follow that case law in our own legal system would create new uncertainties about the application of VAT.

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<sup>5</sup> Case C-173/99 *BECTU v Secretary of State Trade and Industry* [2001] ECR I-4881, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-173/99>

**2.16** This approach maximises legal certainty at the point of departure, but the intention is not to fossilise the past decisions of the CJEU forever. As such, we propose that the Bill will provide that historic CJEU case law be given the same binding, or precedent, status in our courts as decisions of our own Supreme Court. It is very rare for the Supreme Court to depart from one of its own decisions or that of its predecessor, the House of Lords. The circumstances in which it will, exceptionally, do so, derive from a Practice Statement made by the House of Lords in 1966, and adopted by the Supreme Court in 2010. That Statement set out, among other things, that while treating its former decisions as normally binding, it will depart from its previous decisions “when it appears right to do so”.

**2.17** We would expect the Supreme Court to take a similar, sparing approach to departing from CJEU case law. We are also examining whether it might be desirable for any additional steps to be taken to give further clarity about the circumstances in which such a departure might occur. Parliament will be free to change the law, and therefore overturn case law, where it decides it is right to do so.

### **Example 1: Workers' rights and equalities**

The Great Repeal Bill will convert EU law into domestic law. This means that the workers' rights that are enjoyed under EU law will continue to be available in UK law after we have left the EU. Where protections are provided by the EU treaties as a final 'backstop' – such as the right to rely on Article 157 of TFEU (equal pay) directly in court – they will also be preserved.

Protections are further strengthened by the Great Repeal Bill's incorporation of CJEU case law (see paragraphs 2.12 to 2.17), which means that where workers' rights have been extended by CJEU judgments, those rights will continue to be protected in the UK once we have left the EU. In a number of areas, UK employment law already goes further than the minimum standards set out in EU legislation, and this Government will continue to protect and enhance the rights people have at work.

Furthermore, all the protections covered in the Equality Act 2006, the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once the UK has left the EU. This approach will give certainty to service providers and users, as well as employees and employers, creating stability in which the UK can grow and thrive.

### Example 2: Environmental protection

The Government is committed to ensuring that we become the first generation to leave the environment in a better state than we found it.

The UK's current legislative framework at national, EU and international level has delivered tangible environmental benefits, such as cleaner rivers and reductions in emissions of sulphur dioxide and ozone depleting substances emissions. Many existing environmental laws also enshrine standards that affect the trade in products and substances across different markets, within the EU as well as internationally.

The Great Repeal Bill will ensure that the whole body of existing EU environmental law continues to have effect in UK law. This will provide businesses and stakeholders with maximum certainty as we leave the EU. We will then have the opportunity, over time, to ensure our legislative framework is outcome driven and delivers on our overall commitment to improve the environment within a generation. The Government recognises the need to consult on future changes to the regulatory frameworks, including through parliamentary scrutiny.

### Example 3: Consumer protection

UK consumer law predates EU competence in this area, and goes beyond EU minimum requirements in a number of respects. For example, the right for UK consumers to reject a faulty good within a 30-day period is a UK-level protection, and traders are limited to a single attempt to repair or replace a faulty product before having to offer a refund. In addition, the UK has legislated to make sure that consumers have clear rights when buying digital content.

Where consumer protections are set at the EU level and thus already part of UK law, the Great Repeal Bill will preserve the relevant EU law to ensure domestic law functions properly after exit. This stability will give businesses and consumers clarity and confidence in their rights and obligations, facilitating the day-to-day transactions that keep the UK economy strong. It will help ensure that UK consumers' rights continue to be robust after we have left the EU.

In addition, the Government intends to bring forward a Green Paper this spring which will closely examine markets which are not working fairly for consumers.

## Supremacy of EU law

**2.18** The UK Parliament remains sovereign, and parliamentary sovereignty is the foundation of the UK constitution. As a consequence of the ECA, passed by the UK Parliament, case law makes it clear that EU law has supremacy for as long as we are a member state. National laws must give way and be disapplied by domestic courts if they are found to be inconsistent with EU law.

**2.19** Our proposed approach is that, where a conflict arises between EU-derived law and new primary legislation passed by Parliament after our exit from the EU, then newer legislation will take precedence over the EU-derived law we have preserved. In this way, **the Great Repeal Bill will end the general supremacy of EU law.**

**2.20** If, after exit, a conflict arises between two pre-exit laws, one of which is an EU-derived law and the other not, then the EU-derived law will continue to take precedence over the other pre-exit law. Any other approach would change the law and create uncertainty as to its meaning. This approach will give coherence to the statute book, while putting Parliament back in control. Once the UK has left the EU, Parliament (and, where appropriate, the devolved legislatures) will be able to change these laws wherever it is considered desirable.

## Charter of Fundamental Rights

**2.21** One of the general principles of EU law is respect for fundamental rights, which includes many of the rights we refer to as human rights in the UK. In leaving the EU, the UK's leading role in protecting and advancing human rights will not change. The EU codifies fundamental rights in the Charter of Fundamental Rights, which has the same legal status as the EU treaties.

**2.22** The Charter is only one element of the UK's human rights architecture. Many of the rights protected in the Charter are also found in other international instruments, notably the European Convention on Human Rights (ECHR), but also UN and other international treaties too. The ECHR is an instrument of the Council of Europe, not of the EU. The UK's withdrawal from the EU will not change the UK's participation in the ECHR and there are no plans to withdraw from the ECHR.

**2.23** The Charter only applies to member states when acting within the scope of EU law, so its relevance is removed by our withdrawal from the EU. Some rights will naturally fall away as we leave the EU, such as the right to vote or stand as a candidate in European Parliament elections. It cannot be right that the Charter could be used to bring challenges against the Government, or for UK legislation after our withdrawal to be struck down on the basis of the Charter. On that basis the Charter will not be converted into UK law by the Great Repeal Bill.

**2.24** However, the Charter was not designed to create any new rights or alter the circumstances in which individuals could rely on fundamental rights to challenge the actions of the EU institutions or member states in relation to EU law. Instead the Charter was intended to make the rights that already existed in EU law more visible by bringing them together in a single document.

**2.25** The Government's intention is that the removal of the Charter from UK law will not affect the substantive rights that individuals already benefit from in the UK. Many of these underlying rights exist elsewhere in the body of EU law which we will be converting into UK law. Others already exist in UK law, or in international agreements to which the UK is a party. As EU law is converted into UK law by the Great Repeal Bill, it will continue to be interpreted by UK courts in a way that is consistent with those underlying rights. Insofar as cases have been decided by reference to those underlying rights, that case law will continue to be relevant. In addition, insofar as such cases refer to the Charter, that element will have to be read as referring only to the underlying rights, rather than to the Charter itself.

## Chapter 3: Delegated powers in the Great Repeal Bill

### The challenge

**3.1** By repealing the ECA, we are removing parts of the legal framework under which the UK has operated for more than forty years. The previous chapter set out the Government's approach to ensure that this does not leave large holes on the statute book; namely, we will convert the corpus of EU law as it stands when we leave the EU into our domestic law. This action alone will not, though, be sufficient to provide a smooth and orderly exit.

**3.2** A large amount of EU law currently applies in the UK. A proportion of this will continue to operate properly once we have left the EU simply by converting it into UK law. For example, large parts of employment law will continue to function properly once we have left the EU. But an even larger proportion of the converted law will not function effectively once we have left the EU unless we take action to correct it.

**3.3** There is a variety of reasons why conversion alone may not be sufficient in particular cases. There will be gaps where some areas of converted law will be entirely unable to operate because we are no longer a member of the EU. There will also be cases where EU law will cease to operate as intended or will be redundant once we leave. In some cases EU law is based on reciprocal arrangements, with all member states treating certain situations in the same way. If such reciprocal arrangements are not secured as a part of our new relationship with the EU, it may not be in the national interest, or workable, to continue to operate those arrangements alone.

**3.4** Similar issues will arise in legislation made by devolved ministers or enacted by devolved legislatures (discussed further in Chapter 4). The case studies below provide examples of the different types of legal corrections which would need to be made once we leave the EU, and how the power will enable the Government to address them.

### Case study 1: references to “EU law”

Throughout the statute book, there are references which will no longer be accurate once we leave the EU, such as references to “*Member States other than the United Kingdom*”, to “*EU law*” or to providing for the UK’s “*EU obligations*”. Such references will need to be repealed or amended to ensure we have a comprehensive statute book post-exit.

In this instance, the power to correct would allow the Government to amend converted law to reflect our new position. For example, section 171 of the Enterprise Act 2002 requires the Competition and Markets Authority to publish advice and information about the operation of certain provisions of that Act which must include information about the effect of EU law on those provisions. That reference and the definition of “*EU law*” in section 171 will need amending or repealing to reflect the fact that EU law will no longer apply once the UK exits the EU.

### Case study 2: involvement of an EU institution

There will be law which will, upon leaving the EU, no longer work at all and which will need to be corrected to continue to work. An example of this would be the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.<sup>6</sup> These domestic regulations contain a requirement to obtain an opinion from the European Commission on particular projects relating to offshore oil and gas activities. Once we leave the EU, the Commission will no longer provide such opinions to the UK (and we would not seek them). However, this requirement in the existing regulations would prevent certain projects from taking place unless we correct it.

In this instance the power to correct the law would allow the Government to amend our domestic legislation to either replace the reference to the Commission with a UK body or remove this requirement completely.

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<sup>6</sup> See Regulation 6(2)(b) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (S.I. 2001/1754), <http://www.legislation.gov.uk/ukxi/2001/1754/contents/made>

### Case study 3: information sharing with EU institutions

Once we leave the EU, there will be areas of law where policy no longer operates as intended. This is the case where legislation would continue to work legally and can be complied with, but where the policy outcome delivered by that legislation might cease to make sense.

For example, this will happen where preserved legislation will continue to require the UK to send information to EU institutions (or offices, bodies or agencies) or EU member states. The UK would still be able to comply with such requirements in legislation to send information where there would be no legal barrier to doing so (i.e. the law would still function). However, where the UK had not explicitly agreed during exit negotiations to continue to provide such information to the EU, there may well be reasons why the UK would no longer wish to send such information after we exit the EU, and where it would make sense to amend the legislation to avoid previously reciprocal arrangements becoming one-sided.

An example of this would be the requirement for the UK to provide the European Commission with data relating to inland waterways transport as set out in Regulation 1365/2006.<sup>7</sup> In this case where the law no longer functions as intended, the power would allow the Government to amend or repeal these preserved regulations to reflect that such an arrangement only exists if it is in the UK's interest.

Of course in some cases we may want to exchange data with the EU, for example, for security matters.

**3.5** Government departments have been analysing the UK statute book and directly-applicable EU law in their areas of responsibility to enable an assessment of the scale of the changes needed. It is clear that a very significant proportion of EU-derived law for which Government departments are responsible contains some provisions that will not function appropriately if EU law is simply preserved.<sup>8</sup>

**3.6** Similar issues will also exist in legislation that is the responsibility of the devolved legislatures or ministers, such as that made under the ECA. UK Government legal advisers have been engaging with their colleagues in the devolved administrations to help determine the scale of the changes needed. The Bill will therefore give the devolved ministers a power to amend devolved legislation to correct law that will no longer operate appropriately, in line with the power held by UK ministers.

## The proposed solution: delegated powers

**3.7** To overcome the challenge set out above, **the Great Repeal Bill will provide a power to correct the statute book, where necessary, to rectify problems occurring as a consequence of leaving the EU.** This will be done using secondary legislation, and will help make sure we have put in place the necessary corrections before the day we exit the EU.

<sup>7</sup> Regulation (EC) No 1365/2006 of the European Parliament and of the Council of 6 September 2006 on statistics of goods transport by inland waterways and repealing Council Directive 80/1119/EEC, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1365>

<sup>8</sup> This is based on a first trawl of the UK statute book by Government departments

**3.8** Primary legislation can provide a framework within which Government can propose secondary legislation for parliamentary approval. Ultimately, the power to make secondary legislation is granted by Parliament and each use of these powers is subject to Parliament's control.

**3.9** It is important that where Government policies are delivered by secondary legislation, the case for that decision is justified. There is a variety of reasons why, in a particular case, secondary legislation is needed and the relevant content is not suited for inclusion in primary legislation. In the context of the Great Repeal Bill, relevant reasons for using secondary legislation include:

- a. matters which cannot be known or may be liable to change at the point when the primary legislation is being passed because the Government needs to allow for progress of negotiations;
- b. adjustments to policy that are directly consequential on our exiting the EU; and
- c. to provide a level of detail not thought appropriate for primary legislation.

**3.10** The extent of secondary legislation that may be needed under the Bill has recently been the subject of a report by the House of Lords Select Committee on the Constitution. The Committee put this as being a difference between “the more mechanical act of converting EU law into UK law, and the discretionary process of amending EU law to implement new policies in areas that previously lay within the EU's competence”, which the Committee thought should be done through primary legislation.<sup>9</sup> While there is inevitably a degree of discretion in how to undertake even the first of these categories, the Government agrees that the purpose of the Great Repeal Bill and the secondary legislation is to convert EU law into UK law.

**3.11** In this particular instance, without powers to resolve the types of issues set out earlier in this chapter through secondary legislation, we would require a prohibitively large amount of primary legislation to correct these problems.

**3.12** Clearly it is not possible to predict at this stage how every law is to be corrected, as in some areas of policy the solution may depend on the outcome of negotiations. The powers in the Bill will ensure that, whatever the outcome of those negotiations, the statute book can continue to function, and that decisions can be taken in the national interest and reflect the contents of the Withdrawal Agreement.

**3.13** The Committee also reflected that “it is unrealistic to assume that Parliament will be able tightly to limit the delegated powers granted under the Bill”, because to do so would unduly constrain the Government's ability to adapt converted EU law to fit the UK's post-exit circumstances. It also recognised that the circumstances “will almost certainly necessitate the granting of relatively wide delegated powers to amend existing EU law and to legislate for new arrangements following Brexit”.<sup>10</sup>

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<sup>9</sup> ‘The ‘Great Repeal Bill’ and delegated powers’, Lords Select Committee on the Constitution, 9th Report of Session 2016-17, 7 March 2017, page 10 <https://www.publications.parliament.uk/pa/ld201617/ldselect/ldconst/123/123.pdf>

<sup>10</sup> ‘The ‘Great Repeal Bill’ and delegated powers’, Lords Select Committee on the Constitution, 9th Report of Session 2016-17, 7 March 2017, pages 16 and 17 <https://www.publications.parliament.uk/pa/ld201617/ldselect/ldconst/123/123.pdf>

### What is secondary legislation and how is it used?

Secondary legislation should not be misinterpreted as ‘executive orders’ issued by the Government. Rather, the use of secondary legislation is a legislative process of long standing. Statutory instruments, as a category of legislation, are governed by the Statutory Instruments Act 1946. Existing parliamentary procedures allow for Parliament to scrutinise as many or as few statutory instruments as it sees fit. Parliament can, and regularly does, both debate and vote on secondary legislation. Indeed, a large amount of EU law is implemented under the ECA through secondary legislation; although EU regulations are not approved by the UK Parliament at all, as they are directly applicable in UK law. The Government proposes that the Great Repeal Bill will use existing types of statutory instrument procedure.

**3.14** The Committee also rightly identified the need to ensure that there are clear limitations on the use of secondary legislation in the context of EU exit – in terms of the purposes for which it can be used, the processes that have to be followed in using it, and the length of time for which powers are available.

**3.15** The remainder of this chapter sets out some of the expected constraints on the use of this delegated power. The Government will give more specific assurances to Parliament about the limits of this power as it makes the case for it being granted. However, this will need to be balanced against ensuring the power is broad enough to make all of the necessary amendments to the statute book within the timeframe determined by the EU withdrawal process.

### The scope of, and constraints on, the delegated powers

**3.16** It is crucial that the Government is equipped to make all the necessary corrections to the statute book before we leave the EU to ensure a smooth and orderly withdrawal. To achieve this, the power to enable this correction will need to allow changes to be made to the full body of EU-derived law. This will necessarily include existing primary as well as secondary legislation which implements our EU obligations, as well as directly applicable EU law which will be converted into domestic law once we leave. It will also include the power to transfer to UK bodies or ministers powers that are contained in EU-derived law and which are currently exercised by EU bodies. This does mean that the power will be wide in terms of the legislation to which it can be used to make changes.

**3.17** Therefore, it is important that the purposes for which the power can be used are limited. Crucially, we will ensure that the power will not be available where Government wishes to make a policy change which is not designed to deal with deficiencies in preserved EU-derived law arising out of our exit from the EU. Additionally, we will consider the constraints placed on the delegated power in section 2 of the ECA to assess whether similar constraints may be suitable for the new power, for example preventing the power from being used to make retrospective provision or impose taxation.

**3.18** The scope of the power and the volume of primary legislation are intrinsically linked: if the power is too narrow, many more of the changes to legislation which are needed to ensure policy and legislation operate smoothly post-exit would need to be made through separate primary legislation before we leave the EU.

## Statutory Instrument procedure

**3.19** Making sure domestic law works as we leave the EU will be a substantial challenge for both Government and Parliament in complexity and planning to deal with a number of scenarios. In the previous two Parliaments, an average of 1,338 (2005-10) and 1,071 (2010-15) statutory instruments were made per year.<sup>11</sup> A proportion of this secondary legislation, as it has been every year, was implementing EU law. We currently estimate that the necessary corrections to the law will require between 800 and 1,000 statutory instruments. This is in addition to those statutory instruments that will be necessary for purposes other than leaving the EU. Ultimately though, it is not possible to be definitive at the outset about the volume of legislation that will be needed, as it will be consequent on the outcome of negotiations with the EU and other factors.

**3.20** Parliament will need to be satisfied that the procedures in the Bill for making and approving the secondary legislation are appropriate. Given the scale of the changes that will be necessary and the finite amount of time available to make them, there is a balance that will have to be struck between the importance of scrutiny and the speed of this process.

**3.21** The Government proposes using existing types of statutory instrument procedure.<sup>12</sup> These allow Parliament to see all statutory instruments, with different levels of scrutiny. The most commonly used procedures are the negative procedure (which does not require debate) and the affirmative procedure (which requires debate and approval by both Houses). Parliamentary committees scrutinise statutory instruments for technical and policy content. Under the negative procedure, members of either House can require a debate, and if necessary, require a vote.

**3.22** The Bill will therefore provide for the negative and affirmative procedures to be used. The mechanistic nature of the conversion of EU law to UK law suggests that many statutory instruments will follow the negative procedure (for example, removing the requirement to send reports to the Commission on the UK's public procurement activity). The affirmative procedure may be appropriate for the more substantive changes.

**3.23** **The Government is mindful of the need to ensure that the right balance is struck between the need for scrutiny and the need for speed. This White Paper is the beginning of a discussion between Government and Parliament as to the most pragmatic and effective approach to take in this area.**

## Time limits

**3.24** In most cases, the corrections made by the statutory instruments will need to be made before the UK leaves the EU, so that we have a functioning statute book on the day of the UK's withdrawal. The Government intends therefore that the power in the Great Repeal Bill will come into force as soon as the Bill gains Royal Assent, so that the process of correcting the statute book can begin.

<sup>11</sup> These averages are for Westminster statutory instruments subject to specific parliamentary procedure and scrutiny

<sup>12</sup> The various types of scrutiny procedure for statutory instruments are described in House of Commons Library note SN06509, available at 'Statutory Instruments', House of Commons Library Briefing Paper Number 06509, 15 December 2016. <http://researchbriefings.files.parliament.uk/documents/SN06509/SN06509.pdf>

**3.25** Given that most of these corrections can and will need to be made before the UK leaves the EU, the powers proposed under the Bill do not need to exist in perpetuity. The Government will therefore ensure that the power is appropriately time-limited to enact the required changes.<sup>13</sup>

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<sup>13</sup> The importance of time limiting delegated powers was raised by Baroness Fookes (Chair of the House of Lords Delegated Powers and Regulatory Reform Committee) in an evidence session held by the Lords Constitution Committee on 25 January 2017, as part of the Committee's inquiry on the Legislative Process: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/legislative-process/oral/46201.htm>, Q131



## Chapter 4: Interaction with the devolution settlements

**4.1** The United Kingdom's domestic constitutional arrangements have evolved since the UK joined the European Economic Community in 1973. The current devolution settlements were agreed after the UK became a member of what is now the EU and reflect that context. The devolved settlements were, therefore, premised on EU membership. This is why all three settlements set out that the devolved administrations and legislatures have the ability to make law in devolved policy areas as long as that law is compatible with EU law.

**4.2** In areas where the devolved administrations and legislatures have competence, such as agriculture, environment and some transport issues, the devolved administrations and legislatures are responsible for implementing the common policy frameworks set by the EU. At EU level, the UK Government represents the whole of the UK's interests in the process for setting those common frameworks and these also then provide common UK frameworks, including safeguarding the harmonious functioning of the UK's own single market. When the UK leaves the EU, the powers which the EU currently exercises in relation to the common frameworks will return to the UK, allowing these rules to be set here in the UK by democratically-elected representatives.

**4.3** As powers are repatriated from the EU, it will be important to ensure that stability and certainty is not compromised, and that the effective functioning of the UK single market is maintained. Examples of where common UK frameworks may be required include where they are necessary to protect the freedom of businesses to operate across the UK single market and to enable the UK to strike free trade deals with third countries. Our guiding principle will be to ensure that no new barriers to living and doing business within our own Union are created as we leave the EU.

**4.4** To provide the greatest level of legal and administrative certainty upon leaving the EU, and consistent with the approach adopted more generally in legislating for the point of departure, the Government intends to replicate the current frameworks provided by EU rules through UK legislation. In parallel we will begin intensive discussions with the devolved administrations to identify where common frameworks need to be retained in the future, what these should be, and where common frameworks covering the UK are not necessary. Whilst these discussions are taking place with devolved administrations we will seek to minimise any changes to these frameworks. We will work closely with the devolved administrations to deliver an approach that works for the whole and each part of the UK.

**4.5** This will be an opportunity to determine the level best placed to take decisions on these issues, ensuring power sits closer to the people of the UK than ever before. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration.

**4.6** Legislation that is within the competence of the devolved legislatures or ministers giving effect to EU law will also need to be amended as we leave the EU. We therefore propose that the Bill also gives the devolved ministers a power to amend devolved legislation to correct law that will no longer operate appropriately, in line with the power we propose should be held by UK ministers.

## Chapter 5: Crown Dependencies and Overseas Territories

**5.1** The Crown Dependencies and the Overseas Territories, including Gibraltar, are not part of the UK for the purposes of EU law, nor are they separate members of the EU. However, they do have differing special statuses under the EU treaties.

**5.2** The Crown Dependencies are the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. Their relationship with the EU is set out in Protocol 3 to the UK's Act of Accession of 1972. As a general rule, the Crown Dependencies are not bound by EU law, but they are part of the customs territory of the EU. Therefore, EU customs matters, the common external tariff, levies, quantitative restrictions and any other measures having equivalent effect apply in the Crown Dependencies. There is free movement of agricultural goods and derived products between the islands and the EU.

**5.3** Uniquely among the Overseas Territories, Gibraltar is largely subject to EU law. Under Article 355(3) TFEU, the treaties apply to Gibraltar as a European territory for whose external relations the UK is responsible. But there are some important exceptions, and certain provisions of EU law do not apply to Gibraltar under the UK's Act of Accession 1972. These include the provisions on the free movement of goods, the common commercial policy, the common agricultural policy, the common fisheries policy, and rules on VAT and other turnover taxes. Gibraltar is also outside the common customs territory and as a result EU rules on customs do not apply.

**5.4** The EU treaties apply to a very limited extent in the other UK Overseas Territories (which are granted associate status under Part IV and Annex II of the TFEU) and the Sovereign Base Areas in Cyprus. For that reason the issues addressed in this White Paper in relation to preserving EU law do not arise for these territories to the same extent as they do for the Crown Dependencies and Gibraltar.

**5.5** While the ECA applies to Gibraltar and the Crown Dependencies for certain purposes, each territory has its own equivalent legislation to give effect to the EU law which applies to it.

**5.6** **The Government is committed to engaging with the Crown Dependencies, Gibraltar and the other Overseas Territories as we leave the EU.** We will continue to involve them fully in our work, respect their interests and engage with them as we enter negotiations, and strengthen the bonds between us as we forge a new relationship with the EU and look outward into the world. This includes technical engagement on any implications of the Great Repeal Bill for their jurisdictions.



## Annex A: EU law in the UK

**A.1** The Government's approach to preserving EU law is to ensure that all EU laws which are directly applicable in the UK and all laws which have been made in the UK in order to implement our obligations as a member of the EU are converted into domestic law on the day we leave the EU, subject to the exceptions set out in this paper. This chapter describes the different aspects of EU law in the UK.

### The European Communities Act 1972

**A.2** The ECA gives effect to the UK's obligations as a member of the EU and makes EU law supreme in the UK. The ECA will be repealed on the day we leave the EU, returning power to the UK Parliament.

**A.3** As described in Chapter 2, some types of EU law (such as EU regulations and certain decisions) are directly applicable in the UK's legal system. This is provided for in section 2(1) of the ECA. Other types of EU law, such as directives, have to be given effect in UK law through national laws. Section 2(2) of the ECA provides ministers with a power to make secondary legislation for the purpose of implementing these EU obligations.

**A.4** EU laws are sometimes given effect in UK law using primary legislation or using other powers to make secondary legislation instead of through secondary legislation made using the powers in section 2(2) of the ECA. Ministers in the devolved administrations also exercise powers to implement EU law in their areas of policy responsibility. Secondary legislation is the most common means by which the UK Parliament transposes EU directives into law.

### The EU treaties

**A.5** The EU treaties are the highest level of EU law. They define where the EU is permitted to act, to what extent and how. They also contain a mixture of procedural rules for how the EU operates and substantive rules, such as free movement rights for EU citizens. The EU treaties also set out subject areas in which the EU can make more specific laws: this is known as the EU's 'competence'.

**A.6** The two main treaties are the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Some provisions of the TFEU have been found to be sufficiently clear, precise and unconditional that they confer rights directly on individuals. These are referred to as 'directly applicable' or 'directly effective' treaty provisions. Other treaty

provisions do not confer directly applicable rights but simply give the EU power to adopt legislation to give effect to the treaties' provisions.

## The principle of supremacy of EU law

**A.7** A key principle of EU law is that EU law is supreme, which means that it has the status of a superior source of law within the EU's member states. National laws must give way and be disapplied by domestic courts if they are found to be inconsistent with EU law. Notwithstanding, the UK Parliament is sovereign.

## The general principles of EU law

**A.8** General principles are part of the EU law with which the EU institutions and member states are bound to comply. General principles are applied by the CJEU and domestic courts when determining the lawfulness of legislative and administrative measures within the scope of EU law, and are also an aid to interpretation of EU law. Examples of general principles include non-retroactivity (i.e. that the retroactive effect of EU law is, in principle, prohibited) and the protection of legitimate expectations where, for example, an administrative decision is cancelled or revoked.

**A.9** Currently, UK laws that are within the scope of EU law and EU legislation (such as directives) that do not comply with the general principles can be challenged and disapplied.

## The Charter of Fundamental Rights

**A.10** The Charter of Fundamental Rights sets out 'EU fundamental rights', which are general principles of EU law that have been recognised over time through the case law of the CJEU and which have been codified in the Charter which came into force in 2009. The Charter sets out 50 rights and principles, many of which replicate guarantees in the European Convention on Human Rights and other international treaties.

## Directives, regulations and decisions

**A.11** Below the treaties, the EU adopts directives, regulations and decisions using the powers, and following the procedures provided for, in the EU treaties.

**A.12** Regulations contain detailed legal rules. Once made, regulations have the force of law in the UK and throughout the EU. Regulations only rarely require the member states to create their own legal rules in order to ensure the regulation has the desired legal effect. Examples of regulations include Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species and Regulation (EC) No 726/2004 laying down procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency.

**A.13** Directives set out a legal framework that the member states have to follow, but leave it up to the member state to choose exactly how to make it part of their law. So, once an EU directive has been agreed, all member states have an obligation to make national laws that give it effect, but they have a choice as to precisely how to do so.

**A.14** There are a variety of methods through which the UK has given effect to directives. The main methods are as follows:

- a. Primary legislation. For example, the Equality Act 2010 contains provisions which give effect to various directives including Council Directive 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation and Council Directive 2000/43/EC which implements the principle of equal treatment between persons irrespective of racial or ethnic origin.
- b. Secondary legislation made under section 2(2) of the ECA. For example, the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118), which give effect to parts of Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings.
- c. Secondary legislation made under other primary legislation. For example, the Railways and Other Guided Transport Systems (Safety) Regulations 2006, which contain provisions implementing certain aspects of Directive 2004/49/EC (the Railway Safety Directive), are made under the Health and Safety at Work etc Act 1974 rather than under section 2(2) of the ECA.

**A.15** The EU can also adopt binding decisions. Decisions may be addressed to a particular party or parties, which could be individuals (including companies) or member states. For example, the Commission has powers to issue decisions that are binding in order to enforce competition rules.<sup>14</sup>

**A.16** Below regulations, decisions and directives which are made using one of the EU legislative procedures, the EU also adopts measures in order to supplement and amend, or to implement, the rules set out in directives, regulations or decisions. Such measures are referred to respectively as ‘delegated’ and ‘implementing’ acts. For example, under Article 4 of Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species, the European Commission adopts implementing acts in order to list plant species which are assessed as invasive alien species for the purposes of the Regulation.

## EU case law

**A.17** In addition to the EU legal instruments described above, the case law of the CJEU also forms part of EU law. The CJEU has jurisdiction to rule on the interpretation and application of the EU treaties. In particular, the Court has jurisdiction to rule on challenges to the validity of EU acts, in infraction proceedings brought by the Commission against member states and on references from national courts concerning the interpretation of EU acts.

## Recommendations and opinions

**A.18** Recommendations and opinions are non-binding legal acts issued by the EU institutions. They are not legally binding on member states but can be used as an aid to interpretation by domestic courts when interpreting EU law.

<sup>14</sup> See, for example, decisions adopted by the Commission in 2007 in relation to certain car manufacturers – <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007D0788&from=EN>



# Glossary

| Term                          | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Act of Parliament             | An Act of Parliament is a law that both Houses of Parliament have agreed to, and which is enforced in all the areas of the UK where it is applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Bill                          | A proposal for a new law or an amendment to an existing law that has been presented to Parliament for consideration. Once agreed and made into law, it becomes an Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Charter of Fundamental Rights | The Charter of Fundamental Rights sets out 'EU fundamental rights' which is a term used to describe human rights as they are recognised in EU law. EU fundamental rights are general principles of EU law which have been recognised over time through the case law of the CJEU and which have been codified in the Charter which came into force in 2009. The Charter sets out 50 rights and principles, many of which replicate guarantees in the European Convention on Human Rights and other international treaties. See Article 6 TEU.                                                                                                                                                                                  |
| Coming into force             | The process by which an Act of Parliament, secondary legislation or other legal instrument comes to have legal effect. The law can be relied upon from the date on which it comes into force but not any sooner. Also known as commencement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Competence                    | Competence means all the areas where the treaties give the EU the ability to act, including the provisions in the treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. It also means areas where the treaties apply directly to the member states without needing any further action by the EU institutions. The EU's competences are set out in the EU treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the treaties, and where the treaties do not confer competences on the EU they remain with the member states. See Article 5(2) TEU. |

|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Converted EU-derived law                      | EU laws that applied in the UK the moment before the UK left the EU, which are converted into domestic law through the Great Repeal Bill.                                                                                                                                                                                                                                                                                                                                                                                     |
| Court of Justice of the European Union (CJEU) | The CJEU has jurisdiction to rule on the interpretation and application of the treaties. In particular, the Court has jurisdiction to rule on challenges to the validity of EU acts, in infraction proceedings brought by the Commission against member states and on references from national courts concerning the interpretation of EU acts. The Court is made up of two sub-courts: the General Court and the Court of Justice (which is sometimes called the ECJ). See Article 19 TEU and Articles 251 to 281 TFEU.      |
| Decision                                      | A legislative act of the EU which is binding upon those to whom it is addressed. If a decision has no addressees, it binds everyone. See Article 288 TFEU.                                                                                                                                                                                                                                                                                                                                                                    |
| Delegated Act                                 | A form of EU delegated instrument. A legislative act, such as a directive or a regulation, can delegate power to the Commission to adopt delegated acts to supplement or amend non-essential elements of the legislative act. See Article 290 TFEU.                                                                                                                                                                                                                                                                           |
| Directive                                     | A legislative act of the EU which requires member states to achieve a particular result without dictating the means of achieving that result. Directives must be transposed into national law using domestic legislation, in contrast to regulations, which are enforceable as law in their own right. See Article 288 TFEU.                                                                                                                                                                                                  |
| EU agencies                                   | EU agencies are legal entities (separate from the EU institutions) set up to perform specific tasks under EU law. They include bodies such as the European Medicines Agency, the European Police Office (Europol) and the European Union Agency for Railways.                                                                                                                                                                                                                                                                 |
| EU institutions                               | There are a number of EU bodies which are defined under the Treaties as EU institutions including the European Parliament, the European Council, the Council of the European Union and the European Commission.                                                                                                                                                                                                                                                                                                               |
| The EU Treaties (including TEU and TFEU)      | The European Economic Community (EEC) was established by the Treaty of Rome in 1957. This Treaty has since been amended and supplemented by a series of treaties, the latest of which is the Treaty of Lisbon. The Treaty of Lisbon, which entered into force on 1 December 2009, re-organised the two treaties on which the European Union is founded: the Treaty on European Union (TEU) and the Treaty establishing the European Community, which was re-named the Treaty on the Functioning of the European Union (TFEU). |

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|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| European Commission                        | The Commission is the main executive body of the EU. It has general executive and management functions. In most cases it has the sole right to propose EU legislation. In many areas it negotiates international agreements on behalf of the EU and represents the EU in international organisations. And the Commission also oversees and enforces the application of Union law, in particular by initiating infraction proceedings where it considers that a member state has not complied with its EU obligations. See Article 17 TFEU and Articles 244 to 250 TFEU. |
| European Convention on Human Rights (ECHR) | An international convention, ratified by the United Kingdom and incorporated into UK law in the Human Rights Act 1998. It specifies a list of protected Human Rights, and establishes a Court (European Court of Human Rights sitting in Strasbourg) to determine breaches of those rights. All member states are parties to the Convention. The Convention is a Council of Europe Convention, which is a different organisation from the EU. Article 6 TEU provides for the EU to accede to the ECHR.                                                                  |
| European Council                           | The European Council defines the general political direction and priorities of the EU. It consists of the Heads of State or Government of the Member States, together with its President and the President of the Commission. See Article 15 TEU and Articles 235 and 236 TFEU.                                                                                                                                                                                                                                                                                         |
| European Parliament                        | The European Parliament (EP) consists of representatives elected by Union citizens. The EP shares legislative and budgetary power with the Council, and has oversight over the actions of the Commission. See Article 14 TEU and Articles 223 to 234 TFEU.                                                                                                                                                                                                                                                                                                              |
| Implementing acts                          | A form of EU delegated instrument. A legislative act, such as a directive or a regulation, can enable the Commission (and in some cases the Council) to adopt implementing acts where uniform conditions for implementing the legislative act are needed. See Article 291 TFEU.                                                                                                                                                                                                                                                                                         |
| Regulation                                 | A legislative act of the EU which is directly applicable in member states without the need for national implementing legislation (as opposed to a directive, which must be transposed into national law by member states using domestic legislation). See Article 288 TFEU.                                                                                                                                                                                                                                                                                             |
| Secondary legislation                      | Legal instruments (including regulations and orders) made under powers delegated to ministers or other office holders in Acts of Parliament. They have the force of law but can be disapplied by a court if they do not comply with the terms of their parent Act. Also called subordinate or delegated legislation.                                                                                                                                                                                                                                                    |
| Statute book                               | The body of legislation that has been enacted by Parliament or one of the devolved legislatures and has effect in the UK.                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Statutory instrument                       | A form of secondary legislation to which the Statutory Instruments Act 1946 applies.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |









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