What happens to EU law in the UK after Brexit?
Five things you need to know.

When the UK leaves the EU, what happens to all the EU law that currently applies in the UK?

Almost all EU law will be imported into UK domestic law. This process of importing is often referred to as onshoring. EU laws which are onshored, and other EU-derived law which already forms part of UK law, will be known as “retained EU law”. Cases decided by the ECJ before exit day will continue to be binding on UK courts and tribunals. The Supreme Court is not bound by this obligation and can choose not to apply previous ECJ decisions in the same way as it could overrule previous Supreme Court decisions. Some EU law will not be retained, for example, the principle of the supremacy of EU law.

When is EU law onshored?

The onshoring date depends upon whether or not there is a deal. If there is no deal, the onshoring date is the date the UK leaves the EU. If there is a deal, the onshoring date moves to the end of the transition period (also known as the implementation period).

So as things stand currently, the onshoring date would be

> 11:00pm [UK time] on 31 January 2020 if there is no deal and no extension of the Article 50 period, or
> 11:00pm on 31 December 2020, unless the transition period under the Withdrawal Agreement is extended. During the transition period the UK will continue to be treated as if it were a member of the EU and so will have to recognise and implement existing and new EU laws introduced, and ECJ decisions delivered, during that period.

How will EU law be onshored?

The mechanism is set out in the Withdrawal Act. The aim of onshoring is to maintain continuity, but some aspects of existing law simply won’t work without adjustment. The Withdrawal Act therefore allows for “deficiencies” that arise as a result of the UK leaving the EU to be corrected using statutory instruments. Arguably some of the changes go beyond mere technical changes and stray into far more political issues such as reciprocal rights which ministers consider no longer “appropriate” after exit.

Over 800 SIs are expected to be published by the UK Government. We have created a tracker to help you navigate your way around these and identify those which may impact on your business. Go to www.linklaters.com and search “Brexit SI Tracker”.

Where will I find the law after the onshoring date?

The onshoring process means that there will be a UK version of EU regulations after exit. In some cases, businesses will have to comply with both the UK version and the original EU law. The National Archives website, www.legislation.gov.uk, will publish the UK version in the same way as any other domestic legislation. It will also publish a frozen snapshot of relevant EU law as it applied on the onshoring day.

What will change?

Many changes will be needed. Some will be obvious. For example, references to the EU might need to refer to the UK instead. References to EU bodies may need to be replaced with their UK equivalent. Some changes will be more subtle. And some may look simple but can have significant practical implications. For example, a financial services firm authorised by a regulator in the EU can rely on a principle known as passporting to provide its services in other EU Member States without having to get authorisation in each country.

But passporting is an EU single market concept that relies on regulators operating within a single system so UK law is being changed to remove it. This change removes authorisation from hundreds of EU firms providing financial services in the UK. Transitional relief measures have been put in place to delay the impact of the change. It is not just legislation that will change. Regulators such as the FCA and the PRA have also had to amend their rulebooks.

Speak to us about Brexit planning
If you would like to find out more about this topic or Brexit planning generally, please look at our Brexit microsite on our Client Knowledge Portal, and our SI tracker on www.linklaters.com.

We have a wealth of knowledge and experience on Brexit planning and understanding the law, UK or EU, after Brexit so please do not hesitate to contact your usual Linklaters contact if you would like to discuss any aspect with us.

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