

*Plus ça change, plus c'est la  
même chose:*  
The legal challenges

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# Embedded nature of EU law

1. Whole content of rules in EU measures
2. Rules inspired by EU but wholly in UK legislation
3. Rules inspired by EU but largely self-contained although occasional references
4. Incorporation of EU law essential for UK legislation to make sense
5. UK legislation has no role without EU provisions

# Brexit Day - the big break

- Simply say EU laws no longer have any force
  - leaves big EU legacy of measures embedded in UK laws
  - leaves chunks of UK law with major holes
  - leaves legal vacuum on matters where the substantive rules are in EU measures

# Avoiding the mess

- Review all legal rules to identify EU elements (direct and indirect) and replace with domestic legislation as required before Brexit Day
  - huge task
- Provide that all the law in force continues to be in force
  - cover EU measures as well as those embedded in UK legislation

# Interpretation

- No longer stretch words of UK statute to meet EU law
- No longer competent to refer to any EU materials?
- Still able to refer to EU law although not decisive?
- Re-visit with narrower domestic approach past interpretations by UK courts influenced by EU perspective?

# Future changes in EU law

- If EU inspired laws survive
  - either embedded in UK legislation or EU rules continued in force
- Legal archaeology to identify exact state on Brexit Day
- Able to look at post-Brexit CJEU cases etc. if they shed light on interpretation?

# Law-making power

- Heavy reliance on 1972 Act as “parent Act”
- Gaps in domestic parent provisions?
- Co-ordination across different parts of UK?

# Devolution

- Environmental matters largely devolved
- Divergence kept within workable limits by need to comply with EU framework
  - covers vast majority of environmental law
- New mechanisms to assist co-ordination?



# Substantive obligations

## ■ Style of legislation

- EU law sets outcomes and targets to be achieved
- not broad purpose or considerations to be taken into account in exercise of discretion

## ■ Targets and duties on Ministers

- currently look largely to EU mechanisms for enforcement
- how to be enforced without these?