

The influence of European law on English law

European law encompasses legal principles and regulations established by the institutions of the European Union (EU), including treaties, directives, regulations, and case law.

English law refers to the legal system of England and Wales, comprising statutes, common law, and equity.

EU law consists of the founding Treaties (primary legislation) and the legal acts that the European institutions adopt, which enables the EU to exercise its powers (secondary legislation: regulations, directives, decisions, recommendations and opinions).

In a broader sense, EU law encompasses all the rules of the EU legal order, including the Charter of Fundamental Rights (since the Treaty of Lisbon) and the general principles established by the Court of Justice of the European Union.

International agreements with non-EU countries or with international organisations are also an integral part of EU law. These agreements are separate from primary law and secondary legislation and form a sui generis category. According to some judgments of the CJEU, they can have direct effect and their legal force is superior to secondary legislation, which must therefore comply with them.

Sources of English Law

LEGISLATION

- Legislation is created by the Parliament.
- This later is Bicameral =The UK Parliament has two Houses.
- The House of Commons (650 elected MPs), the House of Lords (826 unelected members) and for sure : the monarch (ceremonial role+ sign every new law).
- Both: The House of Commons and the House of Lords share the job of making laws.
- Ideas for new laws are called bills: (see parliamentary ping pong).

Once the two houses agree, then it's the monarch's turn. It's their job to formally agree the bill.

This

makes it an act of Parliament. And only then is it a law.

PARLIAMENTARY SOVEREIGNTY

- Parliamentary Sovereignty means Parliament can enact, revoke or alter any law it sees fit.
- NB: Acts apply in all four countries of the UK – see later slides.

COMMON LAW

- Law that has evolved through court cases over the past 800 years.
- Doctrine of precedent, or stare decisis, lies at the heart of this system.

EUROPEAN LAW

Implications on English law

Historical Overview

United Kingdom joined the European Community in 1973.

Pre-1973: Limited Influence

1. Prior to the UK's accession to the European Economic Community (EEC) in 1973, European law had minimal direct impact on English law.

Post-1973: Integration and Harmonization

1. The European Communities Act 1972 incorporated EU law into English law, establishing the principle of supremacy of EU law.

2. Directives and regulations began to influence domestic legislation and judicial decisions, leading to greater harmonization across member states.

Recent Developments: Brexit

1. The UK's decision to leave the EU, culminating in Brexit in 2020, marked a significant turning point in the relationship between European law and English law.

2. The European Union (Withdrawal) Act 2018 facilitated the transposition of existing EU law into UK law to ensure legal continuity post-Brexit.

Mechanisms of Influence

Direct Effect

The principle of direct effect refers to the capacity of EU law to be invoked before national courts and relied upon by individuals.

Eg Landmark rulings such as Van Gend en Loos and Costa v ENEL established the principle of direct effect, empowering English courts to enforce EU law directly.

Impact: Direct effect facilitated the integration of EU law into English legal practice, enhancing legal certainty and promoting uniformity across member states.

Indirect Effect

This is the obligation of national courts to interpret domestic law in conformity with EU law, even in the absence of explicit directives.

Eg: Cases like *Marleasing* and *Francovich* expanded the scope of indirect effect, requiring English courts to interpret domestic legislation in line with EU principles.

Impact: Indirect effect ensured the consistent application of EU law in English legal proceedings, fostering compliance with EU obligations and promoting legal coherence.

Transposition of EU Directives

Definition and Process

1. EU directives require member states to achieve specific objectives within a prescribed timeframe, allowing for flexibility in implementation.
2. Transposition involves the adoption of domestic legislation to give effect to EU directives, either through primary or secondary legislation.

Impact on English Law

1. The transposition of EU directives into English law has led to the enactment of new statutes or amendments to existing legislation to comply with EU requirements.
2. Transposed directives have influenced various areas of English law, including consumer protection, environmental regulation, and employment rights.

Influence on Judicial Interpretation

European Court of Justice (ECJ) Precedents

1. English courts have consistently referred to ECJ rulings and principles in their decisions, particularly in cases involving EU law.
2. ECJ judgments have served as authoritative interpretations of EU law, guiding English courts in their application and development of legal principles.

Cross-Fertilization of Legal Principles

1. The interaction between English and European legal systems has facilitated the exchange of ideas and approaches, leading to the emergence of common legal principles.
2. English judges have contributed to the development of EU law through their interpretations and contributions to ECJ jurisprudence.

Challenges and Opportunities

Brexit Implications

1. Brexit has introduced uncertainties regarding the future application of EU law in the UK, including issues related to jurisdiction, mutual recognition, and regulatory alignment.
2. The divergence from EU legal frameworks presents both challenges and opportunities for English law, requiring adaptation to new regulatory regimes while asserting national sovereignty.

Legal Continuity vs. Sovereignty

1. Balancing the preservation of legal continuity with the assertion of national sovereignty remains a key challenge in the post-Brexit era.
2. Opportunities exist for English law to retain aspects of EU law deemed beneficial while asserting greater autonomy in shaping domestic legal frameworks.