

# **‘Brexit: The unfinished business’**

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## **Martin Howe KC at Conference: Delivering Brexit**

### **INTRODUCTION**

**As we chart the government’s labyrinthine progress towards fully-fledged nation-state democracy, CIBUK are delighted to endorse the work of our affiliates engaged in the same exercise.**

In that spirit we are very pleased to promote the following key-note speech by Martin Howe KC to the *Bruges Group* at their annual conference in October in which he focusses on two particular areas where the UK remains under the jurisdiction of the EU.

As Chairman of *Lawyers for Britain*, he is uniquely placed to assess the continuing impact of EU legislation on our courts, and to develop and promote solutions to the complex legal problems involved in restoring independence and self-government to the UK.

We provide a written summary of the speech below including points raised in the Q&A afterwards, together with a video-link to the full speech beneath it.

# ***‘Brexit: The unfinished business’***

**by Martin Howe KC**

**Bruges Group Conference – 2022**

## **BACKGROUND**

***‘Disastrous and terrible negotiation of our exit terms...’***

We may no longer be directly subject to EU law in the way we were before 2020, according to the Brexit advocate, but

*“That does not mean that the process of Brexit was completed because as a result of what must go down in history of the most disastrous and terrible negotiation of our exit terms there remain significant areas where we are still bound into the European Union and its legal order.”*

The main focus of the speech concentrates on two main areas:

- 1. Retained EU law.**
- 2. Northern Ireland Protocol**

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## **1. Retained EU Law**

***‘No easy slash and burn exercise that one can do’***

In practice, he concedes it made sense to keep existing EU regulations in place but then to convert them into UK domestic law as a temporary measure under which they would be gone through and systematically replaced.

## ***‘EU Withdrawal Act 2018...did ‘crazy’ things..’***

Thanks to the European Withdrawal Act (2018) not only did it retain EU laws in our legal system (which was necessary) it also made European Court Judgements continue to be binding on UK courts.

For example:

- **A compulsory module on European law for trainee barristers and solicitors remains in place SEVEN years after the referendum result and nearly three years after we supposedly left the EU.**
- While we need people to specialise in EU law where circumstances require, it is quite wrong that an alien system should continue to operate in our courts alongside our Common Law and Statue Law based on different principles of interpretation.

The solution, according to Martin Howe is straightforward:

### **Proposed Cut-Off date**

- To concentrate minds and energise a lethargic civil service to meet a deadline.
- If necessary to do so by Statutory Instrument.

### **Tangible Benefits**

***“By repealing EU law and EU systems of law we hope to re-discover the flexibility of UK law and tailor it to our advantage in promoting our freedoms for the benefit of the UK going forward.”***

## **2. Northern Ireland Protocol**

## **The Heart of the Problem: Democratic Deficit**

- *"The heart of the problem is that the Protocol provides for the continuation of EU laws internally inside Northern Ireland."*
- It is as if NI were still a member state.
- Everything to do with goods and customs rules/VAT etc is also aligned with the EU
- Under the Protocol new amendments and replacements to EU laws automatically take effect.
- But unlike a member state, NI has no vote. It is constitutionally in the worst possible place with all the obligations but none of the safeguards of membership.
- This is unprecedented.

**It is essential, argues Howe, that we get this unfinished business through Parliament.**

## **Q&A: WIDER POINTS ARISING**

### **ECHR**

- It is not an EU issue. It comes under the Council of Europe which includes 20 other states outside the European Union.
- The text of the Treaty itself is not objectionable.
- It contains a series of rights which in normal circumstances would be universally recognised.
- But the interpretation of them under the Court of Human Rights in Strasbourg has been abused.
- Political judges have abused the powers and

- responsibilities of their judicial office by not applying the rules that they're meant to be applying
- Instead, they think they apply rules and doctrines of their own devising because they think they're so much wiser and better than the legislative body which makes the rules.
  - Asylum seeking legislation to curb the deportation of illegal immigrants to Rwanda was quite outside the remit of the ECHR.
  - The UK govt have flaccidly lain down in front of these grotesque abuses of power.
  - If there is a deal done soon with the EU over NI, he fears it will be a rubbish deal and a sell-out.

## **Timetable for repealing EU Law**

- There is a danger of compressing the time-table too much. It is important to scrutinise EU law to see whether it is beneficial to the UK or not rather than simply taking it on whole-sale.
- Even if the laws were in effect the same there is a benefit in getting rid of methods of EU interpretation and of EU texts which need to be referred to when making laws. Going forward one need only refer to UK precedent.
- The professional bodies (the Law Society and Bar Council) could then remove European law as a compulsory module in any future training model for barristers and solicitors.

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**To view the speech in its entirety, please click on the link**

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