

EU law is not a thing we simply leave behind on Brexit day



*The former DExEU minister Steve Baker celebrated the new web archive of EU law to be maintained by the National Archives as Britain becomes a 'self-governing nation again'. **Joelle Grogan (Middlesex University)** writes that EU law will continue to play a role in legal decisions, and the changes the government intends to make will not all receive parliamentary scrutiny.*

Anyone interested in law (and particularly the rule of law and democracy) would no doubt be intrigued to hear of the [visit](#) to the National Archives by (the now former) Minister for Exiting the European Union, Steve Baker. An announcement was made to mark the ex-minister's inspection of the National Archives' efforts to 'keep [legislation.gov.uk](#) up to date and in improving the functionality and searchability of the government web archive'. Chief Executive Jeff James underlined the commitment of the National Archives to support '[government] departments in ensuring continued legal certainty and transparency through publishing our laws online.'



England's Jurassic coast. Photo: [Tom Maloney](#) via a [CC BY 2.0 licence](#)

Legal certainty, or simply the idea that an ordinary person can be certain which, how and when a law applies to them, is an essential part of a functioning legal system. Not knowing what law applies would be chaotic. Legal certainty is necessary for a country based on the rule of law, governed by law – not man (or minister). Transparency is at the foundation of democracy: it is the principle that an ordinary person should be able to know how government acts and enacts law on our behalf. In this way, the National Archives support democracy and the rule of law in the UK by making law accessible to anyone with an internet connection.

However, for the former Minister for Exiting the European Union, some other work of the Archives was worthier of praise and tied to the recent enactment of the [European Union \(Withdrawal\) Act](#). He celebrated the role to be played by the National Archives in creating a new web archive which 'will capture the full body of EU law as it stood on exit day. This will provide an important record to refer back to, as the Government goes about making changes to retained EU legislation.' Baker later tweeted that this was an important step in becoming a 'self-governing nation again.'

On exit day, the web archive will create a snapshot of the two [EU Treaties](#) (but [perhaps](#) not the [EU Charter of Fundamental Rights](#)) along with thousands of directives, regulations, decisions, cases and opinions underlying everything from the trade of pet medication to aeroplanes landing in Heathrow. This is part of the framework outlined in the EU (Withdrawal) Act: all EU law directly operative on exit day will be incorporated into UK law. A gargantuan task, no doubt – made a little easier by the fact that all EU law is available online at [europa.eu](#).

However, law is more than what is written on the (web)page, and celebrating the fossilisation of EU law as it stands on exit day utterly underestimates the uncertain times ahead for law and the British legal system. We will likely face years of litigation on the relevance and [interpretation](#) of retained law. For example, for the Minister, the web archive means '[w]e are now well on our way to ending the supremacy of EU law in the UK' but this is not entirely accurate: in the event of conflict, incorporated EU law will continue to take precedence over pre-Brexit national law – the supremacy of incorporated law will be preserved. Beyond this, fossilising the case law on Brexit Day would leave UK law based on EU norms static and of limited use in [cross border matters](#) where the law in the EU-27 is subsequently changed or repealed by the EU legislator, or reformed and clarified in a subsequent case by the CJEU.

Law will become only more complicated as Ministers make [hundreds](#), if not a [thousand](#), changes to the law with limited Parliamentary oversight and debate (on its own causing significant concern for legal certainty and transparency). This is not to mention any legal obligations under the [Withdrawal Agreement](#) (if there is one) regarding for example the jurisdiction of the Court of Justice or an [Independent Authority](#) for citizens' rights; or EU law and decisions made during a transition period which would also need to be incorporated into UK law.

At least, however, the work of the National Archives is supporting the accessibility of law to anyone and everyone. That's something we can all promote.

This post represents the views of the author and not those of the Brexit blog, nor the LSE.

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