

# Processes, Governance & the 'Great Repeal Bill': An overview

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# Overview

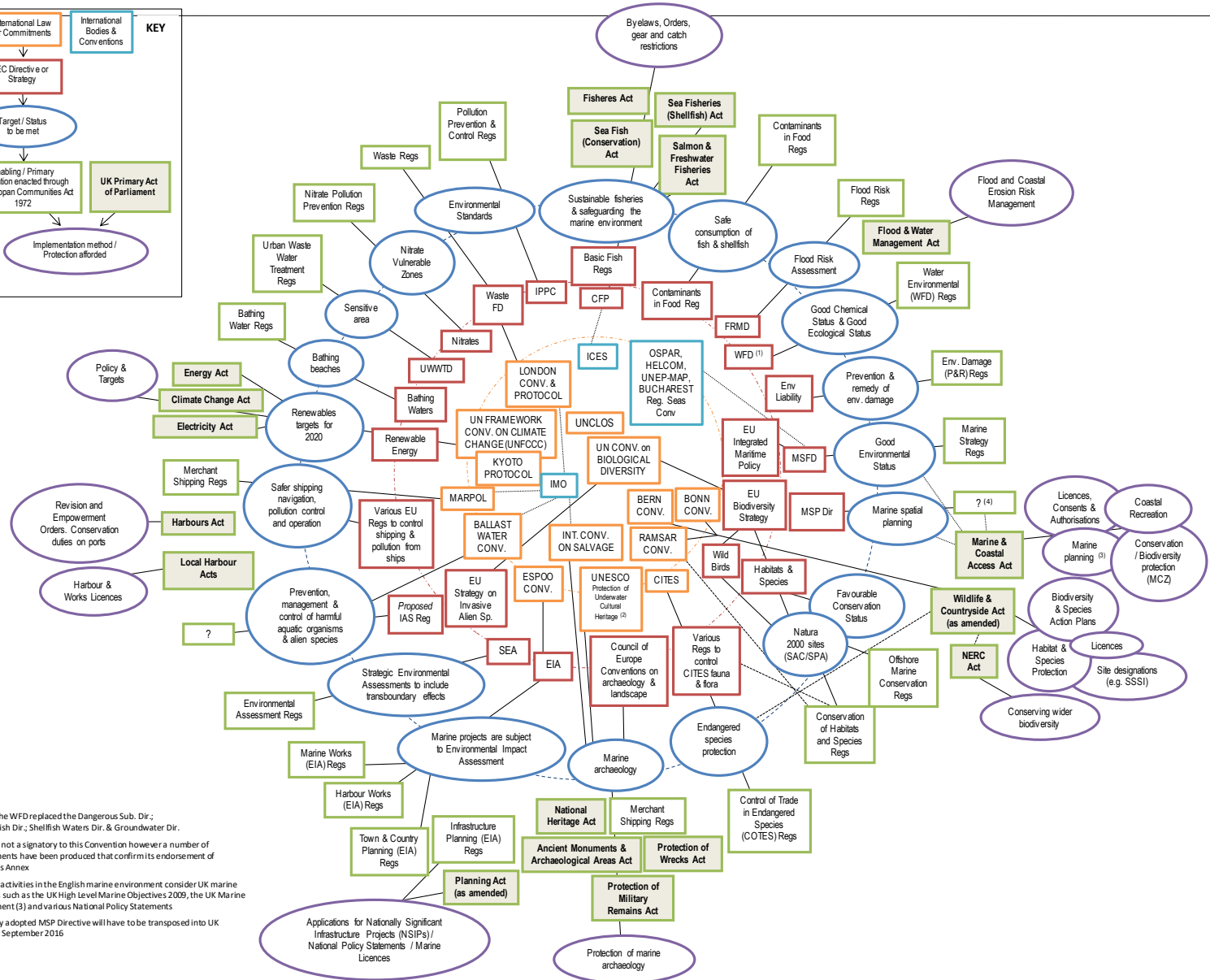
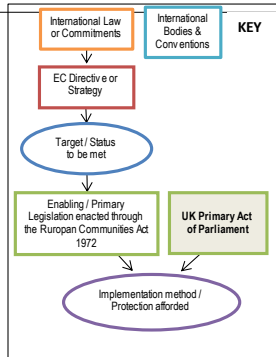
1. What will Brexit entail?
  2. The current position
  3. Brexit legal process
  4. The Great Repeal Bill
  5. Future parameters
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# 1. What will Brexit entail?

- Repealing the European Communities Act (ECA) 1972
  - Determining the status of delegated legislation
  - Determine the allocation of competences between the devolved legislatures
  - New relationship with rEU... and 3<sup>rd</sup> States
  - Vacuum avoidance
    - Transpose ‘Regulations’
    - Systemic consequences of change?
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## 2. The Current Position

- Scale of the challenge...



(1) In 2013 the WFD replaced the Dangerous Sub. Dir.; Freshwater Fish Dir.; Shellfish Waters Dir. & Groundwater Dir.

(2) The UK is not a signatory to this Convention however a number of public statements have been produced that confirms its endorsement of the rules in its Annex

All regulated activities in the English marine environment consider UK marine policy drivers such as the UK High Level Marine Objectives 2009, the UK Marine Policy Statement (3) and various National Policy Statements

(4) The newly adopted MSP Directive will have to be transposed into UK legislation by September 2016

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## Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its **own constitutional requirements**.
  2. A Member State which decides to withdraw **shall notify the European Council** of its intention. In the light of the guidelines provided by the European Council, the **Union shall negotiate and conclude an agreement with that State**, setting out the **arrangements for its withdrawal**, taking account of the **framework for its future relationship** with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
  3. The **Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification** referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
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## 2. Brexit Legal Process: External

- ‘Divorce Agreement’
  - Negotiations and the UK/EU Withdrawal Agreement
    - ‘Hard Brexit’: Single Market and Customs Union
  - Is a Withdrawal Agreement needed? Yes. Why
  - Content of Withdrawal Agreement
    - Maximum - no upper limit on content
    - Minimum – Budget (2020), Bureaucracies
    - International dimensions – 1000+EU treaties
  - Laid before Parliament
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## 2. Brexit Legal Process: External 2

- ‘Future Relationship’ Agreement
    - When? Parallel to or after Art 50?
    - How?
      - Under Art 50? Shadow ‘Agreement’
      - Or EU process Art 207 (Commercial) or Art 218 (International)
    - Multiple agreements?
    - Content?
      - Basic elements of trade relationship
      - Continuity of certain EU laws (at least equivalency)
      - Mechanisms for cooperation
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## 2. Brexit Legal Process: Internal

- Constitutional Process
    - Prerogative or Parliament: Brexit Supreme Court case
  - Other challenges: Irish Brexit case; the Article 127 case
  - Ratification of the Withdrawal Agreement
  - Ratification of the Future Agreement
  - The Great Repeal Bill – ‘A Blanket Law’
  - **Transposing Laws**
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## 3. The Great Repeal Bill

- What do we know?
    - ‘Announced in Queens Speech – introduced May/June Parliament 2017-8 Session
    - Subject to Parliamentary scrutiny and vote
    - Come into force prior to Brexit – with ‘commencement provisions’
    - Misnamed
  - Contents
    - Repeal of ECA 1972
    - ‘Tranposition provision’ of 15% of UK law
    - Delegated powers
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## Future Parameters

- Complex system
  - System Capacity?
    - Parliamentary Scrutiny and Workload
    - Whitehall: Managing the process?
  - Continuing force of international law obligations
  - Devolution issues
  - Residual influence of EU law on ‘common law’
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