

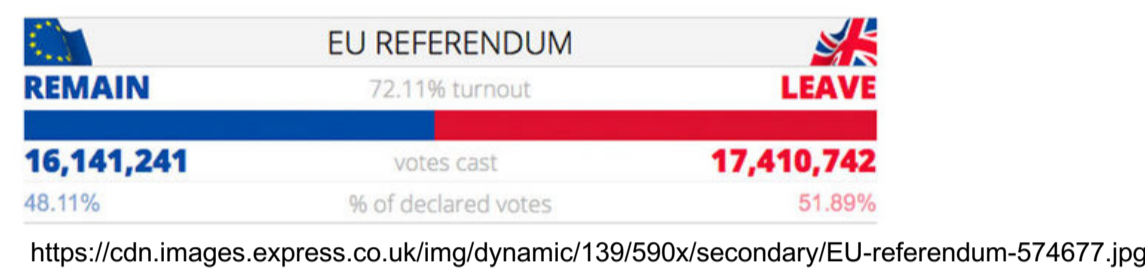
# The Political and Legal Impact of Brexit

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## Introduction

Brexit means the process that will result in the United Kingdom (UK) leaving the European Union (EU). In the EU referendum held on 23 June 2016, the majority with 51.9% voted in favour of leaving the EU.



As Lady Hale emphasised in 2016, following Brexit, it should be clear how much weight the UK judges should give to Court of Justice of the European Union (CJEU) jurisprudence, not only as it existed at the date of Brexit, but also thereafter. If not, there would be legal uncertainty in the UK law.



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## Aims

To examine the possible political and legal impact of Brexit on the UK judicial function in terms of retained EU law and its interpretations.

To examine whether the UK is able to regain full sovereignty

## Methodology

The current relationship between EU and UK law	Likely changes	Conclusions
Two basic principles <ul style="list-style-type: none"> <li>Supremacy</li> <li>Direct Effect</li> </ul>	Sovereignty and Brexit Desire to 'take back control'	The potential continuing effect of the CJEU on the UK Court

## 1 The Current Relationship between EU and UK law

The principle of supremacy	Direct Effect
The principle of supremacy determines which rule applies when there is a conflict between the law of a Member State and any provision of EU law, and the Courts in <i>Van Gend en Loos</i> and <i>Costa v ENEL</i> clearly said that the latter must prevail.	Direct effect means individual citizens can bring actions in domestic courts on the basis of EU provisions, which become the immediate source of law for domestic courts, without a further act implementing relevant EU law, arguing that a domestic law should not be applied as it is in conflict with EU law.

## 2 Likely changes in the relationship the UK judiciary will have with EU law and retained EU law

### Sovereignty and Brexit

- According to Lord Dicey, the Westminster Parliament as a sovereign law-maker, enjoys legally unlimited law-making power.
- However, the principle of the supremacy of EU law requires UK courts to disapply UK legislation contravening directly effect provisions of EU law.
- After Brexit, EU law will no longer be supreme or directly effective in the UK, under the European Union (Withdrawal) Act 2018, which will repeal the European Communities Act 1972. This leads to the end to the overriding role of EU law in the UK's legal system.

### Desire to 'take back control'

- The Prime Minister Theresa May has promised that Brexit will restore the UK's position as a 'sovereign country'.
- However, it is questionable whether the EU ever really posed a substantial problem for parliamentary sovereignty, and it is also questionable whether the UK will regain the traditional parliamentary sovereignty from Brexit.



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## 3 Conclusions

- The UK Court will continue to use interpretations of EU-derived law when the CJEU provided a new interpretation of 'Retained EU law'. Moreover, in certain areas covered by the proposed Withdrawal Agreement, the UK Court will continue to operate under EU law particularly in terms of free movement for Union citizens and their family members.
- Even in areas that were outside the scope of EU law, the UK courts may look to decisions of the CJEU as a 'guidance'.
- There are other challenges to the traditional understandings of the sovereignty under the UK constitution, such as the Human Rights Act 1998, the Devolution Acts or judicial *dicta* in case law. For example, in *R (Jackson) v Attorney General*, Lord Hope said that the courts have a role to play in defining the limits of Parliament's legislative supremacy.
- Therefore, while the UK judiciary will no longer be subject to the CJEU, there will be circumstances in which the interpretation of the UK Courts would be impacted by the CJEU, not because of the membership of the EU, but because of the future relationship with them.**

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