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A legal view on Brexit

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Agenda

**Withdrawal
timeline**

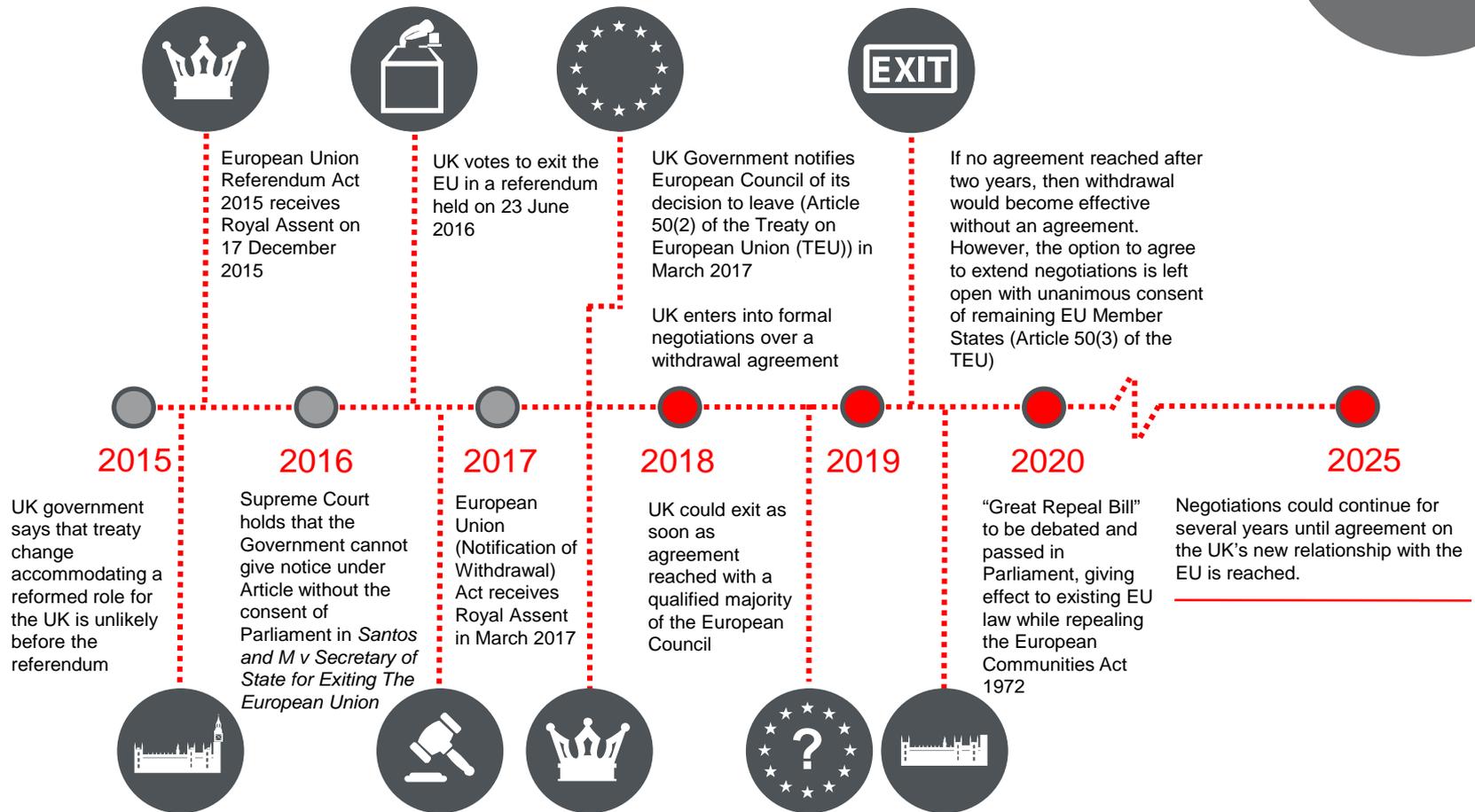
Article 50

**Impact
on legal
landscape**

**Geo-political
factors**

**Future
relationship
with
the EU**

Legal process for withdrawal - timeline



Article 50

Triggering Article 50

Article 50

Article 50 of the Treaty on European Union (TEU)

- The UK has formally notified the European Council of its intention to withdraw from the EU, which triggered Article 50 of the Treaty on European Union
- Triggering Article 50 is the only legal way for a Member State to withdraw from the EU
- A two-year period to negotiate the terms of exit has commenced
- Agreement for withdrawal to take “account of framework for [UK’s] future relationship with the [EU]”
- A trade agreement or other agreements setting out the nature of the future relationship will need to be negotiated

The path to invoking Article 50

Article 50



- *R. (on the application of Miller) v Secretary of State for Exiting the European Union*
- Supreme Court decided by a majority of eight to three that the Secretary of State for Brexit did not have the power to give notice without Parliament's prior authority
- Led to European Union (Notification of Withdrawal) Act 2017 – conferred on the Prime Minister the power to give notice under Article 50

Contents of the Article 50 notification letter

Article 50

Confirms UK will not seek membership of the single market

Seeks a “bold and ambitious free trade agreement”

Sets out seven principles for the forthcoming discussions

UK's seven principles for negotiations

Article 50

1. Engage with one another constructively and respectfully, in a sincere spirit of co-operation
2. Always put citizens first
3. Work towards securing a comprehensive agreement
4. Work together to minimise disruption and give as much certainty as possible
5. Pay attention to UK's unique relationship with Republic of Ireland and the importance of peace in Northern Ireland
6. Begin technical talks on detailed policy areas as soon as possible, but prioritise the biggest challenges
7. Continue to work together to advance and protect shared European values

What happens next?

Article 50



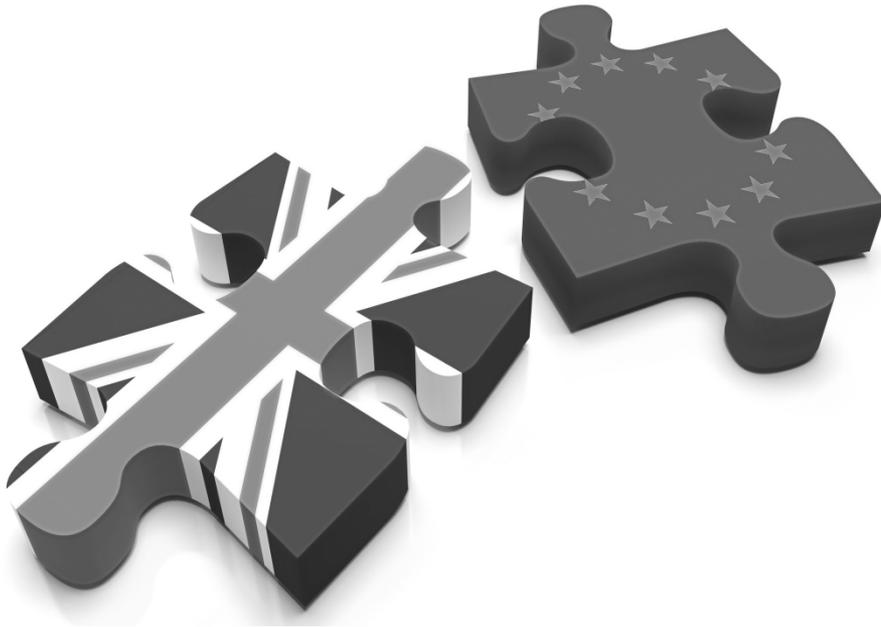
EU council sets guidelines for negotiation of withdrawal agreement

Withdrawal agreement requires **majority vote** by 27 EU member states

Free trade agreement requires backing of **all** 27 EU member states

“Brexit means Brexit”

Article 50



Leave campaign

- Control immigration
- Control sovereignty
- End contributions to the EU budget
- Continue to access single market (**not** seek membership)
- Negotiate free trade agreements

Negotiations begin on two sets of agreements

Article 50

Exit agreement

- UK may face potential net liabilities of €50-80 billion
 - Committed funding for programmes
 - Unspent funds in current programmes
 - Pensions
 - UK's share of the EU institutions' assets to be taken into consideration
- Residency rights of UK and EU citizens
- Relocation of EU agencies
- Transfer of regulatory responsibility
- Borders and security

Future relationship

- Likely to be separate agreement from the exit agreement
- Transitional arrangements?
- Trade agreement?
- Financial contributions?
- Participation in other programmes such as science and technology or security and intelligence sharing

EU's proposed phased approach

Article 50

Response of the European Council to the Article 50 notification

- The European Council has resisted the UK's request that the withdrawal process be negotiated simultaneously with a new free trade agreement
- Draft guidelines propose a phased approach to follow (more or less) sequentially, BUT “nothing is agreed until everything is agreed”
- A full negotiating mandate will be formalised at a summit of the 27 remaining EU Member States on 29 April 2017
- EU negotiator Michel Barnier expects to launch negotiations in early June 2017

EU's proposed phased approach

Article 50

First

- Settle the disentanglement of the UK from the EU, particularly the financial consequences of Brexit
- Provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners living in, or doing business with, the EU and the UK

Second

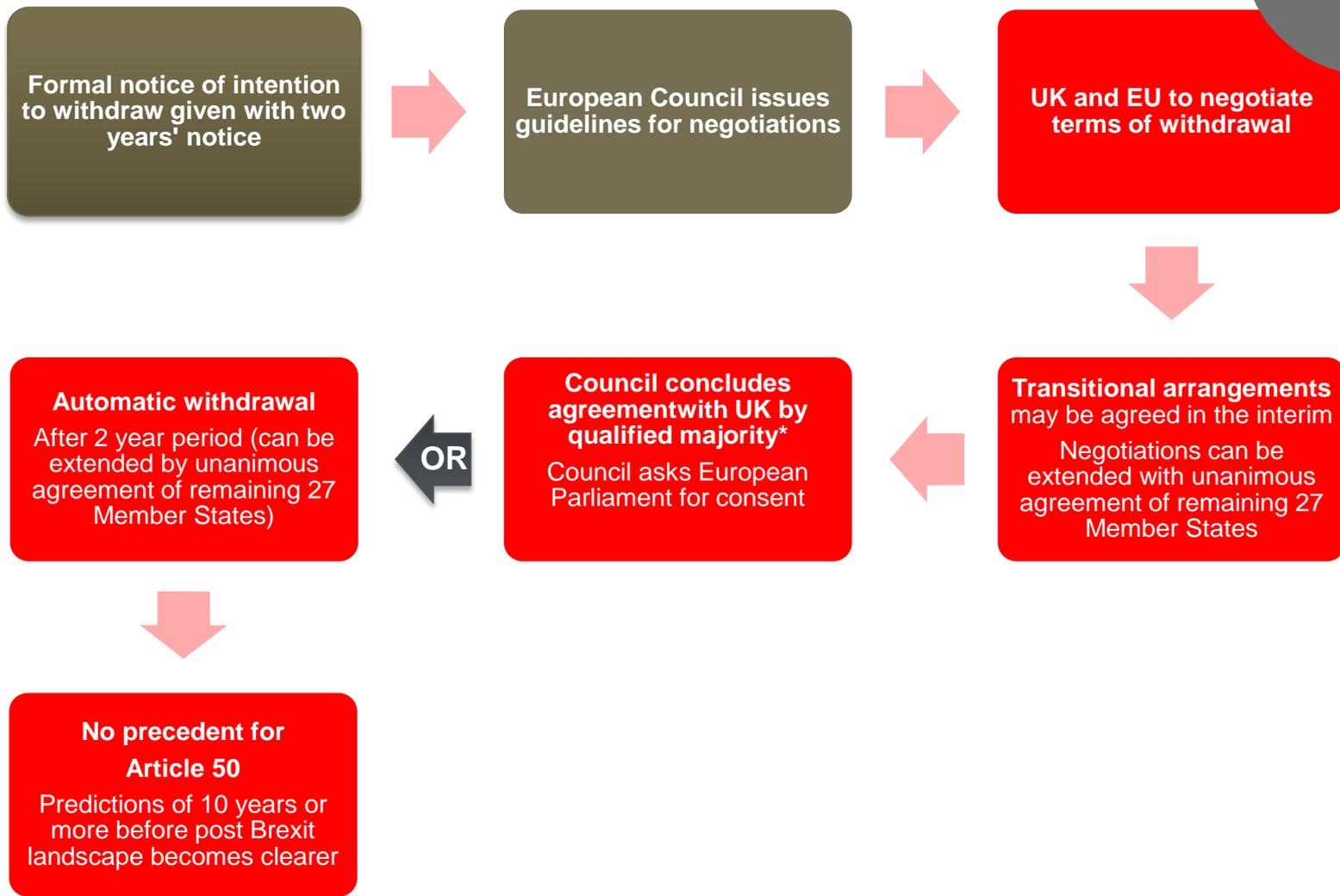
- Identify an overall understanding on the framework for the future relationship
- This phase can begin only when the European Council determines that sufficient progress has been made on the first phase
- There might be transitional arrangements that are clearly defined, limited in time and subject to effective enforcement mechanisms

Third

- Conclusion of a free trade agreement between the EU and the UK
- Such an agreement may only be concluded following Brexit

Legal process for withdrawal – Article 50 TEU

Article 50



*Qualified majority" is defined in Article 238(3)(b) of the Treaty on the Functioning of the European Union as 72 per cent of the participating members of the Council (the UK excluded), comprising at least 65 per cent of the population of the participating Member States.



**Impact
on legal
landscape**

Current interaction of EU and UK law

Impact
on legal
landscape



- EU Treaties
- Including “Mixed Agreements”
- Regulations and technical standards
- Directives
- Decisions of the Court of Justice of the EU (CJEU)
- Domestically, the European Communities Act 1972 (ECA) brings EU law into the UK

UK law

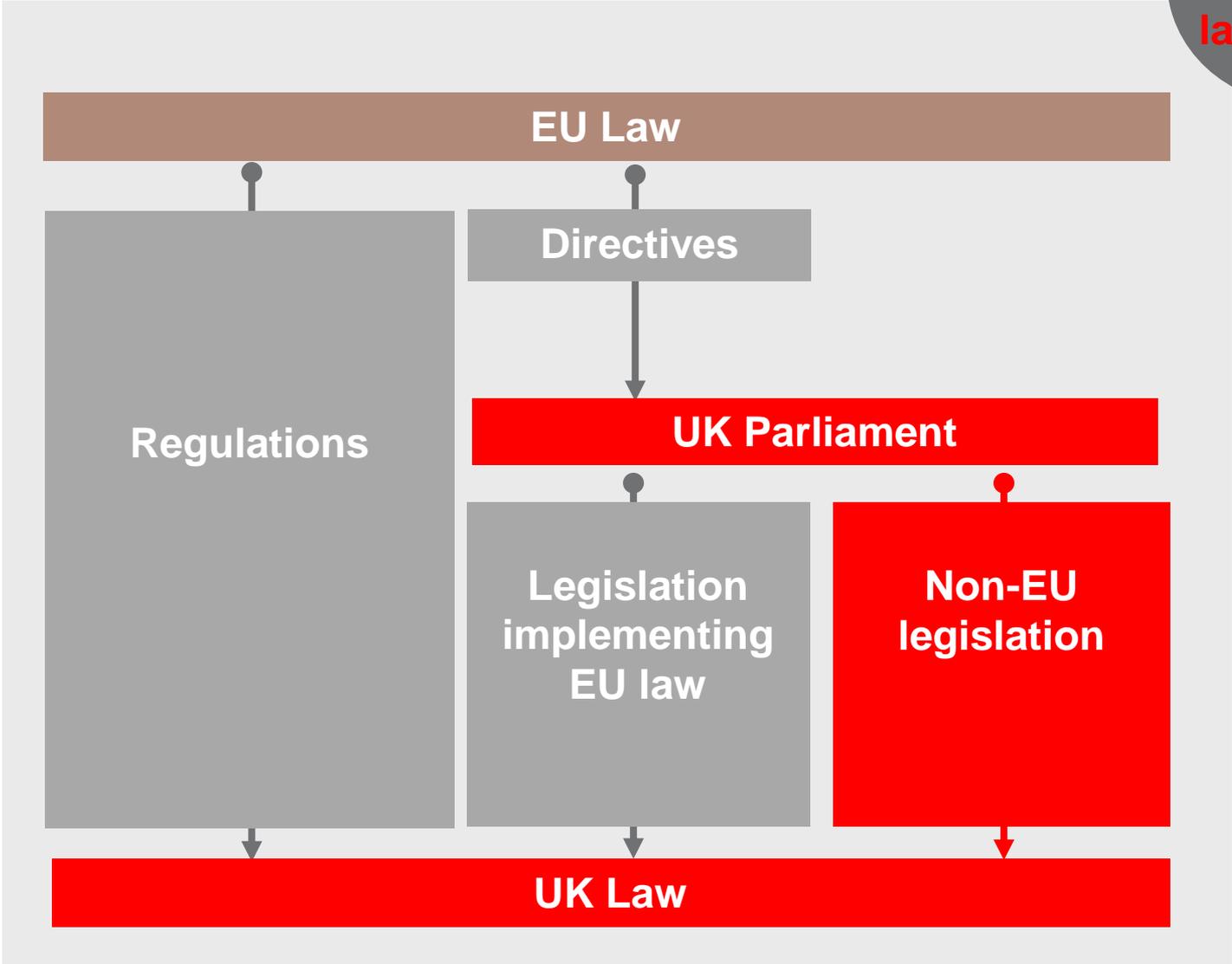
Impact
on legal
landscape



- Until the UK formally exits, EU legislation continues to apply
- Issue as to how over 100,000 EU-derived laws and implementing measures will be maintained where necessary or desirable
- “Great Repeal Bill” will be put to Parliament to repeal the ECA and convert existing EU-derived law into domestic law
- Government’s March 2017 White Paper proposes how the Great Repeal Bill would work

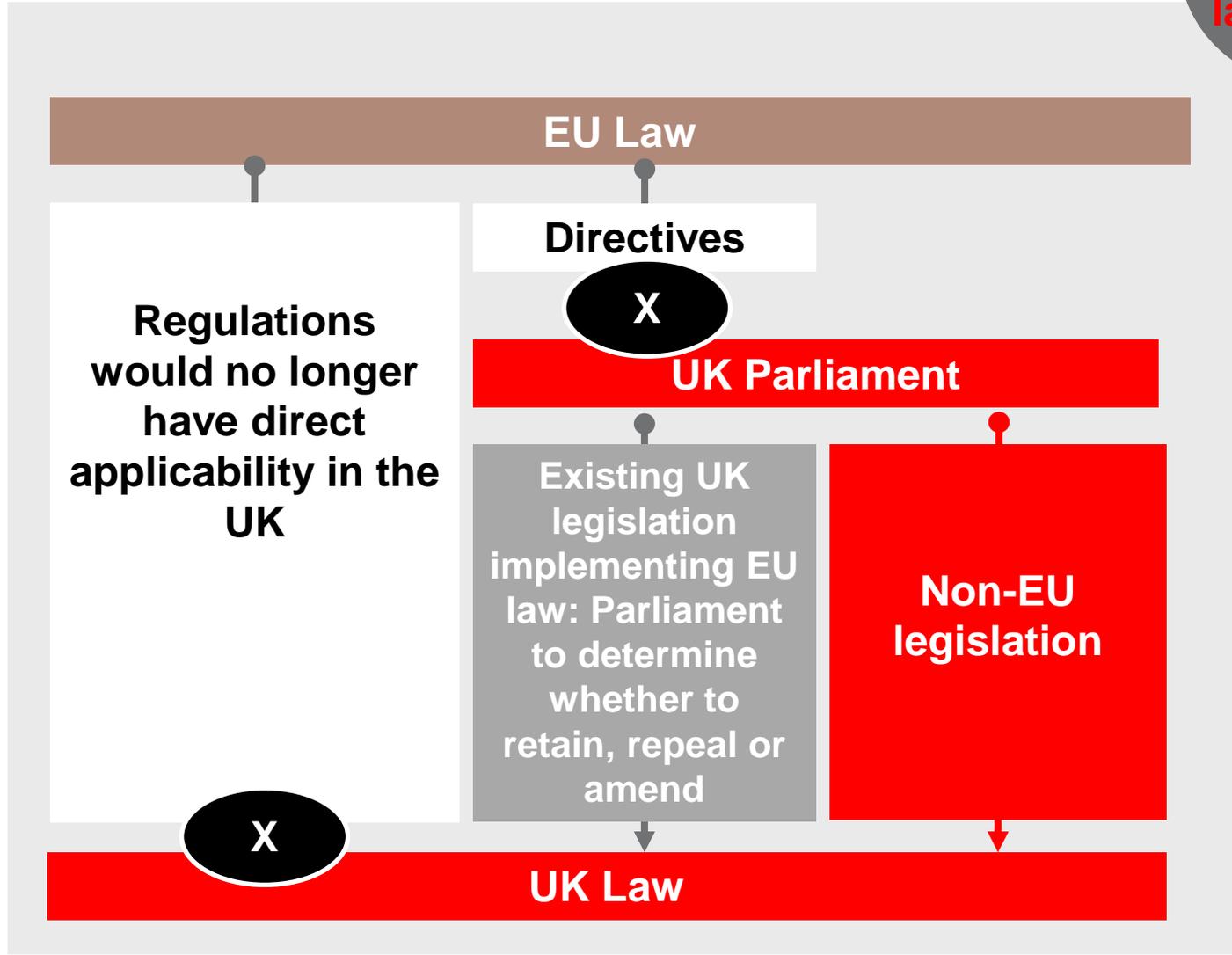
Impact on legal landscape - before

Impact on legal landscape



Impact on legal landscape - after

Impact on legal landscape



EU-derived legislation

Some EU-derived legislation not easily transposed into national law

- Where reciprocity required
- Legislation that relies on an EU regulator or gives jurisdiction to the CJEU
- Treaties signed by the EU that are currently directly applicable in UK
- References in EU law to actions being taken within the EU will not automatically cover actions taken within the UK

Great Repeal Bill – what will it do?

Impact
on UK legal
landscape

Repeal the ECA and transfer regulatory powers to UK institutions

Convert EU law as it stands on the date of Brexit into UK law

Create powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate properly

Great Repeal Bill – how will it work?

Impact
on UK legal
landscape



- Convert directly-applicable EU law into UK law
- Preserve secondary legislation made under the ECA that implement EU obligations
- Make historic CJEU case law binding on UK courts as if they were decisions of the UK Supreme Court
- Ensure that rights in EU treaties that can be relied on directly in court by individuals continue to be available in UK law
- The Charter of Fundamental Rights will not be brought into UK law

Other primary legislation

Impact
on UK legal
landscape



- Customs bill to implement new customs regime
- Immigration bill
- Potential creation of new regulatory bodies in areas where oversight was previously carried out at an EU level
- Others

Brexit distractions

Geo-political factors



Future relationship with the EU?



Trade options

- A free trade agreement
- Remain in the customs union
- Seek a “customs arrangement”
- Other sectoral agreements, for example in services
- Leave the customs union and focus on trading beyond the EU
- World Trade Organization option

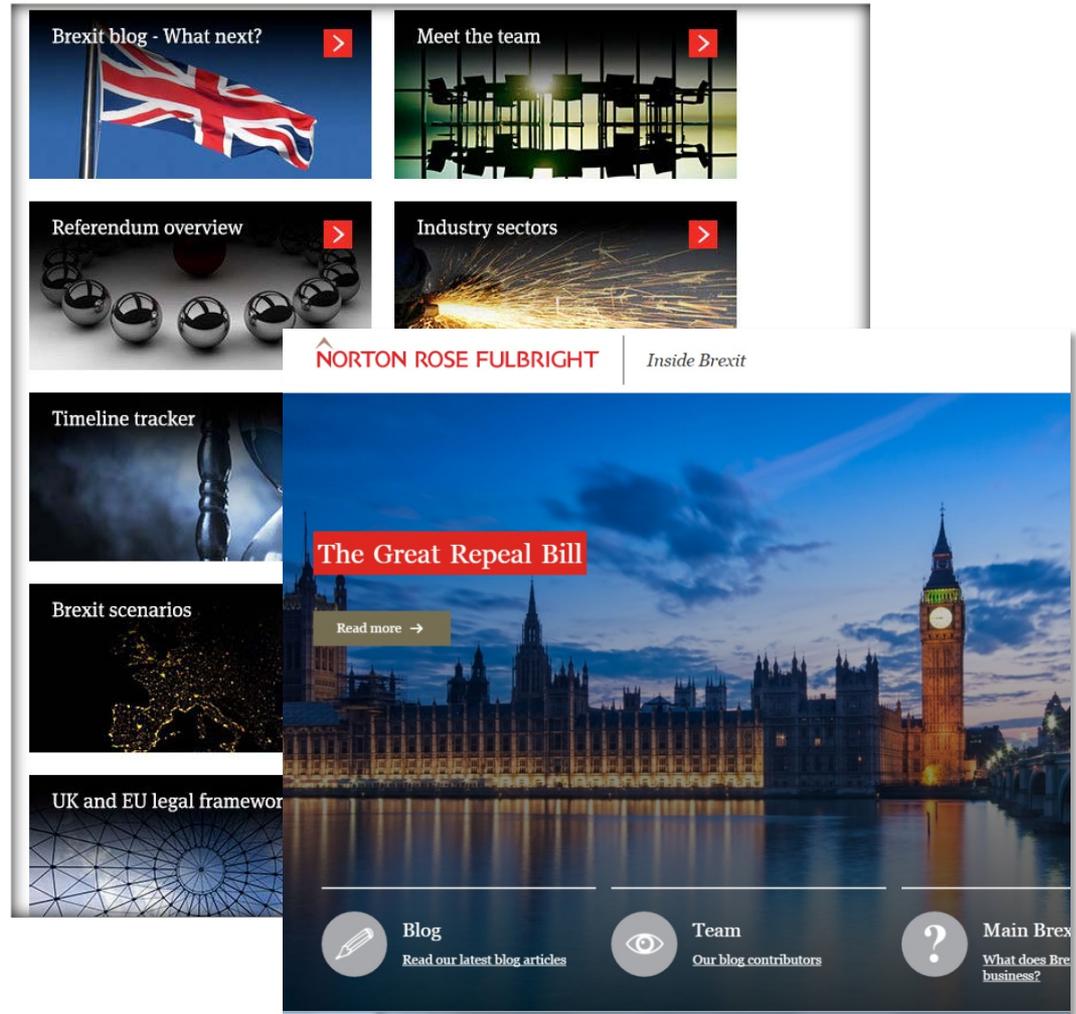
Less likely

- UK re-joining the European Free Trade Association and/or the EEA

www.nortonrosefulbright.com/brexit

Resources

- *Inside Brexit* blog
- Brexit client site
- Industry sector Q&As
- Dedicated Brexit teams
- Trade Treaty practice



Speakers



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