

Chapter 7 – The European Union

Whilst this book is a really basic introduction to English law and the English legal system, it would not be complete without some consideration of its relationship with the European Union.

The general concept of the union of Europe stems back to the time after the Second World War and a desire amongst European countries not to see a repeat of the horrors which took place. Through a series of treaties we now have a European Union which consists of a number of bodies. The general idea is that there should be economic harmonisation across member countries of the European Union in order to create a fair and equal market place for business to thrive. For example, laws on issues such as consumer protection, employment and some areas of taxation are determined to a large extent by European laws.

No doubt you will have heard about Members of the European Parliament standing for election; you might even have voted in those elections at some point. You will probably also have heard of the European Court of Justice, the European Council (once called the Council of Ministers) and the European Commission. Between them these bodies have the power to create European laws which potentially have an impact on all countries which are members of the European Union. Since the United Kingdom is a member of the European Union, these laws have an important impact on English law.

We have seen in chapter 4 that the UK Parliament in London is supreme when it comes to making English law. In other words, it has the power to make or change any law, including laws developed by judges (which we considered in chapter 6 as being the common law). So how does European law fit with this concept that Parliament is supreme?

The answer is that Parliament has voluntarily given up its right of supremacy in relation to European laws. The European Communities Act 1972 was passed by the UK Parliament and this act incorporated European law into English law. For now the Act is in force and therefore England and Wales are voluntarily subject to the laws created by the European Union. However, that Act could be repealed at any time, which means that Parliament retains overall supremacy.

Law is made in the European institutions referred to above. Proposals come from the European Commission, sometimes following a request from the European Council. Approval for any new laws

must be given by the European Parliament, although this role is shared with the European Council. A common criticism of the process is that the European Parliament should have more powers considering it is the only directly elected body involved in the process.

The other way that law is developed in Europe is through the decisions of the European Court of Justice which are generally binding on all countries in the European Union. They often relate to the interpretation of other European laws and help to ensure consistency of application across all member countries.

The most important types of law which come from the European Union are treaties, regulations, directives, decisions, recommendations and opinions and we will now look very briefly at each of these in turn.

Treaties are the headline agreements between the various member countries of the European Union. They create the institutions of the European Union which we have referred to above such as the European Parliament and the European Council; they also give those institutions their powers.

The laws actually created by the institutions themselves include regulations. These are the most "powerful" types of law in that they are applicable in themselves in every member country of the European Union. In other words, as soon as they come into force they become part of English law and must be followed by those who are covered by the law.

A European directive is another type of law created by the European Union. This differs from a regulation in that a directive generally needs to be implemented by the legal system of each country. In other words, it is really an instruction to each country to change their laws to the extent necessary to ensure that a particular legal position is reached. They are commonly used as they are an effective way to ensure that the law is consistent throughout the member countries of the European Union, which will usually be given a time limit within which to implement the provisions of the directive.

Decisions are binding only on the person or country to which they relate, rather than across the whole European Union. Recommendations and opinions are not binding and are therefore less effective as legal measures.

European law is a vast and important part of English law. Many areas of law include some aspects

of European law and therefore it is important to be aware of its existence. A good example is Value Added Tax (or VAT for short). I'm sure you will have heard of VAT as being a tax which we pay when we purchase goods and services. VAT law stems from a European Directive. That directive required member countries to implement the laws relating to VAT into their own legal systems. The English law version can be found in the Value Added Tax Act 1994. This is a "normal" statute passed by Parliament in the usual way. However, when interpreting that statute, it is a good idea to look back at the original directive from Europe to help to understand what the law is trying to achieve. The result overall is that VAT law is more or less the same in all countries of the European Union.

Of course we should not finish this chapter without a mention of the United Kingdom's referendum to leave the European Union. On 23 June 2016 the public voted to leave the EU. This means in its simplest form, that the European Communities Act 1972 will be repealed and Parliament will once again be supreme in the sense that it will no longer have given up voluntary power to the EU institutions. Of course, in practice the process is proving to be complex and there are many legal implications. As we have seen above, many laws which have been created in Europe have now been implemented into English law, and those laws, at least for the time being, will remain in force. Others will need to be incorporated into English law after "Brexit" if we wish them to remain in force. Only time will tell exactly how this will be achieved and how effective it will be.

We have seen in this chapter that European law has a major impact on UK law and English law in particular. We have looked briefly at the institutions of the European Union and the various types of law which they can make. There is another important aspect of European law which we will now go on to consider, and that is the issue of Human Rights.