

INTEGRAZIONE AL VOLUME

LEGAL ENGLISH AND THE COMMON LAW

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WITH LEGAL GRAMMAR HANDBOOK BY PATRICIA SOURS

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**LE PAGINE SEGUENTI SOSTITUISCONO L'ULTIMO
PARAGRAFO DI PAGINA 88 E LE PAGINE DA 89 A 96**

Kingdom joined the Community. Thus, whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act 1972 was entirely voluntary. Under the terms of the Act of 1972 it has always been clear that it was the duty of a United Kingdom court, when delivering final judgment, to override any rule of national law found to be in conflict with any directly enforceable rule of Community law.¹⁰⁶

The House of Lords explained that at the time of British *accession* (*adesione*) to the European Community, the Court of Justice had already established in its *case law* (*“jurisprudence”*) the principle of supremacy of Community law over the national law of *Member States*. Parliament had therefore shown its intention to accept that principle by passing the 1972 Act.

However, if Parliament at any time states clearly and expressly in the text of a law that it intends to legislate in a manner inconsistent with its EU obligations, the English courts recognise that it will be their duty to apply that legislation: the UK Act of Parliament will prevail over Community law.¹⁰⁷ If this happens, the UK will be *in breach* of its international treaty obligations, with all the consequences that may follow. To conclude, Hartley underlines that:

the effect of Community law in the legal systems of the Member States ultimately depends on Member-State law, not Community law. ... The sovereignty (ultimate authority) of the Member States remains intact. This is why the Community is still an international organization (albeit with supranational powers), not a federal State.¹⁰⁸

The constitutional position described above was strengthened by the European Union Act 2011, which introduces controls before the UK government can ratify or approve a treaty or a decision that amends or replaces the Treaty on European Union (TEU: Treaty of Maastricht) or the Treaty on the Functioning of the European Union (TFEU: Treaty of Rome). Parties in court proceedings can no longer argue (as in *Thoburn*, above) that EU law constitutes a new, higher, autonomous international legal order that has become an integral part of the UK system independent of statute law: the *statutory basis* of the effectiveness of EU law in the UK legal order – and therefore British Parliamentary sovereignty - is explicitly reinforced.¹⁰⁹

¹⁰⁶ *Factortame* (No.2), cit., para. 4, Lord Bridge of Harwich.

¹⁰⁷ Lord Denning in *Macarthys Ltd v Smith* [1979] 3 All ER 325 at 329; *Thoburn v Sunderland CC* [2003] QB 151.

¹⁰⁸ Hartley, cit., p.164.

¹⁰⁹ For the text and explanatory notes to the European Union Act 2011 and its Commencement Orders, used above, visit www.legislation.gov.uk

2.7 BREXIT

2.7.1 To be or not to be (in the European Union) – that is the question

The full version of this article first appeared on LinkedIn.¹¹⁰ A few days before the UK referendum on EU membership, the author shared law, language and personal views to help interpret the vote and its legal implications.

A land of hooligans and poets

England is a strange country: the land of Shakespeare and Churchill and that splendid anachronism, our longest-reigning *constitutional monarch*, Queen Elizabeth the Second. But also home to entrenched nationalism and the ugly face of football hooliganism.

The In/Out referendum

On June 23rd 2016, UK *citizens* – but not all of them – *have the right to vote in a referendum* to make the most important choice of a political lifetime: whether to *remain* in or *leave* the *European Union*. It's not a Yes/No referendum, but an In/Out vote.

The question on the *ballot paper* is carefully worded:

European Union Referendum Act 2015 section 1(4)

“Should the United Kingdom remain a member of the European Union or leave the European Union?”

The alternative answers are, under s. 1(5) of the Act:

*“Remain a member of the European Union
Leave the European Union”.*

United in diversity in the European Union

The EU has 28 *member states* today and over 500 million *EU citizens* of many different cultures. There are 24 official languages, including English. The EU motto is *United in Diversity*, a truly inspirational goal! Yet, if you are a football fan, you may have noticed that the UK is not very good at being *united in diversity*. No less than four teams play against each other in international tournaments, one for each constituent country – England, Northern Ireland, Scotland and Wales. However, at the Olympic Games, *British* athletes compete under a single flag for Great Britain. Indeed, there is a single *state in international law*: the United Kingdom of Great Britain and

¹¹⁰ As a two-part article on Alison Riley's LinkedIn page: To be or not to be (in the European Union) – that is the question, 15 June 2016; Part Two, Brexit or not? The story unfolds, 19 June 2016.

Northern Ireland – the UK, for short. The adjective *English*, often misused, refers to *England* alone, while *British* or *UK* can be used at national level.

Br(itish) + exit = Brexit ('brɛɡzɪt, 'brɛksɪt) noun: *the withdrawal of the United Kingdom from the European Union* Collins English Dictionary

Brexit is a new word and the prospect of Brexit, supported by *Brexiters* (like musketeers) is causing waves of uncertainty and fear to impact political circles and economies, not only in the UK and the rest of Europe.

Will Brexit split the UK, too?

A Brexit vote would not only split the EU, but could also take the *United* out of the UK. Pro-European Scotland, for one, will want to try again for independence. In the first Scottish independence referendum of September 2014, the *Yes* supporters lost, but *the Scottish Government*, led by Nicola Sturgeon, *First Minister* and leader of the Scottish National Party, firmly believes that Scotland and the rest of the UK should remain in the EU.¹¹¹

Why the referendum?

In countries with a *written constitution*, there may be general *constitutional rules* governing *referendums*. Not so in the UK, where the decision to hold a referendum like this one is purely political. The UK Parliament is *sovereign*: it does not need the *mandate* of a popular referendum to give it power to leave the EU. However, Prime Minister David Cameron promised this referendum to attract voters at the 2015 general election. One reason was to get right-wing voters to prefer Conservative to the extreme nationalist party UKIP (UK Independence Party). Once they had won the election, Cameron and his party were politically bound to act. Sure enough, in the Queen's speech delivered to Parliament just three weeks later, the referendum legislation was announced. The Bill was approved by Parliament and received *Royal Assent*, on 17th December 2015 – curiously, the same day as a European Council summit where UK plans were on the agenda.

The legal basis for the referendum

The European Union Referendum Act 2015, cited above, is the *statute* that provides the *legal basis* for the referendum. The procedures and modality of the referendum itself are therefore determined by this ad hoc legislation.

- First to note, there is no *quorum*, or minimum number of *votes* that must be *cast* for the referendum to be valid.

¹¹¹ Visit www.gov.scot. *Scotland's Place in Europe* (2016) is a downloadable document that sets out the Scottish Government's position following the result of the EU Referendum.

- Secondly, a simple majority (50% plus one) is required for In or Out to win. Over 44 million people are eligible to vote: those who do, get to decide for all.
- Thirdly, the referendum does not have automatic *legally binding effect*: a vote to leave the EU carries no direct *legal* consequence. The *parliamentary* website informs:

The European Referendum Act 2015 does not include provisions to implement the result of the referendum; legally, the Government is not bound to follow the outcome. However, it would be very unlikely for the Government to ignore the outcome of the referendum.¹¹²

A democratic duty to exit

Either way, In or Out, the referendum result constitutes a political imperative that the Prime Minister intends to respect. This Cabinet Office Policy paper explains why he must:

2.1 The result of the referendum on the UK's *membership of the European Union* will be final. The Government would have a *democratic duty to give effect to the electorate's decision*. The Prime Minister made clear to the House of Commons that "if the British people vote to leave, there is only one way to bring that about, namely to trigger Article 50 of the Treaties and begin the process of exit, and the British people would rightly expect that to start straight away."¹¹³

Brexit – a messy divorce

At national level, the entire *body of EU law* (formerly, EC law) has been part of UK law for 43 years, since Britain *acceded to* the European Communities, along with Denmark and Ireland in the first enlargement from the original six *founding members* to nine in 1973. For the UK legal system, that means almost half a century of *Treaty articles, regulations, case law of the Court of Justice* and the entire European Union '*acquis*', in addition to national legislation used to implement EU law. Important '*common law*' *constitutional statutes*, starting with the European Communities Act 1972, give effect to EU law at national level, including the principle of *primacy*: EU law prevails over national rules in case of conflict. Splitting up would mean a very long, expensive, legal puzzle at best – at worst, a messy divorce.

¹¹² www.parliament.uk/eu-referendum

¹¹³ Policy paper, *The process for withdrawing from the European Union*, Cabinet Office, 29 February 2016, 2.1, available at www.gov.uk/government/publications/.

How to withdraw from the EU

At EU level, Article 50 of the *Treaty on European Union* contains the rules for withdrawal, introduced by the Treaty of Lisbon in 2009. In fact, as the Policy paper cited above explains, the process is unprecedented:

2.3 No country has ever used Article 50 – it is untested. There is a great deal of uncertainty about how it would work. It would be a complex negotiation requiring the involvement of all 27 remaining EU Member States and the European Commission. ... Uncertainty during the negotiating period could have an impact on financial markets, investment and the value of the pound, and as a consequence on the wider economy and jobs.¹¹⁴

What if the UK voted to remain?

If the UK voted to remain in the EU in the referendum, certain aspects of its position in the Union would change. The concerns expressed by the Prime Minister in his letter of 10th November 2015, sent from number 10 Downing Street to Donald Tusk, President of the European Council, formed the basis of negotiations between Britain and the rest of the EU prior to the referendum. In the letter, four areas of concern were identified:

- economic governance (to represent interests of non-euro countries);
- competitiveness (including cuts in excessive EU regulation);
- sovereignty (including enhanced role of national parliaments);
- immigration (net migration of 300,000 a year unsustainable for UK welfare systems).

Agreements were reached¹¹⁵ and Cameron was satisfied that his claims were met. He therefore declared he would lead and back the campaign to remain in the EU with all his “heart and soul”. Yet wasn’t the referendum his idea in the first place?

Goodbye, ever-closer union

On the issue of *sovereignty*, the EU has recognized that the UK ‘is not committed to further political integration into the European Union’. And at the next revision of the Treaties, it will be made clear that ‘the references to *ever closer union* do not apply to the United Kingdom’.¹¹⁶ That in itself seems

¹¹⁴ Ibidem 2.3.

¹¹⁵ Conclusions adopted by the European Council meeting of 18 and 19 February 2016 EUCO 1/16, Brussels, available online as pdf.

¹¹⁶ Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union reached at the summit meeting of 18 and 19 February 2016, Annex 1, Section C Sovereignty, 1.

an extraordinary result. Article 1 of the Treaty on European Union itself enshrines that goal:

Treaty on European Union Article 1

This Treaty marks a new stage in the process of creating **an ever closer union** among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

What a shame that the British won't join in. But then, they invented *opting out* – i.e. securing exemption from EU agreements.¹¹⁷

Why many citizens can't vote – the penalty of free movement

Excluded from the vote by the terms of the 2015 Referendum Act (s. 2) are many British citizens like myself who have been resident abroad for more than 15 years and are not entitled to vote at a UK parliamentary election, or, therefore, in this referendum. About 1.2 million British-born people are living in another EU country, according to United Nations' 2015 figures.

We have exercised our *right to free movement* enshrined in the Treaty of Rome. And we have chosen – for compelling personal reasons or for our careers, or retirement – to live for a period of our lives in another EU member state. I shall never regret my choice to marry my Italian husband and to make our home in Italy. But I am profoundly sorry to be denied the right to vote in this deal-breaking decision that will deeply affect my own and my family's future.

A legal challenge by World War II veteran

Harry Shindler, another British citizen who lives in Italy, is a war veteran of 94 years old. Like Scottish-born lawyer Jacquelyn MacLennan, a resident of Belgium, Mr Shindler felt strongly enough to issue a legal *application for judicial review*. They claim that their exclusion from *the franchise* constitutes an *unjustified restriction* of their EU law rights of *freedom of movement*. However, the Court of Appeal in London rejected that claim.

It is fascinating to read the judgment in the *Shindler case*,¹¹⁸ but it is complex. The Court of Appeal *held* that the 2015 Act “does not fall within the scope of EU law” – therefore, like a horse in a race, “the claim fails at the first hurdle.”¹¹⁹ Any citizens who have exercised their right to free movement and have lived in another EU country for more than 15 years can therefore *lawfully be excluded from the franchise*.

¹¹⁷ Attributed to UK Prime Minister John Major during negotiation of the Treaty on European Union.

¹¹⁸ *Shindler & Another v Chancellor of the Duchy of Lancaster & Another* [2016] EWCA Civ 469, available at www.bailii.org.

¹¹⁹ *Ibidem*, Master of the Rolls, para. 20.

In any case, Article 50(1) of the Maastricht Treaty establishes that any member state may decide to withdraw from the Union ‘in accordance with *its own constitutional requirements*’. It is therefore a matter for national law.

Acts of Parliament trump the common law

Another argument in the Shindler *appeal* – that the court should use a *discretionary power* at common law to declare legislation *unconstitutional* where it conflicts with fundamental constitutional rights such as the *right to vote* – was *dismissed*:

The short answer to this new point is that *there is no such common law right* as that for which Mr O'Neill [representing the appellants] contends *which could take precedence over an Act of Parliament*.¹²⁰

In short, the referendum is governed by the 2015 Act. Legislation takes priority over the common law. And the courts must apply the Act.

Nobel Prize for a continent of peace

Mr Shindler’s case brings to mind the war-torn past of Europe. In 2012, the European Union was awarded the Nobel Peace Prize in recognition of its most important result:

the successful struggle for peace and reconciliation and for democracy and human rights. The stabilizing part played by the EU has helped to transform most of Europe from a continent of war to a continent of peace.¹²¹

Isn’t this the truly great achievement of *European integration*?

Embrace the bigger picture

I can’t vote myself, but I would sincerely ask fellow Britons fortunate enough to have the right to choose on June 23rd to look beyond the narrow, insular view of *Brexitism* and embrace that bigger picture: *vote to remain in the European Union*. There may not be another chance for the UK to be a valued player in this skilful team and to enjoy – in full reciprocity – all the true benefits of being *United in Diversity*.

To conclude, I wonder, European friends, if you’re not beginning to think you would be better off without the British? If they can’t play the game by the rules, shouldn’t they just get off the field and make space for players more skilled at working together as a team?

¹²⁰ *Ibidem*, Master of the Rolls, para. 49.

¹²¹ Norwegian Nobel Committee Announcement: The Nobel Peace Prize for 2012, Oslo, 12 October 2012, <http://nobelpeaceprize.org>.

2.7.2 Brexit – after the referendum

And the rest is history. Or is it?

By a narrow margin, a majority of those who voted in the whole of the UK in the 23 June 2016 referendum expressed the will to leave the European Union:

Leavers 51.9% Remainers 48.1%

The country is bitterly divided. ‘*A tragic split*’, says *The Economist*, where old and young, rich and poor ‘are divided like never before’.¹²² Three-quarters of 18- to 24-year-olds voted to remain, as did 62% of Scots and 55.8% of Northern Irish voters; while in England there is strong support for Brexit in the North and Midlands, but London voted strongly to remain.¹²³

‘*Brexit earthquake. Prime Minister announces resignation. Vote to leave threatens break-up of the UK,*’ announces *The Times*.¹²⁴ Chaos reigns. The Government, led by new Prime Minister Theresa May, claim that, since treaty-making power is a *Crown prerogative* to be exercised by Ministers, the formal withdrawal process may be initiated without legislation (and therefore without debate and approval in Parliament). But in a legal challenge by citizens, the Supreme Court held that Ministers required the authority of primary legislation, noting that withdrawal from the EU would fundamentally change the UK’s constitutional arrangements in a way that would affect EU rights enjoyed by residents of the UK, which existed by virtue of statute law (notably, the European Communities Act 1972).¹²⁵

At the time of writing, Article 50 TEU has been triggered¹²⁶ and the withdrawal process is under way. But little progress has been made. Three key issues, the *financial settlement*, the *Irish border question* and *citizens’ rights* are first being considered before talks on the *trade deal* begin.

Many British people – confirmed Europeans like me or disillusioned Leavers – hope that before withdrawal becomes final by the deadline of March 2019, the decision to leave can be reversed. Could it not be abandoned as a bad and damaging policy for the United Kingdom? (And indeed for the rest of Europe.) Since Britain is a *parliamentary democracy* (not a *direct democracy*) a majority of the democratically elected representatives in the House of Commons, in a cross-party vote, could possibly reject the deal and vote to

¹²² *The Economist*, June 25th to July 1st 2016.

¹²³ For detailed results, visit www.bbc.com/news/politics/eu_referendum/results

¹²⁴ *The Times*, headline of 25 June 2016.

¹²⁵ *R (Miller) v Secretary of State for Exiting the EU* [2016] EWHC 2768 and [2017]

UKSC 5, available at <http://www.bailii.org/uk/cases/UKSC/>

¹²⁶ On 29 March 2017 by Prime Minister Theresa May by letter to Donald Tusk, President of the European Council. Available at www.gov.uk/government/publications/

remain after all in the European Union. This would raise the question of whether and on what terms UK membership continues to be an option. Article 50 TEU is silent on the matter of ‘withdrawing’ a notification of withdrawal.¹²⁷

What does the long-term future hold? As Winston Churchill said, on the qualifications for becoming a politician:

*It is the ability to foretell what is going to happen tomorrow, next week, next month, and next year. And to have the ability afterwards to explain why it didn't happen.*¹²⁸

IDEAS FOR LISTENING AND FURTHER READING

N.B. Website references of interest are given directly in the text and notes of this chapter

The Guardian's weekly podcast, *Brexit Means ...* makes excellent listening for Europeans and everyone interested in keeping up with this topic and understanding what is going on since the dramatic Brexit referendum result.

Brazier, Rodney (1999) ‘The Constitution of the United Kingdom’ in *Cambridge Law Journal*, 58(1), March 1999, pp. 96-128 investigates the devolution legislation and its constitutional impact in depth (Advanced level reading).

David, René & Jauffret-Spinosi, Camille *I grandi sistemi giuridici contemporanei*, 5^a ed. italiana, a cura di Rodolfo Sacco (2004), in particular Parte III – La “Common law”, Capitolo III- Fonti del diritto inglese, Sezione II – La legge, pp. 311-317.

Gambaro, Antonio & Sacco, Rodolfo. (2008). *Sistemi giuridici comparati*, 3^a ed. for comparative legal discussion, Capitolo III: La tradizione giuridica occidentale (pp. 31-46) and on languages and translation, Capitolo I: La comparazione giuridica, Sezione III - I problemi di lingua (pp.7-10).

Leyland, Peter (2016) *Constitution of the United Kingdom. A Contextual Analysis* 3rd ed. In particular, Chapter 1: UK Constitution: Context and History (pp.1-23); Chapter 2: The Sources of the Constitution (pp. 25-43); Chapter 4: The Crown and the Constitution (esp. pp. 85-95 and 99-102); Chapter 5: Parliament (esp. pp. 105-119); Chapter 6: Government and Executive (esp. pp. 157-163); Chapter 8: Devolution, Regional Government and Local Government (esp. pp. 243-254).

¹²⁷ Although Art. 50(5) TEU provides that if a state which has withdrawn wishes to rejoin, its application is subject to Art. 49 TEU, i.e. the same procedure as for fresh applicants.

¹²⁸ Winston Churchill (1874-1965), British statesman, in the *Little Oxford Dictionary of Quotations*, 5th ed., 2012, p.322.

**LA PAGINA CHE SEGUE SOSTITUISCE
IL TASK 3 ALLE PAGINE 111/112**

Task 3 Personal knowledge and research – European integration

Using your own knowledge, fill in the blanks to complete the brief summary below of European integration up to the present day.

Check your work and complete the table by referring to the Europa website.

For example: About the EU – History or Countries.

Focus on the language and content of your completed text, then discuss in groups the process of European integration from its origins to the present day and prospects for the future. Do you think the shared background of Christian origins is significant among EU peoples?

Your discussion may lead to further research. For instance, what are the accession criteria (known as the Copenhagen criteria), which prospective new members must meet? Which countries are currently preparing to enter?

The Six The six States which began the process of European integration were the founder members of the three European Communities back in the 1950s: Italy,,, and the Netherlands. These six States were the original signatories in 1951 to the Treaty of Paris, establishing the European Coal and Steel Community and subsequently on 25th March 1957 to the first Treaty of Rome, establishing the European Economic Community and the second Treaty of Rome, founding the European Community of Atomic Energy (Euratom).

The Nine From 1st January 1973, with the first enlargement of the European Communities, three new States became members, signing and ratifying the Treaty of Accession:,, and At this time, English, Irish and Danish became official languages. Norway also signed the Treaty of Accession, but did not become a Member as it failed to ratify the Treaty when 53% of the population voted against EC membership in a referendum.

The Twelve During the 1980s EC membership continued to grow, with the accession of in 1981, followed by and Portugal in 1986. In 1990, the size and population of the EC expanded further, with the incorporation of the East German Bundesländer thanks to the reunification of Germany. A major milestone was marked by the Twelve in 1992, with the signing of the Treaty on European Union in the Dutch town of Maastricht.

The Fifteen During the 1990s, three more European States joined the European Union:, and in 1995. Many other countries, mainly from Eastern Europe, made applications and began long preparations to join.

**LE PAGINE CHE SEGUONO SOSTITUISCONO
L'ULTIMO PERIODO DI PAGINA 124 E PAGINA 125**

(*‘il diritto di voto e di eleggibilità alle elezioni comunali’*). Article 22(2) grants the same two rights in elections to the European Parliament. Paragraph (2) begins *‘Without prejudice to Article 223(1) ...’* This phrase fixes the priority between the two provisions: Article 223(1), which regulates elections to the European Parliament, has priority: it is not affected by Article 22(2). The Italian text reads: *‘Fatte salve le disposizioni dell’articolo 223 paragrafo 1 ...’*

9. In both cases, the rights are qualified: *‘This right shall be exercised subject to detailed arrangements adopted by the Council ...; these arrangements may provide for derogations where warranted’* (justified) by specific problems: *‘Tale diritto sarà esercitato con riserva delle modalità che il Consiglio adotta ...; tali modalità possono comportare disposizioni derogatorie ove problemi specifici di uno Stato membro lo giustificano.’*
10. Article 20(d) gives citizens a direct right to communicate with the EU bodies and a means to resolve specific problems. The *Ombudsman* (see Article 228, *Mediatore*) is appointed by the European Parliament to receive *complaints of maladministration* from citizens, but also from any other natural or legal person residing in a Member State. According to Article 227, the same persons, individually or in groups, *have the right to petition the European Parliament* about any matter in the ambit of the European Union, of direct concern to them. Article 20 also ensures that the language of communication with EU institutions and bodies is chosen by the citizen.⁶²

Comment – EU citizenship

Citizens are clearly an increasingly central priority of the European Union. The first article of the founding Treaty talks of ‘an ever closer union among the *peoples*⁶³ of Europe, in which decisions are taken ... as closely as possible to *the citizen*’. We have seen that one of the primary objectives of the TEU is the introduction of citizenship to strengthen citizens’ rights and ensure greater protection, both within the Union, and in third countries. The Treaty Articles examined in the Task above established citizenship and the special rights attached to it; some of these were added at a later date when the Treaty of Amsterdam came into force in 1999 and citizens’ rights and opportunities have continued to grow, with the Treaty of Lisbon. For example, the *Citizens’ Initiative* offers the chance for citizens from different Member States to join

⁶² For more detailed provisions, see Articles 24, 227, 228 TFEU.

⁶³ *Peoples* is the regular plural of the countable noun *people* – *popolo, popoli*. Cf. *people* – the irregular plural of ‘person’ – *gente, persone*; in legal English ‘persons’ is usually preferred as the plural of ‘person’, e.g. legal persons – *persone giuridiche*.

forces and take the initiative in advancing a request for a legislative proposal from the Commission.

Examine the Treaty article, below. How is the Citizens' initiative designed to work?

Article 11(4) TEU

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

It is also important to underline that all EU citizens *enjoy equal rights*: Article 18 TFEU prohibits any discrimination on the basis of nationality between EU citizens, and many other Treaty articles specifically guarantee equality, using the phrase 'under the same conditions as nationals of that State', as in many articles we have examined in this section. Freedom of movement in Article 21 creates an exciting opportunity for citizens' mobility; not just for tourism, training or studies and not just for work (a freedom established in 1958 with the original Treaty of Rome), but a free choice, in principle, of where to live in the Union.

However, European citizens' rights may be subject to limits: Article 21 TFEU is not designed to permit EU citizens to take up residence in another Member State purely for the purpose of obtaining social security benefits: this is an area where enormous disparity between Member States continues to exist.⁶⁴

If Brexit goes ahead in 2019 (see 2.7, above), nationals of the UK will cease to qualify as citizens of the European Union. As a consequence, around 65 million people will lose the rights granted by the Treaties, examined in these pages. The situations of EU citizens from the other 27 Member States who live in the UK, and that of UK citizens who have settled in another EU country, clearly require special consideration.

⁶⁴ For an interesting analysis, see *Union Citizenship – Background, Jurisprudence, and Perspective: The Past, Present, and Future of Law and Policy* (2007), Elsmore & Starup.