



# European Union (Withdrawal) Act 2018

## 2018 CHAPTER 16

### *Retention of existing EU law*

#### **6 Interpretation of retained EU law**

- (1) A court or tribunal—
  - (a) is not bound by any principles laid down, or any decisions made, on or after [F<sup>1</sup>IP completion day] by the European Court, and
  - (b) cannot refer any matter to the European Court on or after [F<sup>1</sup>IP completion day].
- (2) Subject to this and subsections (3) to (6), a court or tribunal may have regard to anything done on or after [F<sup>1</sup>IP completion day] by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.
- (3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after [F<sup>1</sup>IP completion day] and so far as they are relevant to it—
  - (a) in accordance with any retained case law and any retained general principles of EU law, and
  - (b) having regard (among other things) to the limits, immediately before [F<sup>1</sup>IP completion day], of EU competences.
- (4) But—
  - (a) the Supreme Court is not bound by any retained EU case law,
  - (b) the High Court of Justiciary is not bound by any retained EU case law when—
    - (i) sitting as a court of appeal otherwise than in relation to a compatibility issue (within the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995) or a devolution issue (within the meaning given by paragraph 1 of Schedule 6 to the Scotland Act 1998), or
    - (ii) sitting on a reference under section 123(1) of the Criminal Procedure (Scotland) Act 1995,

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- [<sup>F2</sup>(ba) a relevant court or relevant tribunal is not bound by any retained EU case law so far as is provided for by regulations under subsection (5A),] and
  - (c) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by.
- (5) In deciding whether to depart from any retained EU case law [<sup>F3</sup>by virtue of subsection (4)(a) or (b)], the Supreme Court or the High Court of Justiciary must apply the same test as it would apply in deciding whether to depart from its own case law.
- [<sup>F4</sup>(5A) A Minister of the Crown may by regulations provide for—
- (a) a court or tribunal to be a relevant court or (as the case may be) a relevant tribunal for the purposes of this section,
  - (b) the extent to which, or circumstances in which, a relevant court or relevant tribunal is not to be bound by retained EU case law,
  - (c) the test which a relevant court or relevant tribunal must apply in deciding whether to depart from any retained EU case law, or
  - (d) considerations which are to be relevant to—
    - (i) the Supreme Court or the High Court of Justiciary in applying the test mentioned in subsection (5), or
    - (ii) a relevant court or relevant tribunal in applying any test provided for by virtue of paragraph (c) above.
- (5B) Regulations under subsection (5A) may (among other things) provide for—
- (a) the High Court of Justiciary to be a relevant court when sitting otherwise than as mentioned in subsection (4)(b)(i) and (ii),
  - (b) the extent to which, or circumstances in which, a relevant court or relevant tribunal not being bound by retained EU case law includes (or does not include) that court or tribunal not being bound by retained domestic case law which relates to retained EU case law,
  - (c) other matters arising in relation to retained domestic case law which relates to retained EU case law (including by making provision of a kind which could be made in relation to retained EU case law), or
  - (d) the test mentioned in paragraph (c) of subsection (5A) or the considerations mentioned in paragraph (d) of that subsection to be determined (whether with or without the consent of a Minister of the Crown) by a person mentioned in subsection (5C)(a) to (e) or by more than one of those persons acting jointly.
- (5C) Before making regulations under subsection (5A), a Minister of the Crown must consult—
- (a) the President of the Supreme Court,
  - (b) the Lord Chief Justice of England and Wales,
  - (c) the Lord President of the Court of Session,
  - (d) the Lord Chief Justice of Northern Ireland,
  - (e) the Senior President of Tribunals, and
  - (f) such other persons as the Minister of the Crown considers appropriate.
- (5D) No regulations may be made under subsection (5A) after IP completion day.]
- (6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after [<sup>F1</sup>IP completion day] from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.

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[<sup>F5</sup>(6A) Subsections (1) to (6) are subject to relevant separation agreement law (for which see section 7C).]

(7) In this Act—

“retained case law” means—

- (a) retained domestic case law, and
- (b) retained EU case law;

“retained domestic case law” means any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before [<sup>F1</sup>IP completion day] and so far as they—

- (a) relate to anything to which section 2, 3 or 4 applies, and
- (b) are not excluded by section 5 or Schedule 1,

(as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

“retained EU case law” means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before [<sup>F1</sup>IP completion day] and so far as they—

- (a) relate to anything to which section 2, 3 or 4 applies, and
- (b) are not excluded by section 5 or Schedule 1,

(as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

“retained EU law” means anything which, on or after [<sup>F1</sup>IP completion day], continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time);

“retained general principles of EU law” means the general principles of EU law, as they have effect in EU law immediately before [<sup>F1</sup>IP completion day] and so far as they—

- (a) relate to anything to which section 2, 3 or 4 applies, and
- (b) are not excluded by section 5 or Schedule 1,

(as those principles are modified by or under this Act or by other domestic law from time to time).

#### Textual Amendments

- F1** Words in s. 6 substituted (30.1.2020 for specified purposes, 31.1.2020 in so far as not already in force) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 26\(1\)\(a\), 42\(7\) \(with s. 38\(3\), Sch. 5 para. 66\); 2020 c. 2, s. 2\(11\)\(c\); S.I. 2020/75, reg. 4\(i\)](#)
- F2** S. 6(4)(ba) inserted (30.1.2020 for specified purposes) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 26\(1\)\(b\), 42\(7\) \(with s. 38\(3\), Sch. 5 para. 66\); 2020 c. 2, s. 2\(11\)\(c\)](#)
- F3** Words in s. 6(5) inserted (30.1.2020 for specified purposes) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 26\(1\)\(c\), 42\(7\) \(with s. 38\(3\), Sch. 5 para. 66\); 2020 c. 2, s. 2\(11\)\(c\)](#)
- F4** S. 6(5A)-(5D) inserted (30.1.2020 for specified purposes, 19.5.2020 in so far as not already in force) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 26\(1\)\(d\), 42\(7\) \(with s. 38\(3\), Sch. 5 para. 66\); 2020 c. 2, s. 2\(11\)\(c\); S.I. 2020/518, reg. 2\(l\)](#)
- F5** S. 6(6A) inserted (30.1.2020 for specified purposes) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 26\(1\)\(e\), 42\(7\) \(with s. 38\(3\), Sch. 5 para. 66\); 2020 c. 2, s. 2\(11\)\(c\)](#)

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**Modifications etc. (not altering text)**

- C1** S. 6 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\)](#), **ss. 2(1)(2)(5)-(7)**, 9(3)
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**Commencement Information**

- I1** S. 6(7) in force at 4.7.2018 by [S.I. 2018/808](#), **reg. 3(b)**  
**I2** S. 6 in force at 30.1.2020 for specified purposes by [2020 c. 2](#), **s. 2(11)(a)(b)**

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