



# 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 exit day by the European Court, and
  - (b) cannot refer any matter to the European Court on or after exit day.
- (2) Subject to this and subsections (3) to (6), a court or tribunal may have regard to anything done on or after exit 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 exit 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 exit 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, 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, 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.
- (6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after exit day from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.
- (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 exit 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 exit 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 exit 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 exit 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).