



European Union (Withdrawal Agreement) Act 2020

2020 CHAPTER 1

PART 4

OTHER SUBJECT AREAS

Relationship to EUWA 2018

26 Interpretation of retained EU law and relevant separation agreement law

(1) In section 6 of the European Union (Withdrawal) Act 2018 (interpretation of retained EU law)—

- (a) for “exit day”, wherever it appears, substitute “IP completion day”,
- (b) in subsection (4), after paragraph (b) (but before the “and” at the end of the paragraph) insert—

“(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).”,

- (c) in subsection (5) after “EU case law” insert “by virtue of subsection (4)(a) or (b)”,
- (d) after subsection (5) insert—

“(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

Status: This is the original version (as it was originally enacted).

- (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.”, and
- (e) after subsection (6) insert—
 - “(6A) Subsections (1) to (6) are subject to relevant separation agreement law (for which see section 7C).”
- (2) After section 7B of that Act (general implementation of EEA EFTA and Swiss agreements) (for which see section 6 above) insert—

“7C Interpretation of relevant separation agreement law

- (1) Any question as to the validity, meaning or effect of any relevant separation agreement law is to be decided, so far as they are applicable—
 - (a) in accordance with the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens’ rights agreement, and

- (b) having regard (among other things) to the desirability of ensuring that, where one of those agreements makes provision which corresponds to provision made by another of those agreements, the effect of relevant separation agreement law in relation to the matters dealt with by the corresponding provision in each agreement is consistent.

(2) See (among other things)—

- (a) Article 4 of the withdrawal agreement (methods and principles relating to the effect, the implementation and the application of the agreement),
- (b) Articles 158 and 160 of the withdrawal agreement (jurisdiction of the European Court in relation to Part 2 and certain provisions of Part 5 of the agreement),
- (c) Articles 12 and 13 of the Protocol on Ireland/Northern Ireland in the withdrawal agreement (implementation, application, supervision and enforcement of the Protocol and common provisions),
- (d) Article 4 of the EEA EFTA separation agreement (methods and principles relating to the effect, the implementation and the application of the agreement), and
- (e) Article 4 of the Swiss citizens' rights agreement (methods and principles relating to the effect, the implementation and the application of the agreement).

(3) In this Act “relevant separation agreement law” means—

- (a) any of the following provisions or anything which is domestic law by virtue of any of them—
 - (i) section 7A, 7B, 8B or 8C or Part 1B or 1C of Schedule 2 or this section, or
 - (ii) Part 3, or section 20, of the European Union (Withdrawal Agreement) Act 2020 (citizens' rights and financial provision), or
- (b) anything not falling within paragraph (a) so far as it is domestic law for the purposes of, or otherwise within the scope of—
 - (i) the withdrawal agreement (other than Part 4 of that agreement),
 - (ii) the EEA EFTA separation agreement, or
 - (iii) the Swiss citizens' rights agreement,

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.”