STATUTORY INSTRUMENTS

2020 No. 1525

EXITING THE EUROPEAN UNION

CONSTITUTIONAL LAW

JUSTICE

The European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020

Made - - - - 9th December 2020

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 6(5A)(a), (b) and (c) and (5B)(a) of the European Union (Withdrawal) Act 2018(**a**).

In accordance with section 6(5C) of that Act, the Secretary of State has carried out the necessary consultations.

In accordance with paragraph 9A of Schedule 7 to that Act(**b**), a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020 and come into force on IP completion day.

Interpretation

2. In these Regulations—

"the 2018 Act" means the European Union (Withdrawal) Act 2018;

"post-transition case law" means any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect on or after IP completion day.

Relevant courts

3. For the purposes of section 6 of the 2018 Act, each of the following is a relevant court—

(a) the Court Martial Appeal Court,

(b) the Court of Appeal in England and Wales,

(**a**) 2018 c. 16. Section 6 was amended by section 26(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(**b**) Paragraph 9A was inserted by paragraph 52(2) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020.

(c) the Inner House of the Court of Session,

(d) the High Court of Justiciary when sitting as a court of appeal in relation to a compatibility issue (within the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995(**a**)) or a devolution issue (within the meaning given by paragraph 1 of Schedule 6 to the Scotland Act 1998(**b**)),

(e) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983(**c**),

(f) the Lands Valuation Appeal Court, and

(g) the Court of Appeal in Northern Ireland.

Extent to which a relevant court is not bound by retained EU case law

4.—(1) A relevant court is not bound by any retained EU case law(**d**) except as provided in paragraph (2).

(2) A relevant court is bound by retained EU case law so far as there is post-transition case law which modifies or applies that retained EU case law and which is binding on the relevant court.

Test to be applied

5. In deciding whether to depart from any retained EU case law by virtue of section 6(4)(ba) of the 2018 Act and these Regulations, a relevant court must apply the same test as the Supreme Court would apply in deciding whether to depart from the case law of the Supreme Court.

Robert Buckland
Secretary of State
Ministry of Justice

9th December 2020

(**a**) 1995 c. 46. Section 288ZA was inserted by section 34(3) of the Scotland Act 2012 (c. 11).
(**b**) 1998 c. 46. Paragraph 1 of Schedule 6 was amended by sections 12(2)(a) and 36(4) of the Scotland Act 2012 (c. 11) and S.I. 2011/1043.
(**c**) 1983 c. 2.
(**d**) "Retained EU case law" is defined at section 6(7) of the European Union (Withdrawal) Act 2018.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide which courts are relevant courts for the purposes of section 6 of the European Union (Withdrawal) Act 2018 (c. 16) (the Act). This means that they are not bound by retained EU case law to the extent provided by these Regulations. Retained EU case law is defined under section 6(7) of the Act as any principles laid down by, and any decisions of, the Court of Justice of the European Union, as they have effect in EU law immediately before IP completion day, subject to certain exceptions, as those principles and decisions are modified by or under the Act or other domestic law from time to time.

Regulation 3 provides that the Court Martial Appeal Court, the Court of Appeal in England and Wales, the Inner House of the Court of Session, the High Court of Justiciary (when acting as a court of appeal in a devolution or compatibility issue), the Registration Appeal Court in Scotland, the Lands Valuation Appeal Court and the Court of Appeal in Northern Ireland are relevant courts for the purposes of section 6 of the Act.

Regulation 4 provides that the relevant courts are not bound by retained EU case law, except so far that retained EU case law is modified or applied by any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect on or after IP completion day, which are binding on the relevant courts.

Regulation 5 provides that in deciding to depart from any retained EU case law, the relevant courts must apply the same test as the Supreme Court would apply in deciding whether to depart from the case law of the Supreme Court.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from legislation.gov.uk.

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