Retained EU Case Law

Consultation on the departure from retained EU case law by UK courts and tribunals



# Consultation Questions

Please submit responses marked for the attention of Joanne Thambyrajah by email to Judicial\_Policy\_Correspondence@Justice.gov.uk

**Q1: Do you consider that the power to depart from retained EU case law should be extended to other courts and tribunals beyond the UK Supreme Court and High Court of Justiciary. Please give reasons for your answer.**

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**Q2: What do you consider would be the impacts of extending the power to depart from retained EU case law in each of the options below? Please give reasons for your answer.**

1. **The Court of Appeal and equivalent level courts;**
2. **The High Court and equivalent level courts and tribunals;**
3. **All courts and tribunals.**

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**Q3: Which option do you consider achieves the best balance of enabling timely departure from retained EU case law whilst maintaining legal certainty across the UK. Please give reasons for your answer.**

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**Q4: If the power to depart from retained EU case law is extended to the Court of Appeal and its equivalents, do you agree that the list below specifies the full range of courts in scope?**

1. **Court of Appeal of England and Wales;**
2. **Court Martial Appeal Court;**
3. **Court of Appeal of Northern Ireland;**
4. **The High Court of Justiciary when sitting as a court of appeal in relation to a compatibility issue or a devolution issue; and**
5. **The Inner House of the Court of Session in Scotland.**

**Please give reasons for your answer.**

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**Q5: If the power to depart from retained EU case law is to be extended to the High Court and its equivalents, do you agree that the list of courts below captures the full range of courts in scope?**

1. **The High Court of England and Wales**
2. **Outer House of the Court of Session in Scotland;**
3. **The Sheriff Appeal Court of Scotland in Scotland;**
4. **The High Court of Justiciary sitting at first instance; and**
5. **The High Court in Northern Ireland.**

**Please give reasons for your answer.**

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**Q6: In respect of either option, are there other courts or tribunals to which the power to depart from retained EU case law should be extended? If yes, in what circumstances should this occur? Please give reasons for your answer.**

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**Q7: Do you consider that the courts and tribunals to which the power to depart from retained EU case law is extended should be permitted to depart from retained domestic case law relating to retained EU case law? If yes, in what circumstances should this occur? Please give reasons for your answer.**

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**Q8: Do you agree that the relevant courts and tribunals to which the power is extended should be bound by decisions of the UK Supreme Court, High Court of Justiciary and Court of Appeal and its equivalents across the UK where it has already considered the question of whether to depart from retained EU case law after the end of the Transition Period, in the normal operation of precedent? Please give reasons for your answer.**

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**Q9: Do you agree:**

1. **that the test that should be applied by additional courts or tribunals should be the test used by the UK Supreme Court in deciding whether to depart from its own case law?**
2. **that this test is capable of being easily understood and applied across the jurisdictions by reference to the relevant case law?**

**Please give reasons for your answers. If you do not agree, what alternative test do you consider should be applied? Please give reasons for your answer.**

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**Q10: Are there any factors which you consider should be included in a list of considerations for the UK Supreme Court, High Court of Justiciary and other courts and tribunals to whom the power is extended to take into account when deciding whether to depart from retained EU case law? Please give reasons for your answer.**

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**Q11: As part of this consultation process, we would also like to know your views on how these proposals are likely to impact the administration of justice and in particular the operation of our courts and tribunals.**

1. **Do you consider that the changes proposed would be likely to impact on the volume of litigation started in UK courts and tribunals? Please specify where, in your view, this would occur and why?**
2. **Do you consider that the changes proposed would be likely to impact on the type of litigation started in UK courts and tribunals? Please specify where, in your view, this would occur and why?**
3. **Do you consider that the changes proposed would be likely to have more of an impact on particular parts of the justice system, or its users? Please specify where this might occur and why.**
4. **Do you consider that the changes proposed would have more of an impact on individuals with particular protected characteristics under the Equalities Act 2010? Please specify where this might occur and why.**

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**Q12: Do you have any other comments that you wish us to consider in respect of this consultation.**

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**Thank you for participating in this consultation.**

# About you

Please use this section to tell us about yourself

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| **Full name** |  |
| **Job title** or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.) |  |
| **Date** |  |
| **Company name/organisation** (if applicable): |  |
| **Address** |  |
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| **Postcode** |  |
| If you would like us to acknowledge receipt of your response, please tick this box | [ ] (please tick box) |
| Address to which the acknowledgement should be sent, if different from above |  |
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**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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