



Official Sensitive

Sir Bob Neill MP
Chair of the Justice Select Committee
House of Commons
London
SW1A 0AA

14 October 2020

Dear Bob,

CONSULTATION RESPONSE ON RETAINED EU LAW

You will be aware that the consultation on which courts and tribunals should have the power to depart from retained EU case law closed on 13th August 2020. We received 75 responses in total and I would like to take this opportunity to thank you for your response.

Having considered the consultation responses in full, I am satisfied that it is appropriate to introduce regulations to extend the power to depart from retained EU case law to additional courts, specifically to the Court of Appeal in England and Wales, the Court of Appeal of Northern Ireland; the High Court of Justiciary when sitting as a court of appeal in relation to a compatibility issue or a devolution issue; the Inner House of the Court of Session; the Lands Valuation Appeal Courts in Scotland; and the Registration Appeal Court in Scotland. I believe this option achieves the Government's objective of enabling greater opportunity for case law to evolve, where appropriate, following our departure from the EU, than the status quo, while minimising the risks outlined in the consultation responses received, that extending the power too widely may risk legal and by extension economic uncertainty.

On 15 October, I will therefore be laying down in Parliament Regulations which designate the Court of Appeal in England and Wales and its equivalents named above in other jurisdictions of the UK, as courts able to exercise the power to depart from retained EU case law, and when doing so, apply the UK Supreme Court test, namely whether it is right to do so. I am mindful that the UK Supreme Court test is underpinned by a wealth of case law in its application and interpretation, which underlines that the need for certainty.

The Regulations will preserve the normal operation of precedent between decisions of UK courts, by making it clear that the courts listed above will be bound in the normal way by a decision of another court which would normally bind them on whether or not to depart from retained EU case law. They do not allow courts to depart from retained domestic case law which relates to retained EU case law in circumstances where they would not otherwise be able to.

The Regulations do not provide for any transitional provisions to prevent issues on the departure from retained EU case law being raised within proceedings already before the courts. The incorporation of transition provisions in respect of these additional courts would be inconsistent with the powers available to the UK Supreme Court where such issues can be raised immediately within on-going proceedings. I therefore do not consider it appropriate for different principles to apply to these additional courts to whom the power to depart from retained EU case law is to be extended.

I attach an advance, embargoed copy of the Government response to the consultation for your information. This will be published on 15 October and will be accessible here:

<https://www.gov.uk/government/consultations/departure-from-retained-eu-case-law-by-uk-courts-and-tribunals>.

I thank you again for your response to this consultation and would be willing to discuss any questions you may have with you further if helpful.

Yours ever

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly informal style.

RT HON ROBERT BUCKLAND QC MP