

The European Court of Justice and the United Kingdom's departure from the European Union

1973 – 2020 – The UK as a member of the EU



- ❖ Whilst the UK was a member of the EU, the ECJ held the highest authority in interpreting EU treaties and directives.
- ❖ The ECJ held supremacy over the UKSC. This meant that the ECJ could overrule decisions made by the UKSC on matters of European Law.
- ❖ Courts in the UK were obligated to follow decisions made by the ECJ when deciding related cases.

2020 – The Brexit Agreement and the UK's departure from the EU



- ❖ In December 2020, the UK and the EU reached the Brexit Trade and Cooperation Agreement. This included a trade deal.
- ❖ The UK became free to amend laws, but major deregulation (such as impacting fair trade) could prompt EU disputes or punitive tariffs.

From 1 January 2021 – The UKSC regained full authority over UK law



- ❖ The ECJ ceased to have a constitutional role in the UK and the UKSC regained full supremacy over UK law.
- ❖ This means that new and future ECJ rulings are no longer binding on UK Courts (there are some exceptions for Northern Ireland).
- ❖ However, some decisions made by the ECJ before the UK left the EU still apply. This is because these decisions have yet to be overturned by changes in UK law.

REUL 2023 – EU laws remain in the UK statute books until repealed



- ❖ The Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023 (REUL) were brought forward to state that almost all existing EU law remained in the UK statute book unless (and until) it is repealed or amended by a future government.
- ❖ Some examples of retained provisions include:
 - Details of records needed for the purpose of Working Time calculations;
 - The permission of the practice of rolled-up holiday pay for irregular hour and part of the year workers;
 - The allowance of a holiday entitlement accrual and payment method of 12.07% of hours worked for irregular hour and part of the year workers; and
 - The definition of a 'normal' pay rate for the calculation of the first four weeks of statutory leave.
- ❖ Some EU law remains good law as it has yet to be repealed or amended. EU law cannot be entirely disregarded.

From 1 January 2024 – Key changes



- ❖ Existing rulings of the ECJ on points of principle are now challengeable in the UK courts.
- ❖ For example, employment tribunals and the Employment Appeal Tribunal can refer matters to the Court of Appeal or UKSC. The courts can then affirm the continuation of the existing ECJ ruling, amend it or abolish it.
- ❖ When making this type of decision, the judges must interpret the existing rulings in a manner which is consistent with UK law.
- ❖ The process in changing points of principle can take many months or years to complete.
- ❖ The most likely points of employment law to be adapted are in cases where the ECJ has overturned UK courts in the past.