**The Supreme Court and Europe**

**What is the relationship between the UK Supreme Court, the European Court of Human Rights, and the Court of Justice of the European Union?**

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The Human Rights Act 1998, which came into force in October 2000, made available, for the first time, a remedy for breach of the European Convention on Human Rights in the UK courts. This means that, in appropriate cases, all UK courts, including the Supreme Court, are tasked with deciding whether public bodies have acted compatibly with the European Convention on Human Rights. In addition, through the Human Rights Act, Parliament imposed on all UK courts, including the Supreme Court, a duty to interpret legislation so as that it is compatible with the European Convention on Human Rights, so far as it is possible to do so. If it is not possible to interpret legislation compatibly with the Convention, the courts can issue a "declaration of incompatibility" – which sends a clear steer to legislators that they should change the law to make it Convention-complaint. No UK court, including the Supreme Court, has the power to "strike down" legislation if it is incompatible with the European Convention on Human Rights.

The Human Rights Act also requires UK courts, including the Supreme Court, to "take account" of decisions of the European Court of Human Rights (which sits in Strasbourg). UK courts are not required, however, always to follow the decisions of that Court. Indeed, they can decline to do so, particularly if they consider that the Strasbourg Court has not sufficiently appreciated or accommodated particular aspects of our domestic constitutional position.

The European Convention on Human Rights and the European Court of Human Rights exist separately from the European Union. The Supreme Court's relationship with the Strasbourg Court is not, therefore, changed by the UK's exit from the European Union.

The relationship between the UK Supreme Court and the Court of Justice of the European Union (which sits in Luxembourg) has, however, changed. Two key changes are provided for in the European Union (Withdrawal) Act 2018 and related legislation.

First, the UK courts, including the Supreme Court, are not bound by decisions of the Court of Justice of the European Union made after 11pm on 31 December 2020. The UK courts, including the Supreme Court, may have regard to the Luxembourg Court's decisions if relevant, but they are not generally obliged to follow them.

The Supreme Court (and some other UK appellate courts) are also free to depart from decisions of the Court of Justice of the European Union taken before 11pm on 31 December 2020. In deciding whether or not to depart from this retained EU case law, the courts will apply the same test that the Supreme Court applies when deciding whether to depart from its own case law. This means that the Supreme Court (and other relevant UK appellate courts) will depart from a previous decision of the Luxembourg Court where it appears right to do so.

Secondly, from 11pm on 31 December 2020, all UK courts, including the Supreme Court, are no longer able or required to refer certain questions of European Union law to the Court of Justice (through what is known as the "preliminary reference procedure"). There are some limited exceptions to this. For example, the UK courts, including the Supreme Court, continue to be able to refer questions to the Court of Justice of the European Union about the interpretation of the citizens' rights provisions in Part 2 of the EU-UK Withdrawal Agreement.