



Stakeholders' Newsletter

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Ministry of Justice Consultation—Departure from retained E.U. case law by U.K. courts and tribunals

The European Union (Withdrawal) Act 2018 (“the 2018 Act”), as amended by the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”) sets the legal framework following our departure from the EU and after the end of the Transition Period on 31 December 2020. The legislation sets out how retained EU law is to be interpreted, including the extent to which the case law of the Court of Justice of the European Union is retained and should be followed by UK courts and tribunals.

The Ministry of Justice has issued a [Consultation](#) on the use of the power contained within section 6(5A) of the 2018 Act, (as amended by the 2020 Act), which enables the Government to designate additional courts or tribunals with the power to depart from retained EU case law; specify “the extent to which, or circumstances in which,” the court or tribunal “is not to be bound by retained EU case law”; set out the test which a relevant court or tribunal “must apply” in deciding whether to depart from any retained EU case law; and specify considerations which “are to be relevant” to the court or tribunal in coming to such decisions.

The FMLC has resolved to respond to the Consultation.

HM Treasury Consultation on the transposition of BRRD II

HM Treasury has published a [Consultation](#) on the transposition of the Bank Recovery and Resolution Directive II (“BRRD II”). BRRD II makes amendments to the BRRD in order to update the E.U.’s resolution policy and Minimum Requirements for Own Funds and Eligible Liabilities (“MREL”) framework.

The Committee has decided to submit a response drawing attention to the uncertainties in respect of resolution groups, the selling of eligible liabilities to retail clients and the contractual recognition of stay powers under Article 71a, as well as reiterate points made previously by the FMLC in connection with [Article 59](#).

Contacting the Secretariat Email: contact@fmlc.org Telephone: +44 (0)20 7601 5118

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