

Scotland's Continuity Bill referred to the Supreme Court

The UK government has announced today that the most senior UK Law Officers, the Attorney General, Jeremy Wright QC and the Advocate General for Scotland, Lord Keen are referring the Continuity Bill passed at Holyrood and similar legislation passed by the National Assembly for Wales to the Supreme Court.

The purpose of the referral is to ask if the laws proposed are constitutional and within the competence of the devolved administrations. The power to refer such legislation to the Supreme Court is exercisable by the Law Officers in the public interest.

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill was introduced to make provisions for continuity of law after withdrawal from the EU.

As it stands there are three legislative powers in Scotland : the EU, Westminster and Holyrood. When the UK quits the EU next year there has to be some way in which the powers used by Brussels are repatriated to either the UK or Scottish governments. The Scottish Parliament is adamant that the powers have to be given back to the devolved administration at Holyrood where appropriate.

Just ahead of the Continuity Bill being discussed at Holyrood at the end of February, Michael Russell, Minister for UK Negotiations on Scotland's Place in Europe, stated in the Chamber that the UK Parliament could still 'restrict the Scottish Parliament's powers unilaterally, through an order made in the UK Parliament, without requiring the consent of either the Scottish Parliament or Government.' He claimed this was unacceptable to both the Scottish and Welsh governments.



Announcing the decision today to take legal action, the Attorney General, Jeremy Wright QC MP said: “This legislation risks creating serious legal uncertainty for individuals and businesses as we leave the EU. This reference is a protective measure which we are taking in the public interest. The Government very much hopes this issue will be resolved without the need to continue with this litigation.”

Advocate General for Scotland Lord Keen said: “By referring the Scottish Parliament’s Continuity Bill to the Supreme Court, we are seeking legal certainty as to its competence. Given the Presiding Officer’s view at introduction that the Bill was not within the legal scope of the Parliament, we believe it is important to ask the Court to provide absolute clarity. In doing so we are following the process set out in the Scotland Act 1998. Particularly in the run up to Brexit, it is vital that we avoid legal uncertainty in our statute book.”

The two Bills – the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, and the Law Derived from the European Union (Wales) Bill – passed through the Scottish Parliament and Welsh Assembly on 21 March this year.

Presiding Officer and Lord Advocate take opposing views

The Scottish legislation was passed notwithstanding the Presiding Officer’s view that it was not within the competence of the Scottish Parliament to do so, although the Lord Advocate James Wolffe QC disagreed with that position when he addressed Holyrood at the end of February in an unprecedented move.

The Lord Advocate said then : “The Scottish Government has been clear that its preferred position is a single piece of

United Kingdom legislation to which the Scottish Parliament could consent: that remains the position. However, that is not the point that we are at. That is the context in which the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill has been introduced.

“The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill has been drafted by skilled parliamentary draftsmen in such a way that, as far as possible, the approach aligns with the approach that is taken in the United Kingdom Government’s European Union (Withdrawal) Bill.”

At the conclusion of Stage 3 of the European Union (Legal Continuity) (Scotland) Bill in Holyrood Donald Cameron Conservative MSP for the Highlands and Islands referred to Ken Mackintosh’s position and said : “There has been much talk about the devolution settlement. One does not protect that settlement by defying the Presiding Officer on legislative competence, by railroading the bill through Parliament on the false pretence that it is some kind of national emergency or by imperilling negotiations between our Governments at a critical time by passing this wretched, reckless and lamentable legislation.”

Michael Russell said : “We should insist that the UK Government listens to and recognises the views of Scotland and the need for differentiation. We should find ways to preserve our membership of the single market and the customs union as the least bad option, and we should never give up on the obligation to observe the mandate of the 2016 referendum, in which Scotland rejected Brexit.”

Referring to the emergency timetable by which this legislation was passed in under a month Mr Russell continued : “It has been a long three and a half weeks. It has been a long few months as the possibility of the bill became more and more likely. However, there is much still to be done, and there is a key message that needs to go out from this chamber: Brexit

is bad for Scotland. We need to go on making that point, because it is the basic point.

“We need to stop the damage that Brexit is likely to do to Scotland, and we need to make it absolutely clear that those people who seek to impose Brexit on a country that did not vote for Brexit are the people who are doing down Scotland, damaging Scotland and damaging every sector of Scotland. By their works you will know them, and the works are the works of the Tory party.”

Scottish Government Comment

Today Michael Russell repeated that Scottish Ministers are satisfied that the Continuity Bill is within the legislative competence of the Scottish Parliament.

Mr Russell said: “The Continuity Bill was passed by 95 votes to 32 in the Scottish Parliament, that is an overwhelming majority. Scottish Ministers are satisfied that the Bill is within legislative competence.

“The Lord Advocate will be arguing in the Supreme Court that it is within the powers of the Scottish Parliament to prepare for the consequences for devolved matters of UK withdrawal from the European Union.

“Our Continuity Bill is an important and necessary piece of legislation to prepare Scotland’s laws for Brexit while protecting the powers of the Scottish Parliament that people voted for.

“The Scottish Government has made clear it cannot recommend the Scottish Parliament consent to the Withdrawal Bill in its current form.

“Alongside the Welsh Government, we have always said our preference would be to reach an agreement with the UK Government to amend the EU Withdrawal Bill to respect the

powers of the devolved administrations and both Governments are ready to continue meaningful talks to further discuss potential solutions.

“While the Scottish Government is not opposed to UK-wide frameworks in certain areas when these are in Scotland’s interests, this must only happen with the agreement of the Scottish Parliament.”

Liberal Democrat comment

Scottish Liberal Democrat Europe spokesperson Tavish Scott MSP said: “British businesses and citizens deserve legal certainty and assurances about how they can move forward after exit day. In all this jostling for power and attention the UK and the Scottish Governments have failed to reach a compromise and left the British economy in the lurch.

“Throughout this process I have stressed the importance of co-operation and collaboration between the Scottish and UK governments. This should all have been signed, sealed and delivered in the Commons long ago, before it was allowed to descend into a battle of wills.

“We need a settlement that works for businesses and people across the UK, something both governments have so far failed to achieve.”

Scottish Labour Shadow Cabinet Secretary for Brexit, Neil Findlay MSP said: “The Tories’ absolutely shambolic handling of the EU Withdrawal Bill is now heading to the courts, and unless the UK Government fixes this mess, the UK is heading towards a constitutional crisis.

“The EU Withdrawal Bill, as currently drafted, is fundamentally flawed and rides roughshod over the devolution settlement delivered by the last Labour government.

“The Tories gave commitments to fix this and have failed to deliver on their commitment. They caused the problem – they have a duty to fix it.

“The people of Scotland deserve better than two governments

snarling at each other in the Supreme Court. David Mundell and Ruth Davidson need to stop burying their heads in the sand and urgently fix this mess. A failure to do so would be completely unacceptable.”