

Inner House unanimously decides prorogation of Parliament is 'unlawful'

The Inner House of the Court of Session in Edinburgh has unanimously decided that the Prime Minister's advice to HM the Queen that the UK Parliament should be prorogued because it had the purpose of stymying Parliament.

The decision by three appellate judges, Lord Carloway, Lord Brodie and Lord Drummond Young in the 'Brexit' case brought by 70+ politicians was delivered in Edinburgh this morning.

Joanna Cherry QC MP who was lead petitioner said this morning that Parliament should go back and get on with its job. She also pointed out that the fact that parliament is not sitting means that the government is breaking the law.

Ms Cherry said: "Today's ruling of the highest court in Scotland that Boris Johnson's plans to shut down the UK Parliament ahead of Brexit are unlawful and unconstitutional is a huge victory and a vindication of our case. The prorogation must now be stopped.

"The court agreed it is unlawful to suspend the UK Parliament for the specific purpose of preventing Parliament from scrutinising the Brexit process and holding this shambolic Tory government's extreme Brexit plans to account.

"We have uncovered more and more evidence that this was a plot

by Boris Johnson and his cronies to prevent us from stopping them taking Scotland and the UK off a Brexit cliff edge by forcing through a damaging no-deal against the will of Parliament.

“This ruling takes us one step closer to ensuring the UK government cancels their shameful prorogation and blatant plot to force through an extreme Brexit. Boris Johnson cannot be allowed to break the law with impunity.”

This was an appeal to the Inner House of the Court of Session. It followed the decision issued last week when the Lord Ordinary, Lord Doherty, refused to grant an interim order to stop the suspension of parliament which began in the early hours of yesterday morning. Lord Doherty considered that the PM’s advice to HM the Queen on prorogation was as a matter of high policy and political judgement non justiciable.

Scotland’s highest court of appeal has decided that the prorogation of the UK parliament by Prime Minister Boris Johnson is itself ‘unlawful’. The case will now proceed to the UK Supreme Court (along with two other court cases raised in England) as the government has indicated it will immediately lodge an appeal. Three days have been set down for that appeal next week in London.

Lord Carloway said in court :”The court is conscious that its view differs from that of the Divisional court of the Queen’s Bench Division in England and Wales. The matter is likely therefore to require resolution by the UK Supreme Court. This morning the court does not propose to make any ancillary orders pending that resolution and therefore it will reserve all incidental or related matters until determination by that court. It will however hear parties on the question of permission to appeal.”

Lord Carloway said in his decision that although advice to HM the Queen on the suspension of parliament was not reviewable

on the normal grounds of judicial review it would nevertheless be unlawful if its purpose was to stymie parliamentary scrutiny of the executive. He also said that the circumstances in which the advice was proffered and the content of the documents produced by the government demonstrated that this was the true reason for the prorogation. (By documents he referred to the redacted memos and emails produced at the Court of Session last week.)

Scottish Greens Parliamentary Co-Leader Patrick Harvie MSP said: "We'll all need to study the detail of this ruling, but it seems clear that the criticism of Boris Johnson's decision to shut down Parliament has been vindicated, and we therefore support the demand to recall Parliament.

"It's extraordinary that the UK Government – even one which has descended ever further into minority status – should have the power to replace the Prime Minister, set the parliamentary agenda and even force MPs to pack up and go home to avoid being held to account. No Scottish Government would have the legal ability to act in this dictatorial manner. The present crisis has highlighted the urgent need for a modern, democratic constitution which prevents the abuse of power by dangerous extremists like Boris Johnson."