

# Back to the Court of Session on Brexit on Monday

There have been several court cases raised as a result of the ongoing debate and impasse on Brexit. One of these, the Vince case, was raised in the Court of Session last month and there was no decision. But the court said it would reconvene tomorrow Monday 21 October 2019 to make a decision.

The petitioners asked for a decision using the *nobile officium* or equitable jurisdiction of the court asking that the court stepped in to ensure the terms of the Benn Act were adhered to. One of these requirements was that the Prime Minister had said openly that he would not seek an extension which would have directly breached the terms of the Benn Act.

The Benn Act is more formally called the European Union (Withdrawal) (No 2) Act 2019 and demands that the Prime Minister seeks an extension to Brexit if no deal has been struck. To do that he must send a letter to the President of the European Council, Donald Tusk. The *nobile officium* would allow the court to find a resolution to a legal matter if none exists in law, so the court might have sent the letter on behalf of the PM.

At the eleventh hour on Saturday night the Prime Minister did send not one, but three, letters to Donald Tusk.

It is now open to the court to decide if the Prime Minister has complied with the whole terms of the act. They did not

feel it necessary to do so even though there were no sworn statements from the Prime Minister confirming that he would comply with the law. They did not have any grounds for thinking he would not.

The delay in the Inner House taking any decision in this case has allowed the government to agree a deal with the EU and bring it to the House of Commons meantime.

That happened yesterday at Westminster but there was no vote on the deal as an amendment lodged by Sir Oliver Letwin was passed, making it impossible for parliament to vote on the Brexit deal until all legislation is drafted first.

The Court of Session will therefore convene in Edinburgh tomorrow to decide if any of the three orders require further action by the court.

This could be any or all of the following : an interdict preventing the UK Government from taking any action that would undermine or frustrate the will of Parliament as expressed in the 2019 Act; or specific performance of the Prime Minister's duties under the 2019 Act; and interdict preventing the Government from withdrawing, cancelling or otherwise undermining the effect of any letter sent in accordance with the Act.

Joanna Cherry QC MP is one of the parties to the Vince case. She said: "I am delighted that the combination of the Benn Act, the legal action taken in Scotland by Dale Vince, Jolyon Maugham and myself and Parliament's support for the Letwin amendment has forced the PM to climb down and to request an extension of the Article 50 negotiation period.

"Despite his childish trick of not signing the letter and sending a contradictory covering letter, the EU, who are the grown-ups in the room, have accepted the request and are considering it.

"I am quite convinced that Boris Johnson would not have sought the extension had he not been forced by the court action to promise the highest court in Scotland that he would.

"Of course he is not renowned for keeping his word and that is why the court continued our case until tomorrow, the first working day after the Benn Act deadline expired. The court will want to know what has happened and our legal team are instructed to update them fully.

"Our legal team are also instructed to remind the court that as well as promising to comply with the letter of the Benn Act the PM also promised not to seek to frustrate the purpose of the legislation. It will be for the court to decide whether his actions in failing to sign the letter of request and sending a letter setting out his contrary intentions are in breach of the undertakings he gave them or a contempt of court.

"The only motion we will make is to continue the case to later this week to ensure that the PM complies with his further obligations under the Benn Act, to agree to any extension proposed by the European Council in response to his letter and not to otherwise frustrate the purpose of the Benn Act."



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