

Scottish Government calling for judicial review of Section 35

The Social Justice Secretary Shirley-Anne Somerville announced last week that the government will challenge the right of the Secretary of State for Scotland, Alister Jack, to use the Section 35 procedure in stopping a bill passed by the Scottish Parliament in December.

The fact that this bill was the Gender Recognition Reform Bill which already had much discussion on all sides, has compounded the government's difficulty in allowing the bill to be summarily dismissed. This is the first time that the UK Government has ever used the procedure drafted into the Scotland Act by Labour First Minister Donald Dewar as the Parliament was being reestablished in 1998.

The Presiding Officer, Alison Johnstone, would not comment on the substance of the application for judicial review but she agreed it is a matter of parliamentary process.

Ms Johnstone said: "It is a process that exists. There is provision under the Scotland Act 1998 for the UK Government where it believes that a bill may have an impact on a reserved

matter, and Section 35 enables them to prevent a bill of the Scottish Parliament going forward for Royal Assent. Normally I would write to His Majesty after a bill has been passed by The Scottish Parliament but in this instance that won't be happening because Section 35 means that the bill is now stopped at this point.

“The Scottish Government are pursuing judicial review at the moment and certainly it would not be appropriate for me to comment any further, but I think that what is really important is that both parliaments continue to communicate effectively so that we can ensure that we're making the most of our opportunities to scrutinise legislation and to undertake our duties in the most effective way possible. It is important that I don't involve myself in any policy discussions, but these are matters of process.”



I asked several Scottish politicians I met at Tartan Week in New York for their views.

Scottish Conservative leader, Douglas Ross, said: “I think

this is a piece of legislation that was enacted by Labour politicians at the time the 1998 Act went through Parliament, and it's the only time it has been used because this is a serious issue, looking at protecting women and girls rights. And I think that's why the UK Government were correct to take this approach.

"I think that's why the vast majority of people in Scotland agree with the UK Government on this on our the news done quite angry that Humza Yousaf and one of his first major decision does First Minister has agreed to challenge this in court, as I say a cost to taxpayers in Scotland."



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Pete Wishart MP PHOTO Martin P McAdam

Pete Wishart MP said: “This was a piece of legislation that was heavily scrutinised in the Scottish Parliament and was passed by a supermajority member to the Scottish Parliament, which is facing unprecedented challenges under Section 35 . If our parliament is worth anything it’s worth defending, and it’s worth respecting the laws that have been passed, We’ll know exactly whether this is going to be a routine use of the Section 35 order if it’s an exception, but we will defend it vigorously.

“There’s so much at stake in all of this. And this is the fear that we’ve got, regardless of the virtues of the case about gender reform, constitutionally, this is so important that we defend and protect the rights of our parliament to make these types of laws.”

Ian Murray MP said: “I think it is going to be a waste of more public money. Rather than throwing lawyers and throwing money at the courts, they would be better to get together and try to find a workable solution. That is what we will be calling

for.

“We really need to separate I think the constitutional issue here from the substance of the issue. The substance of the issue has to be resolved by both governments coming together. And the technical issue around the constitutional use of Section 35, we will defend on the basis that is there and is designed to make the constitution work.”

Asked if the use of the section 35 procedure threatens devolution and the devolved government, Murray responded: “Well, actually, it was designed by Donald Dewar to ensure the Scottish Parliament could legislate freely without undue worry about cross border issues. And the reason it’s never been used before, is because it’s designed for both governments to come together to resolve cross border disputes. There’s no doubt that any devolved area, whether it be a nation like Scotland or a regional assembly across England, if they’re making laws and legislation to deal with the people that they represent, they may have spillover and it’s designed to ensure that they can resolve those spillover issues. So until that’s resolved, this is just going to be more public money down the drain in the courts.”

