

# Brexit constitutional stand-off reaches UK Supreme Court

Steve James  
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A case provisionally due to reach the UK Supreme Court on July 24 marks an unprecedented escalation of tensions between the Conservative central government and the Scottish National Party (SNP) in Edinburgh. It is the first time a disagreement between Westminster and Holyrood has reached the Supreme Court.

At issue are powers due to be handed back to Britain from the European Union (EU), when the UK quits the bloc, over matters such as food labelling, agriculture, fishery management and public procurement. Authority over these lucrative sectors of the economy, although currently in the hands of the EU, legally resides with the Scottish parliament and the Cardiff-based Welsh Assembly, under the terms of the UK's devolution settlement of 1999.

The British government of Conservative Prime Minister Theresa May wants the powers to be repatriated to London, leading to complaints of a "power grab." In March this year, Edinburgh and Cardiff passed emergency continuity legislation to ensure that, post Brexit, control over the contested sectors lapsed to the devolved administrations rather than Westminster. The legislation gave Scottish and Welsh ministers authority to maintain regulatory regimes in line with the EU.

In the event of a "hard" Brexit, followed by a growing customs and trade divergence between Britain and the EU, the result of Scotland or Wales using these powers would be to create differing regulatory environments within the UK. This would effectively break up the UK internal market.

The British government referred both the Scottish and Welsh bills to the Supreme Court, in the hope that the legislation would be struck down as outside the competence of the devolved administrations. For the moment, all three governments agree that regulatory alignment within the UK should be retained.

At issue is the question of where the powers reside.

The Welsh government led by Labour's Carwyn Jones accepted an offer from London that the repatriated powers could be transferred to London for a period of seven years. Any subsequent changes, however, would need the agreement of the Welsh Assembly. The Supreme Court action on the Welsh dispute was dropped.

## Brexit tensions coming to a head

However, the Scottish government, led by the SNP's Nicola Sturgeon, rejected the same terms, tweeting "Scottish Parliamentary powers on vital matters could be restricted for up to seven years without our consent."

The stand-off is only the latest expression of the escalating tensions in the aftermath of the UK vote to leave the EU. It risks becoming a conflict not only between England, Scotland and Wales, but between London and Brussels as Edinburgh and Cardiff seek to maintain their own trading

relations with the EU.

If Scotland's Continuity Bill is upheld by the Supreme Court, the powers transferred from Brussels will go to Edinburgh, thereby handing Scotland powers over the British internal market. If not, Westminster will be able to legislate for the whole of the UK without Scottish agreement, which will call the entire "consensus" basis of devolution into question.

The row coincides with the launch of a series of campaigns seeking a second referendum in Britain, either on the terms of any final Brexit deal, or on the decision to leave.

The Tory government is in the grip of a faction of the British ruling class intent on leaving the EU to pursue a low-tax, low-regulation, cut-throat investment-oriented economy at the expense of the working class. Other factions, including those around former Labour Prime Minister Tony Blair and sections of all the major parties, no less committed to low taxes and attracting investment and likely numerically-dominant, see British interests as best met through membership of the EU.

In Scotland, all parties besides the Tories support the EU. In addition, 40 "civil society figures," including academics, business figures and politicians recently signed a declaration "to work with and support people and organisations of all political views and of none to maintain our European Union membership."

Lord Kerr of Kinlochard, former British diplomat, former director of Rio Tinto and currently a director of the £581 million [\$US 778 million] Scottish American Investment Trust warned, "I think we are very close to a constitutional crisis, I have no idea how it is going to play out, it just feels to me very serious."

## Nationalist divisions

While most of the Scottish ruling elite and its government back continued British EU membership, the SNP and its allies are deeply divided over how best to exploit the Brexit crisis to push for greater independence from Britain.

Tensions have been building since the 2016 Brexit vote. Scotland voted by 62 to 38 percent to remain in the EU, while across Britain 52 percent voted to leave.

The SNP pointed to the claim made by the victorious "No" camp during the 2014 referendum on Scottish independence, that opposing independence would mean that Scotland remained in the EU. The Brexit vote, the nationalists claimed, turned this inside out, with Scotland facing being forced out of the EU despite having voted, in 2014, to maintain the union with England.

Brexit, therefore, gave a boost to nationalist aspirations for a second independence poll. Immediately after the Brexit result, Sturgeon announced that another such vote was indeed "on the table." In 2017, just

before May triggered Article 50, Sturgeon announced plans for a new referendum sometime in 2018 or 2019. This followed the British government's rejection of the SNP's proposals to ensure, on behalf of Scottish-based business, continued access to the European Single Market.

Ever since, the SNP have been rowing back on the timing of another independence vote, and the party and its allies are increasingly divided.

The SNP and the broader nationalist milieu have long based their perspective for Scottish independence on EU membership, but the EU has never reciprocated by encouraging Scottish separatism. After the Brexit vote, Sturgeon's journeys around European capitals seeking sympathy met with little interest as EU states sought to avoid encouraging separatist movements across the continent. Last year, the EU looked the other way while the Spanish government brutally suppressed the Catalan government's declaration of independence. Catalan ministers remain international exiles.

As a result, the SNP leadership aims to postpone another independence vote at least until after the terms of a Brexit deal are revealed. Essentially, the party leadership views the threat of a new poll as a bargaining chip with Westminster.

In addition, the economic case for independence is weaker even than in 2014. A recent report from the SNP's Sustainable Growth Commission by Andrew Wilson outlined a perspective for post-independence Scotland based on deep spending cuts and a squeeze in public finance. The report noted that some £13.5 billion more was spent on public spending in Scotland than was raised in tax. Public spending, the report admits, is £1,437 higher per person in Scotland than across the UK thanks to subventions from Westminster under the Barnett formula.

To offset this, the Wilson report focused on "productivity, population and participation"—all of which should be increased to allow Scotland to emulate Denmark, Finland or New Zealand in the struggle for global investment and international sales.

The SNP is now acknowledging that, to be viable in today's global market conditions, independence must be based on a sharp increase in the exploitation of the working class through lower wages and further social cuts. The report also noted that an independent Scottish government would have to be prepared to bail out its own banks at government expense, requiring yet more transfers from workers and public spending to a newly formed central bank.

John Kay, one of Sturgeon's advisers, told the *Financial Times* that "the report belies the leftist image of Scottish politics..."

The SNP is a right-wing, tax-cutting party of austerity, which has only been able to masquerade as a left formation because of the political cover provided by the various pseudo-left groups that orbit around it.

The same report has therefore caused a crisis within those groups who have for years marketed Scottish separatism as the basis for a left-reformist agenda. The Scottish Socialist Party recently complained in an "Open Letter to the Yes Movement" that the report "has been written to reassure bankers and businessmen that little will change with independence; that we will keep the pound, keep the neo-liberal economic dogma that has failed our people, keep the austerity imposed upon us by corrupt and reckless banking practices, continue with the privatisation of our public services and industries."

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The SNP's support is being challenged, particularly among young people and in the local authority areas it controls. Seeking to cash in on the left credentials of Jeremy Corbyn, Labour's new leader in Scotland, Richard Leonard, has worked to rhetorically position the party somewhat to the left of the SNP.

Labour is seeking to take advantage of a broad, international, leftward shift in the working class, which it can in no sense satisfy. As in England, there have recently been a series of strikes and strike votes against low

wages and poor pension provision.

Sensing that their window of opportunity is closing, a section of the nationalists, backed by the pseudo-left, are seeking to pressure the SNP into calling a new independence referendum as soon as possible.

The largest demonstration yet seen supporting Scottish independence took place May 5 in Glasgow, with estimates of 35,000 attending—around double that of a similar march last year.

Speaking at Glasgow Green, nationalist demagogue Tommy Sheridan insisted that its previous electoral successes meant the SNP had "a mandate" for a new referendum. He demanded the SNP's conference later this month "announce that we don't need a 12-month campaign, all we need is a short three-month campaign." "Let's go," Sheridan continued, "for September 2018."

Sheridan and the SSP speak for all the former lefts who view the prospect of independence as an opportunity for self-enrichment and advancement. Seeking a position for themselves in an expanded state apparatus directed—as the Wilson report makes clear—toward ensuring intensified exploitation, they speak for a wealthy middle class layer seeking a share of the spoils from the destruction of workers' living standards.

### Record of the Socialist Equality Party

These developments vindicate the position taken by the Socialist Equality Party during the 2014 referendum on Scottish independence.

Calling for a "No" vote in 2014, we wrote "All claims that 'independence' is a democratic demand, offering an alternative to cuts and austerity, are lies.

"The move for separation from the UK is being led by right-wing forces espousing nationalism, whether or not they attempt to dress this up in fake left language. The aim is to transform Scotland into a low tax, cheap labour platform for the benefit of the banks and transnational corporations.

"The victims of this will be workers on both sides of the border, who will see a deepening of the ongoing offensive against jobs, wages and conditions that has been waged by all the major parties in both Westminster and Holyrood.

"The unity and independence of the working class is the criterion against which every political party and every political initiative must be judged. This is essential under conditions in which the planet is being befouled with nationalist poison."

*The author recommends:*

Vote "no" in the Scottish referendum—Fight for a socialist Britain  
[21 June 2014]



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