

Press release: Devolved Brexit legislation referred to the Supreme Court

The UK Government's senior Law Officers, the Attorney General and the Advocate General for Scotland, are referring EU exit legislation passed in the Scottish Parliament and the National Assembly for Wales to the Supreme Court.

They are asking for a ruling on whether this legislation is constitutional, and properly within devolved legislative powers. The legal power to refer devolved legislation to the Supreme Court for a ruling on its constitutionality – as set out in the Devolution Acts – is exercisable by the Law Officers in the public interest.

Announcing the decision, 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

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.

The reference is made to the UK Supreme Court under powers conferred by the Scotland Act 1998 and the Government of Wales Act 2006, which provide the Law Officers with discretion to ask the Supreme Court to consider whether legislation passed by the devolved legislatures is within their respective legislative competence. These powers allow the Law Officers to fulfil their unique constitutional duties to uphold the rule of law and the boundaries of the devolution settlements.

The European Union (Wales) Bill and the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill cover very similar ground to the EU(Withdrawal)Bill currently before Parliament but with significant differences in terms of the EU law that is retained and the processes by which it can be amended. To leave these pieces of legislation on the statute book would create very significant legal uncertainty as to how the law would operate.