



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE *Grounds for the Counsel General's application to intervene in the appeal of the Article 50 litigation before the Supreme Court*

DATE *21 November 2016*

BY *Mick Antoniw AM, Counsel General for Wales*

In light of the Supreme Court's confirmation that my application to intervene in the appeal of the above matter before it has been granted, I am publishing the grounds on which that application was made.

Given that this matter is subject to ongoing litigation, I do not propose to give further details of my submissions at this time. Further details of my written submissions will be given nearer the date of the hearing.

The grounds were as follows:

The applicant is the Counsel General for Wales, who is appointed by Her Majesty and is a member of the Welsh Government (see section 49 of the Government of Wales Act 2006 ("GoWA 2006")). He considers that this appeal raises extremely important constitutional issues regarding the legal framework for devolution in Wales and the United Kingdom and will argue that the judgment of the Divisional Court should be upheld. The Counsel General instructed leading and junior counsel to attend the three-day hearing before the Divisional Court on an official watching brief. The Court acknowledged their presence in paragraph 7 of its judgment. Leading counsel for the Scottish Government also appeared before the Divisional Court in the same capacity.

The Counsel General is directly interested in the appeal because it raises questions about whether the Prerogative can be used to take steps which affect the legislative competence of the National Assembly for Wales, the powers of the Welsh Ministers, and more generally the constitutional relationships of the Assembly and the Welsh Government to the Westminster Parliament and the UK Government, respectively. The Divisional Court noted at paragraph 102 of its judgment that the Interested Parties had advanced arguments about the effect of giving notification under Article 50 TEU on the devolution statutes. However, the Court did not consider it necessary to consider these arguments in light of

its conclusion that the Prerogative could not be used to remove rights arising under section 2(1) of the European Communities Act 1972 (ibid).

The Counsel General therefore wishes to make written and oral submissions on the use of the Prerogative to give notice to withdraw from the European Union under Article 50 TEU, thereby overriding certain provisions of GoWA 2006 and altering the powers of the National Assembly and the Welsh Ministers. Further, the Counsel General wishes to make submissions on the limits of the Prerogative power to affect statutes which have “constitutional” status such as GoWA 2006 (as addressed by the Divisional Court at paragraphs 43-44, 82 and 88 of its judgment), as well as the use of Prerogative to override the constitutional principles underpinning devolution in the United Kingdom. The Divisional Court addressed the significance of constitutional principles in paragraphs 82-84 of its judgment.

The Counsel General also seeks permission to file a short witness statement of a leading constitutional academic, Dr Andrew Blick, providing an historic and constitutional perspective on the inappropriateness of using the Prerogative to bring about fundamental changes, particularly to the devolution framework.

*Finally, it is understood that a parallel Northern Ireland claim *Re McCord’s Application* [2016] NIQB 85 will be joined to this appeal. The Attorney General for Northern Ireland will appear before this Court because he is a party to that claim. In the circumstances, it is clearly appropriate that all of the devolved administrations should be represented before the Court, given that the appeal raises such important issues for the devolution framework in the United Kingdom as a whole.*