

Research Paper: What are the implications of Brexit on the Sewel Convention in Scotland and Wales?

1. Executive summary

- 1.1 The Sewel Convention is a fundamental principle within devolution, regulating the relationships between Westminster and the devolved administrations.¹ The UK's withdrawal from the EU has triggered extensive discussion around the nature of the Sewel Convention, requiring the Supreme Court to step in on two occasions² to give further clarification.
- 1.2 This research paper aims to act as a guide to Assembly staff to follow the developments of the Sewel Convention in the contemporary context of Brexit. It will not remark on the application of the Sewel Convention in Northern Ireland. While the principle exists for Northern Ireland, its situation differs to Scotland and Wales due to its absence of a land border with England and of its current absence of a government³. This report will therefore focus primarily on Scotland and Wales.
- 1.3 The paper identifies the important role that Brexit has had in defining the nature of the Sewel Convention. As the first fundamental challenge to the principle, Brexit encouraged its definition, particularly after its placement on statutory footing⁴. In *R v Secretary of State*⁵, the Court qualified the Sewel Convention as legally non-binding, due to its nature as a political convention.
- 1.4 Its development continued with the publication of the UK's European Union (Withdrawal) Bill, whereby the Legislative Consent Motion procedure was engaged. In response to this Bill, Scotland published their own "Continuity Bill"⁶, which was referred to the Supreme Court by the UK Attorney General. A contentious decision found that, while only one section was unlawful when it was initially introduced, large parts of the Scottish Continuity Bill were unlawful following amendments to the EU (Withdrawal) Bill⁷.

¹ Parliament UK, *Sewel Convention* (Parliament Glossary) <<https://www.parliament.uk/site-information/glossary/sewel-convention/>> accessed 20 December 2018

² *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5; *The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill- A Reference by the Attorney General and the Advocate General for Scotland (Scotland)* [2018] UKSC 64

³ BBC, 'Stormont: why does Northern Ireland not have a government?' (9 January 2019) <<https://www.bbc.co.uk/newsround/38648719>> accessed 15 January 2019

⁴ Section 2 Scotland Act 2016, Section 2 Wales Act 2017

⁵ *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5

⁶ UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill

⁷ European Union (Withdrawal) Act 2018

2. Introduction

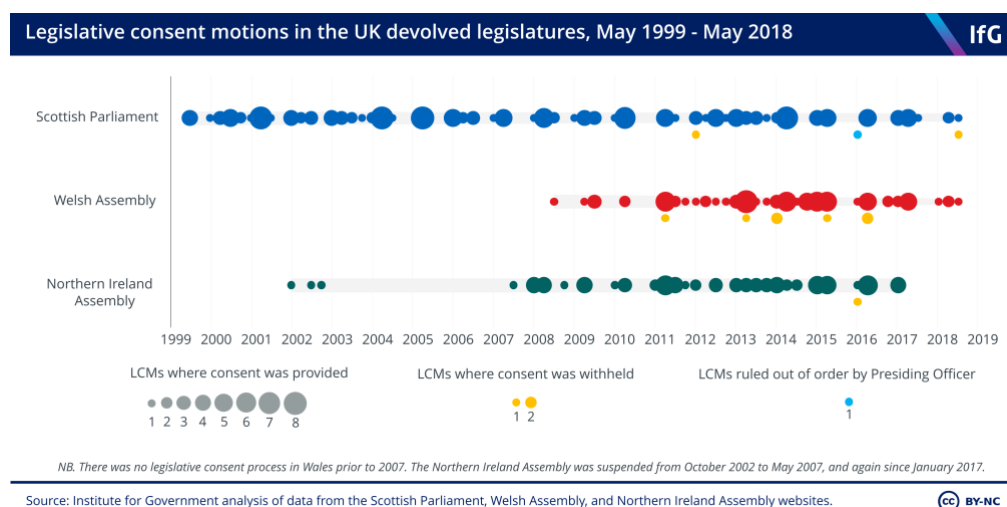
The Sewel Convention is a term used to describe the UK Government's stated policy when the UK Parliament legislates on a matter within the devolved competence of the Scottish Parliament, National Assembly for Wales ("NAfW") or Northern Ireland Assembly.⁸ Under the convention, the UK Parliament will "not normally" legislate regarding devolved matters without the consent of the relevant devolved institution.⁹ It originates from Lord Sewel, who set out the terms of the policy in the House of Lords ("HL") on 21 July 1998¹⁰.

A House of Commons briefing identifies the foundation of the convention as acknowledging the sovereignty of the UK Parliament, who retains its full legal power to legislate on devolved matters, while also acknowledging that the spirit of devolution implies that political power rests with the devolved administrations.¹¹ The Government undertakes a 'self-denying ordinance'¹² to avoid legislating in devolved areas or to alter devolved competence without prior consent.¹³ The briefing paper states that the convention recognises that legal constraints on the UK Parliament and Government's behaviour are impossible, but uses non-legal constraints to condition behaviours.¹⁴

The devolved institution can signify its legislative consent by passing a Legislative Consent Motion ("LCM") after the publication of a Legislative Consent Memorandum on the Bill's objective with a reasoned explanation of whether consent should be given.¹⁵

These LCMs are regularly requested:

Figure 1: Legislative consent motions in the UK devolved legislatures, May 1999-May 2018.¹⁶



⁸ Parliament UK, *Sewel Convention* (Parliament Glossary) <<https://www.parliament.uk/site-information/glossary/sewel-convention/>> accessed 20 December 2018

⁹ Ibid

¹⁰ Lord Sewel, HL Deb 21 July 1998 Vol 592 c791

¹¹ Parliament and Constitution Centre, *The Sewel Convention*, (HC SN/PC/2084, 25 November 2005) 2

¹² Graeme Cowie, *Brexit: Devolution and legislative consent* (HC 08274, 29 March 2018) 4

¹³ Government UK, *Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales* (Cabinet Office, 23 August 2011)

¹⁴ Graeme Cowie, *Brexit: Devolution and legislative consent* (HC 08274, 29 March 2018) 7

¹⁵ Institute for Government, 'Brexit and the Sewel (legislative consent) Convention' (17 May 2018) <<https://www.instituteforgovernment.org.uk/explainers/brexit-sewel-legislative-consent-convention>> accessed 29 December 2018

¹⁶ Institute for Government, 'Brexit and the Sewel (legislative consent) Convention' (17 May 2018) <<https://www.instituteforgovernment.org.uk/explainers/brexit-sewel-legislative-consent-convention>> accessed 29 December 2018

However, it is rare for a devolved administration to refuse consent, with the Institute for Government citing only seven refusals by the NAW and one by each the Scottish Parliament and Northern Ireland Assembly prior to Brexit.¹⁷

While its name states that it is a convention, without legal effects in the Devolution Acts¹⁸, its nature is widely discussed since it gained statutory footing in 1999. The EU currently holds exclusive legislative competence in areas outlined in Article 3 of the Treaty on the Functioning of the European Union, and has shared competences outlined in Article 4. The competence in these areas to legislate on behalf of the UK will be returned to the UK legislators after Brexit, leading to debate on where these powers should return.

¹⁷ Institute for Government, 'Brexit and the Sewel (legislative consent) Convention' (17 May 2018) <<https://www.instituteforgovernment.org.uk/explainers/brexit-sewel-legislative-consent-convention>> accessed 29 December 2018

¹⁸ The Scotland Act 1998; the Northern Ireland Act 1998; and the Government of Wales Act 1998.

3. The Sewel Convention and Brexit

The Sewel Convention was outlined initially in the Memorandum of Understanding (“MoU”) of 1999¹⁹ (now in paragraph 14 of the MoU of October 2013), an overarching statement and intergovernmental agreement of the principles that the parties agree will guide the relationships between the executive authorities in the devolved administrations.²⁰ This sets out the commitment of the UK Government to the LCM Convention, but states that it does not create legal obligations between the parties.²¹

3.1 Statutory Footing

The convention gained statutory footing in amendments made to the original Devolution Acts. After recommendations by the Smith Commission that the convention be placed on a statutory footing in Scotland²², the UK Government placed it in section 2 of the Scotland Act 2016. This development inspired similar recommendations for Wales by the Silk Commission²³, which were satisfied by section 2 of the Wales Act 2017.

Following this placement on statutory footing in Scotland and Wales, the nature of the convention was called into question.

3.2 *R (on the application of Miller and another) v Secretary of State for Exiting the European Union*²⁴

The question of the nature of the convention following its statutory footing arose in 2017 before the Supreme Court (“SC”) in *Miller*. The question: whether Parliament should be consulted before Article 50 to leave the EU was triggered. This raised an issue of the role of the devolved legislatures.

While the SC rejected the argument of the UK Government, it upheld its submission that the Sewel Convention remains legally non-binding despite its placement on statutory footing. In paragraphs 136 to 151 of the judgment, the Court discussed the nature of the Sewel Convention, after reiterating that, “*the courts of law cannot enforce a political convention*”²⁵. It inferred from the wording of “*it is recognised*” and “*will not normally*” that its statutory recognition demonstrates a commitment to “*entrench it as a convention*”²⁶:

The UK Parliament is not seeking to convert the Sewel Convention into a rule which can be interpreted, let alone enforced, by the courts; rather, it is recognising the convention for what it is, namely a political convention.

¹⁹ Memorandum of Understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers and the Cabinet of the National Assembly for Wales, Presented to Parliament by the Lord Chancellor by Command of Her Majesty, October 1999 (Cm 4444)

²⁰ Parliament and Constitution Centre, *Concordats and Devolution Guidance Notes* (HC Briefing Paper SN/PC/3767, 7 October 2005)

²¹ Memorandum of Understanding of October 2013

²² Government UK, *Scotland in the United Kingdom: An enduring settlement* (Office of the Secretary of State for Scotland Policy Paper, Cm 8990, 22 January 2015)

²³ Government UK, *Powers for a Purpose: Towards a lasting devolution settlement for Wales* (Office of the Secretary of State for Wales Policy Paper, Cm 9020, 27 February 2015)

²⁴ *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5

²⁵ *Ibid* [141]

²⁶ *Ibid* [149]

The SC stated that it does not seek to diminish this convention, as the Sewel Convention has an “*important role in facilitating harmonious relationships between the UK Parliament and the devolved legislatures*”²⁷.

In oral evidence to the Public Administration and Constitutional Affairs Committee (“PACAC”), Professor Gordon Anthony identified a trend of the judicialisation of politics through statements from the HL and the SC, moving towards an idea of divided sovereignty between the UK Parliament and the devolved legislatures.²⁸ He accused the *Miller* judgment of being a “*very strong reassertion of Parliamentary Sovereignty*”.²⁹

Therefore, neither the absence nor the refusal of consent by the devolved administration poses a legal barrier to the UK Parliament presenting a Bill for Royal Assent. A House of Commons Briefing Paper has concluded that any consequences of disregarding the convention are “ultimately political”.³⁰

²⁷ Ibid [151]

²⁸ Q142 of Public Administration and Constitutional Affairs Committee, *Oral evidence: Devolution and Exiting the EU* (HC 484, 23 January 2018) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/devolution-and-exiting-the-eu/oral/77511.html>> accessed 14 December 2018

²⁹ Q143 of Public Administration and Constitutional Affairs Committee, *Oral evidence: Devolution and Exiting the EU* (HC 484, 23 January 2018) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/devolution-and-exiting-the-eu/oral/77511.html>> accessed 14 December 2018

³⁰ Graeme Cowie, *Brexit: Devolution and legislative consent* (HC 08274, 29 March 2018) 6

4. The EU (Withdrawal) Act and the refusal of consent

After passing an Act of Parliament and consequently notifying the EU of the UK's intention to withdraw from the EU³¹, the Government introduced the EU (Withdrawal) Bill.

4.1 The EU (Withdrawal) Bill

The Institute for Government summarised the Withdrawal Bill as having three main implications³²:

- It repeals the European Communities Act 1972 which provides legal authority for EU law to have effect as national law in the UK;
- It transfers EU laws into national legislation, "*copying and pasting*" legislation to continue to apply after Brexit as "*EU retained law*"; and
- It confers powers to ministers to make secondary legislation to adapt UK law quickly.

In June 2017, the UK Government confirmed that the consent of the devolved legislatures would be sought for the Withdrawal Bill.³³

4.2 The responses of Scotland and Wales

The Scottish Parliament and the NAfW immediately gave notice that they would not give legislative consent to the Withdrawal Bill. The Institute for Government termed this a "*devolution deadlock*"³⁴ and summarised the dispute as revolving around the repatriation of powers in areas that are theoretically devolved but bound in practice by EU law, which takes precedence. Clause 11 of the Bill provided that the power to amend retained EU law in these areas would transfer from the EU directly to Westminster, who would create UK-wide common legal frameworks to replace EU legislation.³⁵

A joint statement by the First Ministers for Wales and Scotland called this Bill "*a naked power-grab, an attack on the founding principles of devolution*"³⁶. Both Professor Michael Keating³⁷ and Professor Adam Tomkins MSP³⁸ stated that clause 11 was a reversal of the constitutional principle of devolution that all powers not reserved are automatically devolved, with a clear overriding of the Sewel Convention. There were also concerns over the freezing powers assigned to the UK Government, where the Bill proposed that

³¹ European Union (Notification of Withdrawal) Bill 2017

³² Institute for Government, 'EU Withdrawal Act' (7 November 2018)

<<https://www.instituteforgovernment.org.uk/explainers/eu-withdrawal-act>> accessed 15 December 2018

³³ BBC, 'Brexit: Devolved institutions' consent sought on Repeal Bill', (26 June 2017) <<https://www.bbc.co.uk/news/uk-wales-politics-40412934>> accessed 15 December 2018

³⁴ Institute for Government, 'EU Withdrawal Bill: Clause 11 and the devolution deadlock' (20 March 2018)

<<https://www.instituteforgovernment.org.uk/explainers/eu-withdrawal-bill-clause-11-devolution>> accessed 15 December 2018

³⁵ Institute for Government, 'EU Withdrawal Bill: Clause 11 and the devolution deadlock' (20 March 2018)

<<https://www.instituteforgovernment.org.uk/explainers/eu-withdrawal-bill-clause-11-devolution>> accessed 20 December 2018

³⁶ Welsh Government, *Joint statement from First Ministers of Wales and Scotland in reaction to the EU (Withdrawal) Bill* (13 July 2017) <<https://gov.wales/newsroom/firstminister/2017/170713-joint-statement-from-first-ministers-of-wales-and-scotland/?lang=en>> accessed 15 December 2018

³⁷ Professor Michael Keating, 'Can the Sewel Convention survive Brexit?' (The UK in a Changing Europe, 8 May 2018)

³⁸ Q530 of Public Administration and Constitutional Affairs Committee, *Oral evidence: Devolution and Exiting the EU* (HC 484, 30 April 2018) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/devolution-and-exiting-the-eu/oral/82307.html>> accessed 20 December 2018

new reservations of devolved power would be temporary, but without a ‘sunset provision’ to ensure their expiry.

After failing to find an agreement on amendments, both the Scottish Parliament and the NAFW passed their own “Continuity Bills”³⁹ to transpose EU law that falls within devolved competence into devolved law. The Attorney General, the UK Government’s Law Officers, and the Advocate General for Scotland referred these Bills to the Supreme Court to assess whether they were within competence on 17 April 2018.⁴⁰

After further discussions, a written statement on 25 April⁴¹ stated that the UK Government would amend the Bill by seeing decision-making powers transferred to the devolved legislatures from Brussels. It noted that, for a small number of areas, defined in an intergovernmental agreement, common legislative frameworks may be needed across the UK, but drafts would be shared with the devolved legislatures before parliamentary approval.

Professor Michael Keating confirmed that this reverted to the model of reserved powers, with a presumption that powers would return from the EU to the devolved legislatures unless expressly reserved.⁴² Amendments also introduced an expiry period on the freezing regulation. These amendments were accepted in the HL on 2 May.

After these amendments, the NAFW voted to give its consent to the amended Bill on 15 May and the Welsh “Continuity Bill” was repealed on 20 November.⁴³

However, the amendments were insufficient to reassure the Scottish Government. On 15 May, the Scottish Parliament voted to refuse consent to the Withdrawal Bill. On 14 June, the Secretary of State for Scotland stated the view of the UK Government that these negotiations and “radical changes”⁴⁴ to the Bill “*demonstrated their commitment to the Sewel convention and the principles that underpin our constitution*” throughout the passage of the Withdrawal Bill.⁴⁵

The UK Government proceeded without consent and the European Union (Withdrawal) Act 2018 received Royal Assent as the first Act of UK Parliament passed without legislative consent of a devolved administration.⁴⁶

³⁹ Law Derived from the EU (Wales) Act 2018, UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill

⁴⁰ In Brief by Senedd Research, ‘What happens now to the Sewel Convention? Developments in Parliament’ (25 June 2018) <<https://senedresearch.blog/2018/06/25/what-happens-now-to-the-sewel-convention-developments-in-parliament/>> accessed 04 January 2019

⁴¹ Parliament UK, *European Union (Withdrawal) Bill and Devolution: Update on Clause 11: Written Statement- HCWS646* (25 April 2018)

⁴² Professor Michael Keating, ‘Can the Sewel Convention survive Brexit?’ (The UK in a Changing Europe, 8 May 2018)

⁴³ BBC, ‘AMs repeal Welsh Assembly EU continuity law’ (20 November 2018) <<https://www.bbc.co.uk/news/uk-wales-politics-46268710>> accessed 28 December 2018

⁴⁴ Q777 of Public Administration and Constitutional Affairs Committee, *Oral evidence: Devolution and Exiting the EU* (HC 484, 20 June 2018) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/devolution-and-exiting-the-eu/oral/85914.html>> accessed 19 December 2018

⁴⁵ HC Deb 14 Jun 2018 vol 642 <[https://hansard.parliament.uk/Commons/2018-06-14/debates/EFED14D2-5DB4-498B-BD32-6FEC64815B7E/EuropeanUnion\(Withdrawal\)BillSewelConvention](https://hansard.parliament.uk/Commons/2018-06-14/debates/EFED14D2-5DB4-498B-BD32-6FEC64815B7E/EuropeanUnion(Withdrawal)BillSewelConvention)> accessed 29 December 2018

⁴⁶ HC Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationship* (HC 2017-2019, 8th report, 1485, 13 July 2018)

Ian Blackford MP stated that this “*effectively turns Sewel on its head*” and concluded that this “*risks the security of the devolution settlement*”.⁴⁷ Professor Michael Keating argued that this situation has exposed a fundamental flaw in the Sewel Convention, that the UK Government can unilaterally alter the devolution settlement.⁴⁸ In evidence given to PACAC, he added that:

The Sewel Convention post the Scotland Act 2016 and the Wales Act 2017 has failed its first test because... just when it really matters... the UK Government says ultimately it does not make any difference.⁴⁹

Moreover, Daniel Wincott argued that the devolution settlements have rarely appeared so “unsettled” and argued that Brexit has demonstrated limits and weaknesses in existing devolution structures.⁵⁰

However, Professor JD Gallagher has advocated that constitutional conventions may be interpreted flexibly in unanticipated circumstances such as Brexit⁵¹, where this flexibility can be an advantage.

While the referral of the Welsh Continuity Bill was withdrawn following the intergovernmental agreement, the Supreme Court recently judged on the validity of the Scottish Continuity Bill.

4.3 Judgment on the reference by the Attorney General and the Advocate General for Scotland on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill⁵²

The Supreme Court released its judgment on the validity of the Scottish Continuity Bill on 13 December 2018. It confirmed that, regarding where powers vested in EU institutions should return to:

It is not the role of this court to form or express any view on those questions of policy, which are the responsibility of our elected representatives and in which the wider civil society has an interest.⁵³

It reiterated *Miller* on the nature of the Sewel Convention. Except section 17, it concluded that the Continuity Bill was lawfully within the competence of the Scottish Parliament when it was introduced.⁵⁴ However, it confirmed that large parts of the Bill had become unlawful after amendments made in the HL to the Withdrawal Act limited these powers. Despite the Scottish Continuity Bill being passed before the Withdrawal Act, the Scotland Act 1998 section 33(1) provides an opportunity for the legislative competence

⁴⁷ In Brief by Senedd Research, ‘What happens now to the Sewel Convention? Developments in Parliament’ (25 June 2018) <<https://senedresearch.blog/2018/06/25/what-happens-now-to-the-sewel-convention-developments-in-parliament/>> accessed 04 January 2019

⁴⁸ Professor Michael Keating, ‘Can the Sewel Convention survive Brexit?’ (The UK in a Changing Europe, 8 May 2018)

⁴⁹ Q506 of Public Administration and Constitutional Affairs Committee, *Oral evidence: Devolution and Exiting the EU* (HC 484, 30 April 2018) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/devolution-and-exiting-the-eu/oral/82307.html>> accessed 20 December 2018

⁵⁰ Daniel Wincott, ‘Brexit and the territorial constitution: déjà vu all over again?’ (Cardiff University Blog, 02/08/2018), <<https://blogs.cardiff.ac.uk/brexit/2018/08/02/brexit-and-the-territorial-constitution-deja-vu-all-over-again/>> accessed 05/01/2019

⁵¹ Professor JD Gallagher, ‘Conventional wisdom: Brexit, Devolution and the Sewel Convention’ (Gwilym Gibbon Centre)

⁵² *The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill- A Reference by the Attorney General and the Advocate General for Scotland* [2018] UKSC 64

⁵³ *Ibid* [11]

⁵⁴ Scottish Government, ‘Supreme Court judgment’ (13 December 2018) <<https://news.gov.scot/news/supreme-court-judgment>> accessed 05 January 2019

of a Bill to be challenged after it is passed, but before it receives Royal Assent.⁵⁵ The Continuity Bill could not obtain Royal Assent until after the SC's judgment.

The SC identified section 17 as a key part which now breaches UK law as it would modify the Scotland Act. S17 would make the UK Parliament's power to authorise Minister to make subordinate legislation conditional upon the consent of Scottish Ministers. Section 28(7) of the Scotland Act states that the UK Parliament has unqualified legislative power in Scotland.⁵⁶

Moreover, several provisions⁵⁷ of the Bill amount to modifications of the Withdrawal Act and are outside the competence of the Scottish Parliament. The Withdrawal Act listed itself as a protected enactment under amendments made in the HL which came into force when the Bill received Royal Assent on 26 June, after the introduction of the Scottish Continuity Bill. These provisions would have been within competence when initially legislating but, following the Royal Assent of the Withdrawal Act including its amendments, these became unlawful provisions before the judgment.

This judgment reiterated the supremacy of Parliament, and confirmed the political nature of the Sewel Convention. Consequently, Constitutional Relations Secretary Michael Russell stated that parts of the Bill are outside the Scottish Parliament's competence because, in an "*act of constitutional vandalism*", the UK Government took steps which cut Holyrood's powers without its consent after MSPs approved the new law⁵⁸.

The First Minister of Scotland has not yet confirmed whether the Continuity Bill will be retained and amended, or whether it will be withdrawn.

⁵⁵ The Scottish Parliament, *UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* (SPICE Briefing SB 18/18, 6 March 2018) 18

⁵⁶ UK Supreme Court Blog, 'New Judgment: The UK Withdrawal from the EU (Legal Continuity) (Scotland) Bill- Reference by the Attorney General and Advocate General for Scotland' (13 December 2018) <<http://uksblog.com/new-judgment-the-uk-withdrawal-from-the-eu-legal-continuity-scotland-bill-reference-by-the-attorney-general-and-advocate-general-for-scotland-2018-uksc-64/>> accessed 15 January 2019

⁵⁷ The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill: Section 2(2); section 5; section 7(2)(b) and 7(3); section 8(2); section 9A; section 9B; section 10(2), 10(3)(a) and 10(4)(a); section 11; section 13B, section 14, section 14A, section 15, section 16, section 19(1) and section 22; section 26A; and section 33 and Schedule 1 paragraphs 11(a) and 16

⁵⁸ Scottish Government, 'Supreme Court judgment' (13 December 2018) <<https://news.gov.scot/news/supreme-court-judgment>> accessed 05 January 2019

5. Conclusion

Brexit has had far-reaching implications on the definition and the nature of the Sewel Convention. Professor Michael Keating stated that, while the Sewel Convention has worked well for almost twenty years, it was not designed to bear the burden that Brexit has placed on it.⁵⁹ The term “not normally” poses challenges in interpretation. Since its entrenchment in legislation and statutory footing, the convention has been placed in what the UK Government considers as an abnormal situation. It cites that Lord Sewel himself has acknowledged that Brexit was unforeseen at the time of the drafting of the convention.⁶⁰ He stated that these are not “normal times” and that Brexit “*requires the possibility that the UK Government would act on its own initiative, without necessarily the approval of the Scottish Government*”.⁶¹

However, no parliamentary procedures have been put in place throughout this discussion to recognise the convention in the legislative process. Due to the strain placed upon the Sewel Convention throughout Brexit, there have been calls for reform. In its paper, the Implications for Wales of Brexit, the External Affairs and Additional Legislation Committee recommended that:

This convention should be extended to require the consent of devolved legislatures in circumstances where devolved competence is affected by non-legislative means, for example in relation to international trade treaties.⁶²

Other Committees have also advocated response from the UK Government, including the recommendation that the Government set out clear statements of the circumstances under which legislative consent from a devolved legislature is not required by the convention.⁶³

The Sewel Convention, relatively new in terms of the UK Constitution, has been forced to evolve in a particularly unique context. With statutory footing only since 2016, this convention revolving around normality has been trialled in an exceptional setting.

⁵⁹ Professor Michael Keating, ‘Can the Sewel Convention survive Brexit?’ (The UK in a Changing Europe, 8 May 2018)

⁶⁰ BBC, ‘Emergency debate on Brexit powers held in Commons’ (18 June 2018) <<https://www.bbc.co.uk/news/uk-scotland-scotland-politics-44522940>> accessed 05 January 2019

⁶¹ Ibid

⁶² External Affairs and Additional Legislation Committee, *Implications for Wales of leaving the European Union* (January 2017)

⁶³ HC Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships* (HC 2017-2019, 8th report, 1485, 13 July 2018) 23

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