

For immediate release

## Case C-621/18 Wightman and others

### DECISION OF THE EUROPEAN COURT OF JUSTICE – 10 December 2018

The European Court of Justice has today ruled in Case C-621/18 Wightman and others that the United Kingdom may, if it chooses to, unilaterally revoke its notification of intention to withdraw from the European Union.

This ruling of the Court affirms both the sovereignty of the United Kingdom as a nation, and the sovereignty of the UK Parliament.

Parliament can instruct the Government either to continue with the current negotiations around the UK's withdrawal, or to bring an end to that process and keep the UK in the EU on the basis of its present membership deal.

This means that it is open to Parliament, if so minded, to "call off Brexit" so that the UK stays in the EU on its existing terms.

This would involve the UK keeping the Pound, maintaining its border controls, and holding on to its current EU budget rebate, while continuing to benefit from frictionless and tariff-free trade within the European Union and profiting from the free trade deals which the EU is able to conclude, from a position of world market strength, with third countries outside the EU.

It also means that British nationals would retain all the additional rights that come with their being EU citizens, including the rights to live and work in, receive healthcare from, and retire to, the rest of the EU.

In so ruling, the Court of Justice rejected the arguments of the two main EU institutions – the Council of Ministers and the European Commission – that the consent of all the other Member States would be needed for any revocation of the UK's withdrawal to be effective.

Instead, the Court ruled that any choice to stay in the EU was for the UK alone. This could be done at any time, while the Treaties still applied to the UK (whether in the two year period from initial notification or in any extension of this period agreed with the European Council).

All that would be required would be a decision to remain, taken in accord with the UK's constitutional requirements and then duly notified to the President of the European Council.

This judicial review was brought by a cross-party group of elected politicians from constituencies in Scotland. They wanted to know whether they had the option of voting for the UK staying in the EU, if they thought that that course offered better protection for their constituents than the UK leaving the EU on the basis of the Government's withdrawal deal.

The case was taken by them before the Court of Session in Edinburgh, which referred the question of EU law which they had raised to the European Court of Justice for its guidance. The UK Supreme Court rejected an attempt by the UK Government to block this reference. The matter now comes back to the court in Scotland for its final ruling.

The Scottish politicians - Andy Wightman MSP, Ross Greer MSP, Alyn Smith MEP, David Martin MEP, Catherine Stihler MEP, and Joanna Cherry QC MP – were supported throughout this case by Jolyon Maugham QC, director of the Good Law Project, who organised crowd funding support.

They have been represented at every stage in this case by Aidan O’Neill QC who was instructed as leading counsel by Elaine Motion, Chairman of the Edinburgh law firm, Balfour + Manson. He was assisted by David Welsh, Advocate and, before the European Court of Justice in Luxembourg, also by Maya Lester QC and Professor Piet Eeckhout.

#### **Note to editors**

Aidan O’Neill is a “double silk”, being a Queen's Counsel at the Scottish Bar and at the Bar of England and Wales. He has a wide ranging legal practice in both London and Edinburgh, with a particular expertise in EU law, human rights law and UK constitutional law. He has appeared before the UK Supreme Court and the European Court of Justice in many of the recent leading cases of the day in these areas, including:

- whether an Act of Parliament was needed to trigger Brexit (R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5);
- whether it was lawful to exclude long term British expats from the Brexit referendum franchise (R (Shindler) v. Chancellor of the Duchy of Lancaster 24 May [2016] UKSC 2016/0105; [2016] EWCA Civ 469)
- whether prisoners were entitled to vote in the Scottish independence referendum (Moohan and others v. Scottish Government [2014] UKSC 67);
- the lawfulness of the ban on prisoners’ voting rights in UK elections: (R. (Chester) v Secretary of State for Justice/McGeoch v. Lord President of the Council [2013] UKSC 63);
- the challenge to the plans for minimum pricing for alcohol in Scotland (Case C-333/14 Scotch Whisky Association and others v. Scottish Ministers [2017] UKSC 76, EU:C:2015:845);
- the challenge to the UK Government’s levying fees for using Employment Tribunals (R (UNISON) v. Lord Chancellor [2017] UKSC 51);
- whether it was lawful to remove the “reasonable belief” defence as to a sexual partner being over the age of consent (AB v. Her Majesty’s Advocate [2017] UKSC 25);
- on the fundamental right to have a solicitor present during a police interview while in police detention (Cadder v. Her Majesty’s Advocate [2010] UKSC 43);

- whether a child permanently fostered under Islamic law by two EU citizens was to be treated as equivalent to their adopted child for the purposes of free movement into the UK (Case C-129/18 SM (Algeria) v. Entry Clearance Office, UK Visa Section EU:C:2019:nyr, [2018] UKSC 9);
- the challenge to legislation mandating the compulsory allocation, to every child in Scotland, of State appointed guardians (“named persons”) tasked with collating personal data on, and exercising supervisory and other functions over, these children (Christian Institute and others v. Lord Advocate [2016] UKSC 61);
- whether Christian guest-house owners could, on grounds of their religious convictions, lawfully refuse a double-bedded room to a same sex couple in a civil partnership (Bulls v. Preddy and Hall [2013] UKSC 73)

### **Contact details**

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