

Brexit: Unlawful Prorogation Means Continued UK Parliament Scrutiny of Brexit Plans

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In a historic decision issued today, 24 September 2019, the UK Supreme Court ruled that the UK prime minister, Boris Johnson, acted unlawfully when he advised the Queen to prorogue, or suspend, the UK Parliament for five weeks, until 14 October 2019.

The effect of the very clear and unanimous decision of the 11 Supreme Court judges is that Parliament was not in fact suspended and can immediately resume its work.

This in turn means that Parliament has more time to scrutinise the government's Brexit plans, as opposed to having to wait until 14 October to do so, and that it can continue to reject a no-deal Brexit by insisting on an extension to the Brexit timetable if Mr Johnson does not agree to new withdrawal terms with the EU at a council meeting on October 17-18.

Delivering the ruling, the President of the Supreme Court, Lady Hale, said that the effect of the prorogation on the fundamentals of UK democracy was extreme. The prime minister's decision to advise the Queen to prorogue Parliament was unlawful because it had the effect of frustrating or preventing the ability of Parliament to carry out its constitutional business, without any reasonable justification. The only evidence put to the Court had been a memorandum that did not consider the impact of prorogation on the special procedure for scrutinising the delegated legislation necessary for achieving an orderly withdrawal from the EU with or without an agreement on 31 October 2019, and did not discuss what parliamentary time would be needed to secure parliamentary approval for any new agreement between the EU and UK.

The Court quashed both Mr Johnson's advice to the Queen and the Order in Council that subsequently gave effect to the prorogation, and said that it was for the Speakers of the House of Commons and House of Lords to decide on how to proceed.

The Court's decision comes after a three-day hearing on two separate appeals. It upholds a ruling of the Scottish Court of Session, that the prorogation was unlawful, and dismisses a ruling of the English High Court, that prorogation was not an issue on which the courts had jurisdiction to rule. Both proceedings involved a challenge to the prorogation on the basis that Mr Johnson was using it to prevent parliamentary scrutiny of his plans for Brexit and not, as he argued, to allow time to present the government's policies for the next parliamentary session.

Prime Minister Johnson's position in light of the ruling is not yet wholly clear. The Supreme Court's decision records that Mr Johnson's lawyers told the Court that he will take all necessary steps to comply with any ruling it might make. Mr Johnson himself has said he respects the ruling, but he has also said he strongly disagrees with it and that he will get on and deliver Brexit on 31 October 2019. In addition, the ruling has prompted calls for his resignation. The Court held that, having found the effect of the prorogation to be unlawful, it did not need to go on to consider whether Mr Johnson's motive or purpose was unlawful. However, the wording of the judgment delivers strong criticism, in particular the finding that the prorogation led to prolonged suspension of parliamentary democracy in "quite exceptional circumstances". The Court noted that this was not the normal prorogation routinely used in the run-up to presentation of the government's new policies for the next parliamentary session.

In the meantime, members of Parliament started to make their way back to Parliament almost as soon as the decision was made public, with parliamentary business starting again in full on 25 September.

Although the Supreme Court decision resolves an important constitutional issue, it does not alter the lack of a parliamentary majority in favour of any Brexit solution, on 31 October or by any extended deadline.

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