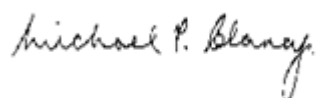


The Society's Constitutional Law Subcommittee has considered the bill and has the following comments to make:

- a. The Judgement in the case of Miller and Dos Santos v Secretary of State for Exiting the European Union [2017] UKSC 5 was clear in requiring the Government to obtain Parliamentary authority for the notification of the UK's withdrawal from the EU under Article 50(2).
- b. The bill will achieve that policy objective. It is closely drawn and narrow in scope therefore there is limited capacity for amendment to the bill.
- c. The Government has promised a White Paper on its strategy for Brexit. It is essential for MPs voting on the bill and for the general public if the White Paper were available before the end of the Report Stage of the bill so that MPs can be sure of the import of what they are voting for.
- d. Whilst accepting that the UK Supreme Court has come to the view that the consent of the Scottish Parliament and the devolved Assemblies is not a legal requirement before the bill is passed it should also be noted that the Supreme Court judgment is not authority for interpreting the scope of the Sewel Convention. That Convention is of central importance in the relationship between the UK Parliament and the Scottish Parliament and the Northern Ireland and Welsh Assemblies. Under Devolution Guidance Note 10 the consent of the Scottish parliament requires to be sought where the UK Parliament is proposing to legislate on areas of devolved competence or where the legislation would change the legislative competence of the Scottish Parliament or the executive competence of Scottish Ministers thus including UK legislation having that effect. These core aspects of the convention are substantive matters and **not** merely procedural matters of practice that have varied from time to time).
- e. It might be argued that a Bill which gives the Prime Minister a power, whose exercise will inevitably alter the competences of the Scottish Ministers and Parliament, will engage the convention. For example, the triggering of Article 50 will inevitably enlarge those competences by removing the constraints upon those competences of having to observe EU law (see para 132 of the Miller decision).

If you have any comments or questions please let me know.



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