

The UK Supreme Court after Brexit

I hear that the UK Supreme Court wants more clarification from Parliament over how to judge matters after we have left the EU.

The proposed guidance set out in the European Union Withdrawal Bill seems very clear to me. It says that after we have left UK judges no longer have to follow new judgements by the European Court of Justice, but may do so if they think they are sensible from the UK point of view.

This applies when a case comes before the UK Supreme Court that relates to a UK law which was until we left an EU law which we have now adopted as a national one. The Supreme Court can decide as it sees fit. If there has been a new case before the ECJ that changes the EU's law the UK Supreme Court can if it wishes make the same change to UK law, or can decline to do so. These are experienced and senior judges who often like to change UK made law. It is a Court which is certainly not cowed by Parliament, as we saw when it told us how to go about leaving the EU and how to approve the sending of the Article 50 letter. It will be able to exercise similar independent judgement about what were EU laws once we have left.

Given the pro EU attitudes of many of our judges this means they would be free if they wish to follow ECJ judgements all the time we keep the unamended EU law as part of our UK law code. If they do so in ways which no longer suit the UK people then of course the UK Parliament will intervene and amend the law to override the Supreme Court judgement, as we can do today on UK made laws.

What is unclear about this? We will expect our Supreme court to be supreme when it comes to interpreting laws, which will mean former EU laws as well as nationally conceived laws. We will also expect Parliament to be sovereign. If the judges make a judgement that does not please Parliament can always change the law and issue new instructions.

At the moment both Parliament and our judges are impotent to change , amend or improve an EU law if the European Court of Justice has decided. We do not at the moment expect our Supreme court to follow decisions of the US Supreme Court where they amend US laws where we may have a similar law. We trade a lot with the USA but keep our independent legal system. So why would the ECJ be any different when we are out of the EU?