Reasons for the determination

In the matter of Secretary of State for Exiting the European Union (Appellant) v Wightman and others (Respondents)

20 November 2018

1. The Secretary of State for Exiting the European Union seeks the permission of this court to appeal against interlocutors (orders) of the First Division of the Inner House of the Court of Session dated 21 September and 3 October 2018.

2. Under section 40 of the Court of Session Act 1988, the only basis on which an appeal against the interlocutors in question might be taken would be if they constituted "a decision constituting final judgment in any proceedings". "Final judgment" is defined as meaning "a decision which, by itself or taken along with prior decisions in the proceedings, disposes of the subject matter of the proceedings on its merits". The question therefore arises whether, as the Secretary of State contends, the interlocutor dated 3 October 2018 constituted final judgment in these proceedings as so defined. If it did not, it follows that this court has no jurisdiction to hear an appeal.

3. These proceedings concern the notification given on 29 March 2017 of the United Kingdom's intention to withdraw from the European Union, in accordance with article 50 of the Treaty on European Union. The present respondents, who include Members of the Scottish, United Kingdom and European Parliaments, have petitioned the Court of Session to declare "whether, when and how the notification … can unilaterally be revoked".

4. On 6 June 2018 the Lord Ordinary refused the petition. In their interlocutor dated 21 September 2018, the First Division of the Inner House allowed an appeal against that decision, rejected a number of objections by the Secretary of State, decided that a preliminary ruling by the Court of Justice of the European Union ("the CJEU") on the interpretation of article 50 was

necessary to enable the Court of Session to give judgment, and invited the parties to make submissions on a draft request for such a ruling. Having received and considered those submissions, in their interlocutor dated 3 October 2018 the First Division requested the CJEU to give a ruling on the following question:

> "Where, in accordance with article 50 of the Treaty on European Union, a member state has notified the European Council of its intention to withdraw from the European Union, does EU law permit that notice to be revoked unilaterally by the notifying member state; and, if so, subject to what conditions and with what effect relative to the member state remaining within the European Union?"

5. It is clear that this interlocutor did not constitute a final judgment. Contrary to the Secretary of State's contention, an interlocutor requesting a preliminary ruling is not "interlocutory in form but final in substance", and the passage in *Beattie v Glasgow Corporation* 1917 SC (HL) 22, 24, on which the Secretary of State relies, is therefore not in point. The request to the CJEU did not in itself "dispose of the subject matter" of the proceedings: it remains to be seen what remedy, if any, the Court of Session will grant. That will remain the position even after the CJEU has made a ruling on the question referred. The purpose of the ruling is, as is stated in article 267 of the Treaty on the Functioning of the European Union, under which the preliminary ruling has been requested, "to enable [the national court] to give judgment". As both this court and the CJEU have made clear, the preliminary ruling is merely a step in the proceedings pending before the national court: it is that court which must assume responsibility for the subsequent judicial decision (see, for example, *Revenue and Customs Commissioners v Aimia Coalition Loyalty UK Ltd* [2013] UKSC 15).

6. It will therefore remain for the Court of Session to give judgment in the light of the preliminary ruling, any relevant facts which it may find and any relevant rules of domestic law. It is only then that there will be a final judgment in the proceedings.

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