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Why Scottish nationalists won't see Article 50 ruling as a defeat

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Nicola Sturgeon: Scotland not being listened to. PA/Jamie Simpson

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The UK Supreme Court ruling over the triggering of Article 50, the EU process that will make Brexit possible, was half a victory for the Scottish government – and perhaps more than that.

On the plus side, it means there will now be a Westminster vote over triggering Brexit. On the minus side, there will be no veto for Scotland or the other devolved parliaments. Yet this too is arguably a positive in the Scottish government's quest to keep Scotland in the EU and eventually gain independence.

The court's decision to allow both houses of parliament to vote on the Brexit bill will help the Scottish nationalist MPs at Westminster as they try to build support for avoiding a departure from the European single market. It will also cause difficulties particularly for Labour, which is already torn between having many MPs who oppose Brexit but serve constituencies that voted in favour.

Still the SNP's main competitor for votes in Scotland, Labour's intractable mess over Brexit will become much more obvious in debates and votes in the House of Commons. This will help to sharpen political conflict over the process and substance of Brexit, which sees the SNP aligned with Scottish voters and many of the country's institutions and interest groups – a fairly novel situation for the party on a major constitutional, political and economic issue.

Nicola Sturgeon, the SNP leader and Scottish first minister, has already said her party will table 50 “serious and substantive amendments” to the bill. These will include a proposal that the UK would remain in the EU under revised membership terms if MPs reject the final deal; and that any deal will require the unanimous agreement of the Joint Ministerial Committee of the UK’s four nations.

No veto

The Supreme Court’s decision against allowing the Scottish, Welsh and Northern Irish governments to have a formal role in the Brexit process is a mixed blessing for the SNP. The Scottish government would have used its institutional leverage to bargain, negotiate and threaten the UK with a veto – not least as it has produced its own Brexit options for Scotland. Now the Scottish government is reduced to making political hay by moving for a Brexit vote in Holyrood anyway.

On the other hand, the Supreme Court ruling relegated the importance of devolution and supports the supremacy of Westminster. The 55% No vote in the Scottish independence referendum of 2014 was built on a strong and improved devolution settlement and the argument that UK membership was the only way to stay in the EU: both have been fatally undermined by Brexit.

It’s a funny kind of unionism that prevents Scotland (and the other devolved nations) from having a voice over Brexit through institutions set up to bolster their role in the UK. The Conservative government’s position isn’t exactly consistent with claims from senior figures to “listen to Scotland” and that the UK is a “partnership of nations”. It doesn’t make Scotland appear to have “the strongest devolved parliament in the world”, contrary to promises from former prime minister David Cameron.

Poll position

Where does this all leave a second independence referendum? Following the court’s verdict, Nicola Sturgeon did not really move forward from her previous indications that a referendum is probable. She said:

Is Scotland content for our future to be dictated by an increasingly right-wing Westminster government with just one MP here – or is it better that we take our future into our own hands? It is becoming ever clearer that this is a choice that Scotland must make.

My own reading is that the court’s decision probably makes a second referendum closer. Crucially, however, there will be less control over the timing than last time around. When the Scottish government negotiated the terms of the first independence referendum in 2012, it was given the power to hold it by the end of 2014. This gave it some control over the timetable. This time, the timing of such a poll will probably be dictated by the Brexit departure timetable.



David Cameron and Alex Salmond signing Edinburgh Agreement in 2012. PA/Gordon Terris

And while Brexit is certainly the type of explicit material change the SNP has long said would legitimise a second referendum, this doesn't make it inevitable or winnable. There are a lot of obstacles in the way, such as the oil price, the currency question, future EU membership and lukewarm independence polling.

The SNP leadership is realistic about this, retaining a note of caution, knowing that everything is different to 2014 except public opinion. Yet much could still change: a lot of the substance of Brexit and its effects are still to come. That will feed into the SNP's agenda on the constitution – not to mention policy issues for the Scottish government such as EU citizens, social policy, the environment, single market, energy and higher education. As Nicola Sturgeon and her advisers await the UK government's White Paper on Brexit, they will certainly be feeling that there is still everything to play for.

Labour EU SNP Scotland Devolution Theresa May Holyrood Brexit Nicola Sturgeon Conservative
Supreme Court Westminster Article 50