

IN THE SUPREME COURT OF THE UNITED KINGDOM

APPLICATION BY THE SCOTTISH NATIONAL PARTY

IN THE REFERENCE BY THE LORD ADVOCATE UNDER PARAGRAPH 34 OF
SCHEDULE 6 OF THE SCOTLAND ACT 1998

IN RELATION TO

WHETHER THE QUESTION FOR A REFERENDUM ON SCOTTISH INDEPENDENCE
CONTAINED IN THE PROPOSED BILL RELATES TO RESERVED MATTERS

APPLICATION FOR PERMISSION TO INTERVENE

Introduction

1. On 28 June 2022 the Lord Advocate submitted a reference to this court under paragraph 34 of Schedule 6 of the Scotland Act 1998, seeking a determination on the legislative competence of the question proposed in the Scottish Independence Referendum Bill. The court has provisionally set down a hearing on the reference for 11 and 12 October 2022.
2. The Scottish National Party [‘the applicant’] hereby applies for permission to intervene in the reference, in terms of rules 26 and 41 of The Supreme Court Rules 2009.
3. Rule 26 provides as follows:

‘26. – (1) After permission to appeal has been granted by the Court or a notice of appeal has been filed, any person and in particular –

(a) any official body or non-governmental organization seeking to make submissions in the public interest,

(b) any person with an interest in proceedings by way of judicial review,

(c) any person who was an intervener in the court below or whose submissions were taken into account under rule 15,

may apply to the Court for permission to intervene in the appeal.’

4. Rule 41 provides as follows:

'41. – (1) Appeals or references under the Court's devolution jurisdiction shall in general be dealt with in accordance with these Rules but the Court shall give special directions as and when necessary, and in particular as to –

...

(c) any direct references under paragraph 33 or 34 of Schedule 6 to the Scotland Act 1998, paragraph 33 or 34 of Schedule 10 to the Northern Ireland Act 1998 or paragraph 29 or 30 of Schedule 9 to the Government of Wales Act 2006.

...'

5. Rule 26, read *mutatis mutandis* in accordance with Rule 41, therefore permits the applicant to make this application to intervene in the Lord Advocate's reference. In similar circumstances, this court has previously stated that it would be willing to give permission to bodies to intervene where the views of such bodies "might be of assistance": *Local Government Byelaws (Wales) Bill 2012 – Reference by the Attorney General for England and Wales* [2012] UKSC 53, [2013] 1 AC 792 per Lord Hope at §100.
6. The applicant respectfully submits that it has a particular justification to intervene in terms of categories (a) and (b). It is an established political party with elected representatives at local, Scottish, and UK levels, and it seeks by way of this application to make submissions to this court in the public interest which are complementary to those made by the Lord Advocate, and it is therefore an 'official body' for the purposes of Rule 26(a).
7. Separately, the applicant is a person with an interest in these proceedings, standing its history, involvement, and prominence in UK politics on the matter of Scottish independence and, in particular, the rights of the Scottish people to self-determination. Were this matter to have been brought before the court by way of judicial review, the applicant would have standing: *AXA Insurance v. Lord Advocate* [2011] UKSC 46, 2012 SC (UKSC) 122 at §§62-63. It cannot reasonably be argued that the applicant would not have standing in such circumstances. Given, therefore, that Rule 41 applies the rules of this court *mutatis mutandis* to an application under paragraph 34 of Schedule 6 to the Scotland Act 1998, it is competent for the applicant to make this application. It is

respectfully submitted that the submissions of the applicant would be of assistance to this court in determining the questions posed by the Lord Advocate's reference.

8. For all of the reasons set out below, the applicant invites this court to grant permission to the applicant to intervene in these proceedings. The applicant envisages that its intervention, if such permission were to be granted, would be primarily by written submissions but this court is invited to grant permission for the applicant also to make short oral submissions to supplement the written intervention in light of the written cases of the other parties. The applicant appreciates that any such oral submissions will be time restricted in accordance with Rule 26(2).

The applicant and its manifesto commitments

9. The applicant sets out here in brief its history, its role in relation to the debate surrounding Scottish independence, and a summary of the political matters which have resulted in the Lord Advocate's reference being necessary at this time.
10. The applicant is a political party which was founded in 1934. Its aims, as set out in its constitution, are:

'a) Independence for Scotland; that is the restoration of Scottish national sovereignty by restoration of full powers to the Scottish Parliament, so that its authority is limited only by the sovereign power of the people of Scotland to bind it with a written constitution and by such agreements as it may freely enter into with other nations or states or international organisations for the purpose of furthering international cooperation, world peace and the protection of the environment.

b) the furtherance of all Scottish interests.'

11. The applicant is funded mainly from voluntary contributions. With over 100,000 members, it is by some measure the largest political party by membership in Scotland. Since 2007, it has held the largest number of seats of any party in the Scottish Parliament; and since 2015, it has held the largest number of Scottish seats in the House of Commons.
12. Independence has always been at the centre of the applicant's policy agenda. In 2011, its manifesto for the Scottish Parliamentary elections included the following pledge:

'We think you should be able to choose our nation's future in an independence referendum – that is the fair way to take this decision. It is with independence that Scotland will truly prosper.'

13. In the election which followed, the applicant secured 69 of the 129 seats, the first time that any single party had secured a majority in the Scottish Parliament. The applicant, in government, moved to implement its manifesto commitment to hold a referendum on the issue of Scottish independence. It issued a consultation paper, *'Your Scotland, Your Referendum'*, which stressed the advisory nature of the proposed referendum, but noted the differing views on the matter of legislative competence:

'The UK Government has made public its view that legislation providing for a referendum on independence, even an advisory one, would be outside the existing powers of the Scottish Parliament. As outlined above, the Scottish Government contends that there are suitable questions which are entirely within the legislative competence of the Scottish Parliament. The Scottish Government is nevertheless ready to work with the UK Government to remove their doubts about the competence of the Scottish Parliament and put the referendum effectively beyond legal challenge by the UK Government or any other party.'

14. The disagreement on competence was rendered moot by the Edinburgh Agreement, whereby the UK Government agreed to present a draft section 30 order to Parliament, which had the effect of explicitly, but temporarily, devolving authority to legislate for an independence referendum to the Scottish Parliament. The applicant's position was, and remains, that the section 30 order was legally unnecessary - or, at the very least, that its necessity had not been established - but, at that time, politically expedient. It removed the threat of legal challenge from the process.
15. After the section 30 order became law, the Scottish Parliament passed the Scottish Independence Referendum (Franchise) Act 2013 and the Scottish Referendum Act 2013, which respectively extended the franchise to 16 and 17 year olds and provided for the referendum to take place.
16. The issues which arose in the referendum campaign were varied and complex. Two critical and inter-related issues were the economy and the European Union. The Better Together campaign argued that independence would create considerable economic uncertainty for Scotland and would terminate Scotland's membership of the European Union.

17. The referendum was held on 18 September 2014. Voters were asked whether Scotland should be an independent country. 55.3% voted no, while 44.7% voted yes.
18. On 23 June 2016, the United Kingdom European Union membership referendum took place. Voters were asked whether the United Kingdom should remain a member of or leave the EU. The applicant strongly supported remain. Across the United Kingdom, a total of 51.9% voted leave, while 48.1% voted remain. In Scotland, however, there was strong support for remain: 62.0% voted remain, while 38.0% voted leave. That position was reflected across Scotland: there was a majority in favour of remain in every local authority area.
19. The 2016 referendum decision ushered in a period of exceptional political turbulence. The Prime Minister, David Cameron, resigned, and was replaced by Theresa May. A UK general election in 2017 produced a hung parliament. The Conservative government entered into a confidence and supply arrangement with the Democratic Unionist Party. Parliament was unable to resolve the question of how the 2016 referendum result should be implemented. Mrs May resigned and was replaced by Boris Johnson in 2019. A further general election took place later that year. The United Kingdom exited the European Union on 31 January 2020, with a one year transition period. Weeks later, the arrival of the Covid-19 pandemic caused the country to go into lockdown.
20. The applicant contends that there have been a series of material changes in circumstances since the 2014 independence referendum which collectively justify the Scottish people being asked for their views in relation to Scottish independence again, including (but not limited to):
 - a. The dramatic growth in support at UK Parliamentary elections for the applicant and other pro-independence parties. In the 2010 UK general election, the applicant secured 19.9% of the Scottish vote and 6 seats. In the 2015 election (the first since the 2014 independence referendum) the applicant secured 50.0% of the Scottish vote and 56 out of the 59 Scottish seats. Its dominance continued through the 2017 and 2019 UK elections.
 - b. The United Kingdom's exit from the European Union, against the wishes of the Scottish people.

- c. The terms of that exit, which could never have been anticipated in 2014, and which fundamentally contradict the arguments presented by the Better Together campaign.
 - d. The long-term fundamentally-changed economic circumstances caused by the foregoing.
21. The applicant's manifesto for the 2019 UK general election included the following commitment:
- 'We have a clear mandate to deliver a new referendum on becoming an independent country, and we are making it clear at this election that next year we intend to offer the people of Scotland a choice over their future.'*
22. Reflecting prior uncertainty about the power of the Scottish Parliament to legislate for a referendum, the applicant undertook to demand a further transfer of powers, akin to the section 30 order made in 2013. For the avoidance of doubt, it remained the applicant's position that the Scottish Parliament already had the necessary powers; but that it was preferable to remove any remaining doubt.
23. At the December 2019 UK general election, the applicant secured 45.0% of the votes in Scotland, and 48 of the 59 Scottish seats. It remained the third largest party in the House of Commons, after the Conservative Party and the Labour Party.
24. The applicant's manifesto for the 2021 Scottish Parliamentary election included the following commitment:
- 'A vote for the SNP at this election is a vote in favour of these basic democratic principles: The people of Scotland have the right to decide our own future... and... The people best able to decide how Scotland is governed are the people who live here. Based on those principles we believe the people of Scotland should have the opportunity in a referendum when the Covid crisis is over to decide whether Scotland should be an independent country. We are seeking the permission of the Scottish people in this election for an independence referendum to take place after the crisis. This would be within the next Parliamentary term on a specific date to be decided by our democratically elected parliament.'*

25. The manifesto repeated the pledge to discuss with the UK Government a transfer of power *'to put a referendum beyond legal challenge and in the hands of the Scottish Parliament. For the UK government to refuse to do so would both undemocratic and unsustainable.'*
26. At the 2021 Scottish Parliamentary election, the applicant secured 47.7% of the constituency votes (the highest share of the constituency vote won by any party in the history of the Scottish Parliament) and 40.3% of the regional votes. It won 64 of the 129 seats, making it the largest party in the chamber. It subsequently entered into a co-operation agreement with the Scottish Green Party, which won 8 seats at the election. The Scottish Green Party also supports holding a further independence referendum and campaigned on that basis in its manifesto for the 2021 Scottish Parliamentary election.
27. The UK Government has stated repeatedly that it is opposed to a further independence referendum being held. It has declined to make a further section 30 order. Both candidates to replace Boris Johnson as Conservative Party leader, and hence Prime Minister, have said, as at the time of drafting this application, that they will refuse to do anything to facilitate a referendum - in some instances suggesting that they will never 'allow' a referendum. Similar statements have been made by the leader of the Labour Party.
28. If this matter were brought before the courts as an application for judicial review, the applicant would certainly have standing in such proceedings.

The applicant's duty to implement its manifesto commitment

29. Having secured election to both the United Kingdom Parliament and the Scottish Parliament on a clear manifesto commitment to hold a referendum on independence, the applicant's position is that it has a duty to the people of Scotland to seek to implement that manifesto commitment in order to place beyond doubt the view of those people - the Scottish demos - as regards the manner in which they choose to be governed.
30. The position of the applicant as regards Scottish independence could scarcely be clearer. As with the basis of the Salisbury Convention that the House of Lords does not generally prevent the UK Government of the day from seeking to implement its manifesto commitments, the applicant's position is that it is at least constitutionally

improper for any part of the UK Government to seek to prevent a devolved administration from implementing a clear manifesto commitment on which its demos has elected it to govern.

31. The public is entitled to expect that parties (and groupings of parties) which are elected to govern will give effect to their manifesto commitments. It is on that basis that the public cast their votes and it is on that basis that they reasonably expect to be governed in a democracy. That is particularly so, in the respectful submission of the applicant, when the matter at hand is one of self-determination.

Self-determination

32. The applicant wishes to make submissions on the right to self-determination. It is the applicant's position that the right to self-determination, as a fundamental and inalienable right, must inform the interpretation of the 1998 Act when considering the answer to the questions posed by the Lord Advocate. For the reasons set out below, the applicant submits that, properly construed, the Scottish Parliament does have the legislative competence to legislate for a referendum on Scottish independence. The applicant wishes to make developed submissions on this matter if permitted to intervene in these proceedings.
33. This argument is additional and complementary to those set out by the Lord Advocate in her written case. In the exercise of her functions in making this reference, the Lord Advocate is independent of the Scottish Government and the applicant. The applicant wishes to be clear, however, that it makes this application in order to complement – and not to detract from – the position of the Lord Advocate, and that the applicant's position is that holding a non-self-executing referendum on Scottish independence is within the competence of the Scottish Parliament. It is in the interests of justice that this argument is considered by the court, and it is just and reasonable that this court reaches a determination on the referred questions in light of full submissions on all relevant factors. The submissions of the applicant will therefore be of assistance to this court.
34. A single-question referendum on the matter of Scottish independence is the clearest way in which the will of the Scottish people can be ascertained. The issue directly affects the Scottish people as a whole. It is also important to everyone in Scotland, in particular those who voted for the applicant.

35. Self-determination is a central pillar of modern international law. Deriving ultimately from customary international law, Article 1 of the UN Charter states that one of the fundamental purposes of the United Nations is '*to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples*'.
36. Furthermore, Article 1 of the International Covenant on Civil and Political Rights (adopted by the United Kingdom in 1966 and ratified in 1976) provides as follows:
- 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'*
37. Self-determination favours the territorial integrity of states at an international law level and favours the democratic method of a demos in determining for itself how and by whom it chooses to be governed. The UK's own position on such matters was stated as follows in its written statement to the International Court of Justice in relation to the unilateral declaration of independence in respect of Kosovo at §5.33:
- 'To summarise, international law favours the territorial integrity of States. Outside the context of self-determination, normally limited to situations of colonial type or those involving foreign occupation, it does not confer any "right to secede". But neither, in general, does it prohibit secession or separation, or guarantee the unity of predecessor States against internal movements leading to separation or independence with the support of the peoples concerned.'*
38. The right of a demos to self-determination is a fundamental and inalienable right. It is recognised as such in international law: see, for example, the Resolution of the General Assembly of the United Nations on 22 May 1960, following the advisory opinion of the ICJ on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 (A/RES/1514/15).¹
39. There is a strong presumption that domestic law should be interpreted and construed in a manner which does not place the United Kingdom in breach of its international obligations: *Assange v. Swedish Prosecution Authority* [2012] 2 AC 471 per Lord Dyson at §122; extra judicial speech given by Lord Mance on 13 February 2017 at King's College, London at §8.

¹ 'Guided by the principles enshrined in the Charter of the United Nations, including the inalienable right of self-determination of peoples.'

40. When approaching the exercise of the interpretation of the Scotland Act 1998 in the circumstances of this reference, it is respectfully submitted that the court must, where at all possible and in accordance with the strong presumption that domestic law should be read consistently with international law, construe the 1998 Act in a manner consistent with that fundamental and inalienable right. Courts are very familiar with such an exercise, particularly in relation to Convention rights and the statutory obligation under section 3 of the Human Rights Act 1998.
41. In practical terms, therefore, it is the position of the applicant that, when considering the scope of the phrase 'relates to reserved matters' for the purposes of section 29 of the Scotland Act 1998, that phrase should be given a narrow and restricted interpretation, as set out in more detail below, so as not to infringe upon nor render otiose the right of the Scottish people to exercise their right to self-determination.
42. Such an interpretation is consistent with the decisions of this court that fundamental rights cannot be overridden by general or ambiguous words and, even when faced with express statutory authorisation of an intrusion into a fundamental right, such authorisation will be interpreted narrowly and strictly: *AXA General Insurance Ltd v. Lord Advocate* [2011] UKSC 46, 2012 SC (UKSC) 122 per Lord Reed at §152; *R (UNISON) v. Lord Chancellor* [2017] UKSC 51, [2020] AC 869 per Lord Reed at 65, 66, 77-84.
43. Lest it be suggested that the people of Scotland do not form a discrete demos or 'a people' for the purposes of the right to self-determination, that suggestion does not withstand even the lightest scrutiny. Scotland is a nation with a distinct and discrete history, culture and legal background. That the people of Scotland are not recognisable as a demos is an unsustainable proposition. Indeed, that the people of Scotland *are* so recognised is found in the 1998 Act itself at section 63A(3).

The constitutional tradition of Scotland

44. The applicant wishes to ensure that this court hears and considers submissions in relation to the separate and discrete constitutional tradition which is applicable in Scotland. In the respectful submission of the applicant, it is vital to this reference that the Scottish constitutional tradition is appreciated and applied unlike, for example, in *R (Miller) v. Secretary of State for Exiting the European Union* [2018] AC 61 where it was suggested that there were no differences between the constitutional traditions of England & Wales and those of Scotland (for the purposes of that case).

45. Most fundamentally, the tradition of parliamentary sovereignty as a fundamental principle of the 'UK Constitution' as referred to by this court in *Miller* at §43 is borne of a reading of Dicey which plays no part in Scots law. Indeed, the passage quoted from Dicey in *Miller* expressly refers to 'the law of England'. The matter is, perhaps, most succinctly set out in *MacCormick v. Lord Advocate* 1953 SC 396, per the Lord President (Cooper) at 411:

'The principle of the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish constitutional law. It derives its origin from Coke and Blackstone, and was widely popularised during the nineteenth century by Bagehot and Dicey, the latter having stated the doctrine in its classic form in his Law of the Constitution. Considering that the Union legislation extinguished the Parliaments of Scotland and England and replaced them by a new Parliament, I have difficulty in seeing why it should have been supposed that the new Parliament of Great Britain must inherit all the peculiar characteristics of the English Parliament but none of the Scottish Parliament, as if all that happened in 1707 was that Scottish representatives were admitted to the Parliament of England. That is not what was done. Further, the Treaty and the associated legislation, by which the Parliament of Great Britain was brought into being as the successor of the separate Parliaments of Scotland and England, contain some clauses which expressly reserve to the Parliament of Great Britain powers of subsequent modification, and other clauses which either contain no such power or emphatically exclude subsequent alteration by declarations that the provision shall be fundamental and unalterable in all time coming, or declarations of a like effect. I have never been able to understand how it is possible to reconcile with elementary canons of construction the adoption by the English constitutional theorists of the same attitude to these markedly different types of provisions.'

46. The Scots law tradition of the sovereignty of the people, entrusted by them to their elected representatives, is different in nature from the Diceyan theory of the absolute vesting of power in the Crown in Parliament which Dicey refers to as the *despotism* of King in Parliament.
47. The doctrine of the sovereignty of Parliament has, in any event, been shown to be an oversimplification since the writings of Professor Dicey. Put simply: no power is without limit. In the United Kingdom, the rule of law is maintained through a balance of the three branches of government, and not by attempts by one of them to override or usurp the role of the others: *Cherry v. Advocate General* [2020] SC (UKSC) 1 Per Lady

Hale at §23. Indeed, in *Moohan v. Lord Advocate* [2014] UKSC 67, Lord Hodge said at §35:

'I do not exclude the possibility that in the very unlikely event that a parliamentary majority abusively sought to entrench its power by a curtailment of the franchise or similar device, the common law, informed by principles of democracy and the rule of law and international norms, would be able to declare such legislation unlawful.'

48. The rule of law always provides a protection against the overreaching of any arm of government.
49. To speak, therefore, of 'the sovereignty of parliament' as meaning something akin to the Diceyan form of that phrase is simply incorrect – certainly in Scotland. The UK Parliament may well have supreme legislative competence, in that it can legislate in relation to anything, but it is not the case that, consistent with the rule of law, it is able to override, remove, or otherwise interfere with fundamental rights (such as the right to self-determination) without clear and unambiguous statutory authority and without a clear, rational and evidenced basis for doing so.

Argument in favour of legislative competence

50. The Scottish Parliament forms part of the UK's current constitutional arrangement as a self-standing democratically-elected legislature: *AXA General Insurance Ltd v. Lord Advocate* [2011] UKSC 46, 2012 SC (UKSC) 122 per Lord Hope at §46. The competence of the Scottish Parliament to pass legislation is limited by law as is set out by the Lord Advocate: Lord Advocate's written case at §§88ff.
51. The Scottish Parliament cannot be abolished other than by way of a decision of the people of Scotland in a referendum: section 63A(3) of the 1998 Act.
52. The 1998 Act is 'an essential element of the architecture of the modern United Kingdom': *Somerville v. Scottish Ministers* [2007] UKHL 44, 2008 SC (HL) 45 per Lord Mance at §169. It is a constitutional statute, meaning its provisions are not subject to implied repeal by later non-constitutional Acts of Parliament: *H v. Lord Advocate* [2012] UKSC 24, 2012 SC (UKSC) 308 per Lord Hope at §30.

53. The Scottish Parliament exercises its legislative power for and over the people of Scotland to whom it is democratically accountable. It is firmly rooted in the traditions of a universal democracy: *AXA v. Lord Advocate* [2011] UKSC 46, 2012 SC (UKSC) 122 per Lord Hope at §49.
54. On the matter of the power to hold referendums, the applicant is at one with the submissions of the Lord Advocate insofar as they set out the arguments in favour of the existence of that power, and the applicant does not seek to repeat those submissions unnecessarily: Lord Advocate's written case at §§114-129, 135-138.
55. The applicant regards it of fundamental importance to these proceedings that it be recognised that the holding of a referendum, such as that which is being proposed, does not of itself implement the result or the outcome of that referendum. The referendum indicates the view of the demos on the question posed to it. That there will be subsequent secondary discussions between the UK and Scottish Governments in the event that the Scottish people indicate their support for Scottish independence does not change that. Those discussions are separate from the referendum and do not inform its purpose.
56. Section 29(3) of the 1998 Act requires consideration of the '*effect in all the circumstances*' of the provision which is said to be outwith the legislative competence of the Scottish Parliament. It is therefore important to consider the purpose of the provision in question before being able to determine whether it 'relates to' a reserved matter: *Re UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* [2018] UKSC 64; 2019 SC (UKSC) 13 at §27. Notably, in the same paragraph, it is stated that:
- 'The purpose of an enactment ... may extend beyond its legal effect, but it is not the same thing as its political motivation.'*
57. For the reasons set out at paragraph 52 above, the purpose of any legislation to hold a consultative referendum on Scottish independence is self-evidently to determine the view of the Scottish people in relation to the question posed. That is an exercise by the Scottish people of their right to self-determination. The implementation of the exercise of that right in the event of a vote in favour of independence would require an Act of the UK Parliament. Whatever the outcome of any such referendum, Scotland would not – and could not as a matter of law – become an independent country by default the day after 'referendum day'. The referendum itself is not an act of secession; it is

not a unilateral declaration of independence. A process of negotiation and subsequent legislation would be required to give effect to a referendum outcome in favour of independence.

58. It is, therefore, in the respectful submission of the applicant, very difficult to see how the holding of a referendum to determine the view of the Scottish people has anything more than a loose or consequential connection with any reserved matter in the 1998 Act. Seeking to test the views of the Scottish people by way of a referendum is perfectly competent and, standing the continued electoral mandate given to the applicant as set out above, it is democratically unthinkable that the people of Scotland would be denied such a right to express their view.
59. As the Lord Advocate makes clear in her written case at §130, the fundamental question for this court is the breadth of the phrase 'relates to' in the 1998 Act. As set out above, it is the applicant's submission that the answer to this question must be considered in light of the fundamental and inalienable right of the people of Scotland to self-determination. If the Lord Advocate is correct that 'relates to' can be given either a broad or a narrow reading, it is incumbent on this court to give that phrase the reading which does not infringe, reduce, or otherwise render otiose that fundamental and inalienable right. In the circumstances of this case, the applicant will argue that 'relates to' must be given a narrow reading, finding it to be competent for the Scottish Parliament to legislate for a consultative referendum on Scottish independence.
60. Put short, the holding of a consultative referendum does not result in a reduction in the scope of the powers of the UK Parliament and nor does it, of itself, have any effect on the Union. Legislation to enable such a referendum does not, therefore, in the respectful submission of the applicant, relate to the reservation of the Union nor to the Parliament of the United Kingdom.
61. The applicant wishes to set out its arguments in full by way of written case and to make short supplementary oral submissions in relation thereto. Those submissions will be of assistance to this court in the determination of the questions posed by the Lord Advocate. It is noted that the written submissions would be required to be lodged with this court at least six weeks before the hearing in accordance with practice direction 6.9.4 unless this court directs otherwise.

Conclusion

62. The applicant is an official body seeking to make submissions in the public interest and would be a person with an interest in the questions raised by these proceedings had they been brought by way of judicial review. For that reason, the applicant satisfies two of the categories of person who are encouraged 'in particular' by Rule 26, read alongside Rule 41, to seek to intervene.
63. As set out above, the applicant does not seek to repeat arguments that will be made by others but seeks to make submissions to this court on discrete and complementary legal arguments, most particularly the effect of the fundamental right of self-determination on the interpretation exercise that this court is being asked to carry out. The arguments set out above are wholly arguable as a matter of law.
64. It is right and proper that this court considers the questions posed by the Lord Advocate, which are of fundamental constitutional importance, in the full context of all arguments and having heard submissions from all relevant parties. The applicant does not propose to extend or delay the proceedings before this court, and seeks only a period of allocated time for oral submissions in addition to the ability to make written submissions to this court.
65. In all the circumstances, it would be fair, just, and reasonable for the applicant to be granted permission to intervene in these proceedings in order to make submissions on the matters set out above. The submissions will be of assistance to the court and no party will suffer prejudice as a result of the applicant being able to take part in these proceedings.
66. This court is therefore respectfully invited to grant the applicant's application to intervene and to issue directions in relation to (i) a timetable for the lodging of the applicant's written case, and (ii) the allocation of time for oral submissions by the applicant.

Claire Mitchell QC

David Welsh

Instructed by Stuart Munro, Livingstone Brown