



Motion S5M-16554 and its Legal Consequences

The Law Society of Scotland is the professional body for almost 12,000 Scottish solicitors. We seek to influence the creation of a fairer and more just society and are strongly committed to our statutory duty to work in the public interest and to both protect and promote the rule of law.

The Motion which has been tabled by Mr Harvie states:

S5M-16554 Patrick Harvie: Revoking Article 50—That the Parliament commends the more than five million signatories to the UK Parliament petition to revoke Article 50, and believes that, unless the UK secures a sufficient extension to the Brexit process to organise and conduct a People’s Vote with an option to remain in the EU, the UK’s notification under Article 50 of the Treaty on European Union should be revoked immediately.

We attempt to analyse below the motion to identify how it would be put into effect in law.

A People’s Vote or Referendum

A referendum would require specific legislation which will have an impact on the length of extension which the UK would need to agree with the EU. The required law would build on the framework under the Political Parties, Elections and Referendums Act 2000 which sets out restrictions on the referendum period, regulation of the administration of the referendum and the role of the Electoral Commission in referendums. The specific legislation might be expected to contain details such as who is entitled to vote, regulation of the conduct of the referendum, and campaigning and financial rules which may be controversial. There would need to be statutory provision for the referendum campaign. As an indication the 2016 referendum campaign period was designated in regulations as running from 15 April to 23 June 2016, a period of 10 weeks.

Revocation of the Article 50 notification

In *Wightman and others v The Secretary of State for Exiting the European Union* the European Court of Justice (ECJ) determined that the decision to withdraw the Article 50 notice “is for that member state alone to take, in accordance with its constitutional requirements”:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=208636&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6167731>

The revocation of Article 50 would need to be “submitted in writing to the European Council”. The ECJ did not describe the constitutional processes which the UK would have to undertake to revoke the notice.

There is an ongoing academic argument as to what processes would be needed. On the one hand the balance of opinion supports the proposition that an Act of Parliament would be needed to allow the Government to revoke. On the other hand some contend that the Government could revoke without further parliamentary authorisation. If there was no agreement on the way forward it could lead to litigation in the Courts.