

In the matter of an application by Clifford Peeples for Judicial Review (Appellant) (Northern Ireland)

Case ID: 2022/0089

Case summary

Issue

In these conjoined appeals, the appellants challenge the lawfulness and constitutionality of the respondents' decisions and actions in the implementation, and operation of the Northern Ireland Protocol ("the Protocol"). The issues raised concern the constitutional settlement of the UK, the operation and interpretation of the Belfast Agreement, and the effect of the Withdrawal Agreement between the UK and the EU and the Protocol in domestic law.

The grounds of appeal are, among others, the claimed incompatibility of the Protocol and related regulations with the Acts of Union 1800 and the Northern Ireland Act 1998, the correct approach to statutory interpretation to resolve a conflict or clash between the constitutional provisions of constitutional Acts, and the lawfulness of the Protocol.

Facts

The referendum on 23 June 2016 resulted in a majority across the UK deciding to leave the EU. Withdrawal from the EU was given effect in domestic law by a series of legislative steps. First, the UK Parliament passed the European Union Notification of Withdrawal Act 2017. Then, the European Union Withdrawal Act 2018 ("the 2018 Act") was passed which repealed the European Communities Act 1972. Subsequently, the European Union Withdrawal Agreement Act 2020 ("the 2020 Act") was passed amending the 2018 Act and providing for the formal execution and ratification of the Withdrawal Agreement between the UK and the EU, including the Protocol. The Withdrawal Agreement came into operation on 1 February 2020, the Protocol came into operation on 10 December 2020. The transition period ended on 31 December 2020 with the result that final withdrawal from the EU took effect from 1 January 2021.

The Protocol provides the framework for post-withdrawal arrangements in Northern Ireland ("NI"). Article 18 of the Protocol requires the UK to provide the opportunity for democratic consent in NI to the continued application of Articles 5 to 10 of the Protocol. The Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020 ("the 2020 Regulations") implement in domestic law the mechanism for obtaining this democratic consent.

The appellants brought judicial review applications challenging the Protocol and the 2020 Regulations on the following grounds. First, the Protocol and the 2020 Regulations were incompatible with the Acts of Union 1800, and specifically with Article VI which provides that the subjects of Great Britain and Ireland shall be on the same footing with respect to trade, and that any future treaty entered into with a foreign power shall preserve that footing. Secondly, the Protocol was incompatible with the Northern Ireland Act 1998, specifically section 1(1) which provides that "Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of the majority of the people of Northern Ireland voting in a poll...". Thirdly, the 2020 Regulations unlawfully eliminated the constitutional safeguard enshrined in section 42 of the Northern Ireland Act 1998, which requires Assembly votes to have cross-community support. Finally, the appellants alleged that there had been a breach of the European Convention on Human Rights and EU law.

The judge at first instance dismissed the appellants' applications for judicial review. The Court of Appeal in Northern Ireland dismissed their appeal. The appellants now appeal to the Supreme Court.

Judgment appealed

[\[2020\] NICA 15](#)

Parties

Appellant(s)

Clifford Peeples

Respondent(s)

Secretary of State for Northern Ireland

Appeal

Justices

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Sales, Lord Stephens

Hearing start date

30 November 2022

Hearing finish date

1 December 2022

Watch hearing

30 Nov 2022 [Morning session](#) [Afternoon session](#)

1 Dec 2022 [Morning session](#)

Judgment details

Judgment date

8 February 2023

Neutral citation

[2023] UKSC 5

- [Judgment \(PDF\)](#)
- [Press summary \(HTML version\)](#)
- [Judgment on The National Archives \(HTML version\)](#)
- [Judgment on BAILII \(HTML version\)](#)