

Holyrood Non-consent

By David Hearne, Centre for Brexit Studies

16th May 2018

Yesterday, the Scottish Parliament voted to refuse to give consent to the UK's European Union (Withdrawal) Bill, arguing that it would restrict the power of the devolved parliament. Specifically, at present there are some 158 areas in which policy that would usually be the domain of devolved administrations is presently determined in Brussels. There is little argument in 134 of these areas where policy will, post-Brexit, be directly repatriated to the Scottish Parliament and Welsh Assembly. In 24 areas, however, the UK government intends to repatriate policy directly to Westminster (at least for a period).

Although one can envisage compromise being found in some of these areas (public procurement policy, perhaps), others are rather fundamental to the effective working of the UK's own internal market. They include chemicals regulation, agriculture and fisheries policies, for example. In some regards this is understandable: it is difficult to see a situation where English farmers are allowed to use certain products whilst their Scottish counterparts a few miles away are not (or vice versa) as being acceptable. In this vein, it is noteworthy that the Welsh Assembly voted to allow the UK government to repatriate powers.

Whilst in the strictest terms this is of relatively limited constitutional importance – the UK government does not need the consent of the Scottish Parliament to introduce legislation – it raises thorny questions for a country that is deeply divided along regional lines. Indeed, it seems possible that the argument over the appropriate devolution of powers is something of a proxy for more fundamental disagreements. Although the UK ultimately voted by a relatively narrow margin (51.9% to 48.1%) to leave the EU, this masks highly divergent regional patterns in the vote. Whilst the Midlands, for example, voted decisively to leave (by 59.1% to 40.9%), Scotland voted heavily to remain part of the EU (62% of votes were in favour of remaining). Indeed, this was referred to explicitly by the Scottish Minister Michael Russell in his address as “a Brexit that Scotland did not vote for and which can only be damaging to our country.” (*Official Report: Meeting of the Parliament 15 May 2018, 2018*)

This raises thorny questions for the Government in Westminster – how should the UK reconcile the different wishes of various regions? The past 20 years have seen dramatic developments in the UK's constitutional and political landscape. One of the most centralised states in the world has engaged in a rather dramatic experiment with devolution, which is, in the Scottish case at least, widely seen as a resounding success. Given this, it may prove politically challenging for Westminster to ride roughshod over the concerns of Holyrood.

Indeed, EU membership was an important factor for many in Westminster who campaigned in favour of Scotland remaining within the UK during the 2014 referendum on Scottish independence. That same parliament now seems set to take the UK (and Scotland) out of the EU against the wishes of the Scottish public and their elected representatives. Of course, this imbalance is not lost on



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many voters in England. It is difficult to see, for example, why regions like Yorkshire (with a population similar to that of Scotland) should be constrained to follow a policy set by Westminster by a party that, by and large, they did not vote for, when the Scottish Parliament enjoys such wide legislative powers to follow a different policy. This, of course, is in addition to the West Lothian question that continues to bedevil the UK's devolution policy. Brexit's role in all this is to heighten and highlight the constitutional challenges faced by the UK.

Official Report: Meeting of the Parliament 15 May 2018, The Scottish Parliament (2018).