# WRITTEN STATEMENT

# BY

# THE WELSH GOVERNMENT

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| **TITLE** | **Supreme Court Reference: UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill – Counsel General’s written case** |
| **DATE** | **16 July 2018** |
| **BY** | **Jeremy Miles AM, Counsel General** |

Today I am publishing a copy of the written case I have filed in the Supreme Court, in relation to the Attorney-General’s and Advocate General’s Reference of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

I am publishing my case in the interests of transparency. This case raises issues of constitutional importance across the United Kingdom, and the different devolution frameworks. Along with the Lord Advocate in Scotland and the Attorney General for Northern Ireland, we are each making our written cases public, so that our positions on these important issues are clear.

As I have emphasised before, the Welsh Government’s participation is not about our own Law Derived from the European Union (Wales) Act. Through the changes to the EU (Withdrawal) Act and an Intergovernmental Agreement, we have secured protections of devolution in Wales and made sure laws and policy areas which are currently devolved remain devolved.

The issues raised on behalf of the UK Government by the Attorney General and the Advocate General for Scotland in their case extend beyond the Scottish Bill, and relate to the future functioning of the UK after Brexit. It is vital that Wales has a voice on those issues, and they are the focus of my case.

Firstly, I address the impact of leaving the EU on the competence of the Assembly. I strongly contend that leaving the EU will see all those powers in devolved areas which currently sit with the EU, for example in relation to agricultural support, no longer being constrained by EU law. As the Supreme Court itself noted in the *Miller* case, withdrawal from the EU will enhance the devolved legislatures’ competence. It is for the Assembly to determine where, if at all, it wishes to ‘pool’ any of those powers through common UK wide frameworks.

The second issue relates to the legislative practicalities of withdrawal. My case states that legislating for the domestic consequences of withdrawal from the EU, where those consequences relate to matters which are not reserved, falls squarely within the legislative competence of the Assembly and not within the international relations reservation.

Thirdly, I contend that it is perfectly within the Assembly’s competence to legislate in advance of exit in order to make the changes which need to be in place from day one after the UK leaves the EU.

The fourth point in my case deals with the scope of the courts’ common law power to review Assembly legislation. The Supreme Court made it clear in *AXA* that where the democratically elected devolved legislatures act within the scope of the devolution frameworks laid down by Parliament, their acts are reviewable by the courts only on very limited grounds, and only where fundamental rights or the very essence of the rule of law is at stake. The Scottish Continuity Bill is not, in my submission, legislation of that extreme kind.

The case will be heard by the Supreme Court on 24 and 25 July. Michael Fordham QC will make oral submissions to the Court on my behalf. I will make a further statement once the Court has handed down its judgment.