

## **Supreme Court decision on prorogation** <sup>[1]</sup>



### **What is the state of play on the court challenges to prorogation?** <sup>[2]</sup>

There were three challenges to the lawfulness of the government's decision to prorogue Parliament <sup>[3]</sup>: one in the courts of England and Wales, one in the Scottish courts and one in the Northern Irish courts.

The High Court in England rejected the challenge in England and Wales. It decided that the prime minister's decision to prorogue was "inherently political in nature", and that there are "no legal standards" against which to judge its legitimacy.

The first judge to hear the Scottish case reached a similar view. However, the challengers in that case appealed to the Inner House of the Court of Session, which ruled on 11 September that the prorogation was unlawful, because the prime minister had acted for the improper purpose of stymying scrutiny in Parliament.

The High Court in Northern Ireland decided not to consider the prorogation challenge, since the issue was already being litigated in England and Scotland.

On 17 September, the UK Supreme Court heard a joint appeal from the judgment of the High Court and the Inner House of the Court of Session. It gave its decision on 24 September.

### **What did the Supreme Court decide?** <sup>[4]</sup>

The Supreme Court disagreed with the England and Wales High Court and found that the courts did have "jurisdiction to decide upon the extent and limits of a prerogative power". It found that the power to prorogue "is limited by the constitutional principles with which it would otherwise conflict" – those two principles being parliamentary sovereignty and parliamentary accountability.

The Supreme Court decided it did not need to look at the motive for prorogation, but that what mattered was the effect of prorogation. It concluded that prorogation would be unlawful if it "has the effect, of frustrating or preventing, without reasonable justification, the power of Parliament to carry out its constitutional functions as a legislature and as the body responsible for the supervision of the executive". It found that proroguing for five weeks, rather than the normal four to five days, in the run-up to the major constitutional change on 31 October was unlawful. It therefore quashed the Order in Council, meaning prorogation never happened.

The court reached its judgement unanimously.

### **Did the court say the prime minister misled the Queen?** <sup>[5]</sup>

No. The judges said that they did not know what conversation passed between the prime minister and the Queen when he advised her to prorogue Parliament. Instead, the court said that the prime minister lacked a justification for such an "extreme" prorogation, whatever reasons he gave to the Queen.

### **What happens next?** <sup>[6]</sup>

The Supreme Court has declared that Parliament "has not been prorogued", and suggests that it is for the Speaker and Lord Speaker to decide what that means.

Speaker of the House of Commons John Bercow has said Parliament will resume sitting on Wednesday 25 September at 11:30am, although there will be no Prime Minister's Questions as normal due to late notice.

Business in the House of Commons will be determined by government business managers in consultation with the usual channels, as usual.

Legislation which was dropped on 9 September can now resume its passage, including the Domestic Abuse

Bill, although it is unclear how far they will progress if Parliament opts for a general election in October and November.

## **Will the Conservative Party Conference go ahead?** <sup>[7]</sup>

There is nothing to stop the Conservative Party Conference from continuing as scheduled, although MPs will now have to choose whether to attend or return to Westminster.

Boris Johnson's speech on Wednesday 2 October will now likely clash with Prime Minister's Questions.

## **What does the court ruling on prorogation mean for Brexit?** <sup>[8]</sup>

Parliament has already legislated to try to prevent a no-deal Brexit on 31 October, by passing the European Union (Withdrawal) (No. 2) Act 2019.

However, the court's ruling gives MPs more opportunities to scrutinise the government's Brexit policy as the prime minister both seeks a renegotiated Brexit deal and prepares to leave with no deal. For example, the prime minister had been scheduled to be questioned by the Liaison Committee on 11 September. MPs may also want to hold hearings on the [Yellowhammer documents](#) <sup>[9]</sup> and pursue the government's non-compliance with the Humble Address on disclosure of correspondence on prorogation between the PM's aides.

The decision also means that Brexit-related legislation – [which fell at the point of prorogation](#) <sup>[10]</sup> – could continue its passage through Parliament, though in practice it was not lack of time which prevented these bills passing. But if Parliament has more time, it should be able to scrutinise secondary legislation which otherwise might have had to go through under the emergency procedure.

## **What would the Supreme Court say if the PM prorogued Parliament again?** <sup>[11]</sup>

The Supreme Court didn't address that – but it is clear that the court sees a role in protecting Parliament from the actions of an executive which tries to frustrate it without good justification so the government would need to expect a similar outcome if it opted for an exceptional prorogation again in the run-up to Brexit.

### **Update date:**

Tuesday, September 24, 2019

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[2] [http://twitter.com/intent/tweet?](http://twitter.com/intent/tweet?text=What%20is%20the%20state%20of%20play%20on%20the%20court%20challenges%20to%20prorogation%3F)

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[3] <https://www.instituteforgovernment.org.uk/explainers/proroguing-parliament>

[4] [http://twitter.com/intent/tweet?](http://twitter.com/intent/tweet?text=What%20did%20the%20Supreme%20Court%20decide%20about%20the%20prorogation%20of%20Parliament%3F)

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[5] [http://twitter.com/intent/tweet?](http://twitter.com/intent/tweet?text=Did%20the%20court%20say%20the%20prime%20minister%20misled%20the%20Queen%3F)

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[6] [http://twitter.com/intent/tweet?](http://twitter.com/intent/tweet?text=What%20happens%20next%20now%20the%20Supreme%20Court%20has%20ruled%20prorogation%20was%20unlawful%3F)

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[7] <http://twitter.com/intent/tweet?text=Will%20the%20Conservative%20Party%20Conference%20go%20ahead%3F>

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[9] <https://www.instituteforgovernment.org.uk/explainers/operation-yellowhammer>

[10] <https://www.instituteforgovernment.org.uk/explainers/carried-over-bills>

[11] [http://twitter.com/intent/tweet?](http://twitter.com/intent/tweet?text=What%20would%20the%20Supreme%20Court%20say%20if%20the%20PM%20prorogued%20Parliament%20again%3F)

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