

ENDING THE UNION

**EMPOWERING SCOTLAND'S MEMBERS OF PARLIAMENT
TO END THE TREATY
IF THE UNION WITH ENGLAND ACT 1707 IS BREACHED
OVER BREXIT**

**PUTTING FORWARD A CASE WITH LEGAL ARGUMENTS
FOR THE REPEAL OF
THE UNION WITH ENGLAND ACT 1707**



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SCOTTISH INDEPENDENCE WILL HAPPEN

AND THERE ARE MANY WAYS THAT THIS CAN BE ACHIEVED

WE NEED TO BE OPEN TO DISCUSSION AND DEBATE ON
EVERY ROUTE AVAILABLE TO US IRRESPECTIVE OF

WHETHER YOU LIKE IT OR NOT

WHETHER YOU AGREE WITH IT

WHETHER YOU THINK IT WILL WORK

WHETHER YOU THINK ANYONE WILL SUPPORT IT

WHETHER YOU LIKE THE PERSON PROPOSING IT

WHETHER YOU LIKE THE GROUP ASSOCIATED WITH IT

IT WILL ONLY BE THROUGH CONTINUED DISCUSSION AND
DEBATE THAT WE CAN EVER HOPE TO FORMULATE A PLAN
TO ACHIEVE OUR OBJECTIVE OF AN INDEPENDENT SCOTLAND

ALTERNATIVE ROUTES COULD CONSIST OF A REFERENDUM
WITHOUT A SECTION 30 ORDER, OR USING THE NEXT SCOTTISH
OR GENERAL ELECTIONS AS A PLEBISCITE FOR INDEPENDENCE

WHAT IS BEING PROPOSED HERE MAY WELL BE A MATTER OF
CONTENTION FOR SOME, BUT IN MY OPINION IS A VIABLE, LEGAL
AND REALISTIC OPTION

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INTRODUCTION

The UK government is currently facing a brexit crisis and some sort of sacrifice will have to be made to appease the voters. But will that be England and Wales, will it be Scotland or will it be Northern Ireland.

Revoking article 50 will be great for Scotland and Northern Ireland who voted overwhelmingly to remain, but will not go down so well with the English and Welsh people who voted to leave, and I doubt very much that they will they throw Northern Ireland under the brexit bus to appease the majority as they need the DUP to get any deal through.

So it is looking more and more likely that brexit will go ahead, with or without an agreement.

A separate deal will then have to be made for Northern Ireland, and Scotland will become the sacrificial lamb.

Legislation will be hastily re-written to accommodate the deal, new laws will be passed quickly and without debate in the House of Commons, changes will be made to the 1706/1707 Acts of the Union to facilitate these new laws and when Scotland objects, we will be told to sit down and shut up....

It is for these reasons that I have put together this proposal along with its supporting documents and legal arguments so that the Scottish people can empower their MP's in Westminster to repeal the 1707 Acts of the Union if the treaty is broken over brexit

Much of this proposal relates to an enactment made by the Scottish Parliament in 1707, this is the “*Act Ratifying and Approving the Treaty of Union of the Two Kingdoms of SCOTLAND and ENGLAND*”

HISTORICAL DATES

We will start by taking a look at some historical dates, the importance of which are explained in more detail throughout this proposal.

In **1702/1703** the proposed Act of the Union failed because the English Parliament refused to give way on matters relating to freedom of trade for Scotland. Following further debate and pressure from the monarchy an agreement was reached.

In **1707** (1706 on the English calendar) the Scottish and English parliaments became the Parliament of Great Britain and the union was formed and ratified by treaty.

In **1801** the Parliament was changed to include Ireland and became the Parliament of the United Kingdom of Great Britain and Ireland making Ireland a third state of the union of Great Britain.

In **1927** following Irish independence it changed to the Parliament of the United Kingdom of Great Britain and Northern Ireland replacing Ireland with Northern Ireland as the third state of the union of Great Britain.

In **1999** the Scottish Parliament reconvened as the Scottish Executive.

In **2012** The Scottish Executive was changed to that of the Scottish Government

On the **22nd of October 2015**, the House of Commons approved changes that introduced 'English votes for English laws' which had the effect of re-instating an English Parliament.

On the **4th of July 2018**, the House of Commons endorsed the principles of the Claim of Right for Scotland.

On the **26th of April 2019**, a petition to the UK Government was submitted requesting an order under section 30 be granted, the petition cited significant changes since 2014 as well as stating that the proposals to allow part of the UK to trade differently from Scotland contravened the Union with England Act 1707.

On the **15th of July 2019**, the UK Government responded to the petition and totally ignored the facts upon which the petition was based, including the implied breach of articles 4 and 6 of the Acts of the Union.

31st of October 2019 – We leave the EU with or without a deal.

ARGUMENT FOR THE REPEAL OF THE UNION WITH ENGLAND ACT 1707

The Union with England Act 1707

An Act Ratifying and Approving the Treaty of Union of the Two Kingdoms of SCOTLAND and ENGLAND

The Union with England Act 1707 has been shredded to the point of non-existence and there is not much left of the original act. Most of the act has been repealed and re-written into the various Scotland Acts, but there are still a few sections of the original act that remain intact and it is these sections of the act that are being threatened by new legislation.

In order for the UK Government to proceed with its legislation for the proposed EU withdrawal bill to satisfy Northern Irelands unique position it must first make changes to, or repeal some of the remaining sections of the 1707 Union with England Act.

The United Kingdom referenced in Section III of the 1707 act refers to the “United Kingdom of Great Britain” and it can be argued that the “United Kingdom of Great Britain and Northern Ireland” supersedes the original act, however, this is not the case as the 1800 Act of Union (Ireland) clearly states.

The parliaments of Great Britain and Ireland have resolved to concur in measures for uniting the two kingdoms: Whereas in pursuance of his Majesty's most gracious recommendation to the two houses of parliament in Great Britain and Ireland respectively, to consider of such measures as might best tend to strengthen and consolidate the connexion between the two kingdoms, the two houses of the parliament of Great Britain, and the two houses of the parliament of Ireland have severally agreed and resolved, that in order to promote and secure the essential interests of Great Britain and Ireland, and to consolidate the strength, power, and resources of the British empire, it will be adviseable to concur in such measures as may best tend to unite the two kingdoms of Great Britain and Ireland, into one kingdom, in such manner, and on such terms and conditions, as may be established by the acts of the respective parliaments of Great Britain and Ireland.

The important part of this section of the 1800 act is the last paragraph; “*in such manner, and on such terms and conditions, as may be established by the acts of the respective parliaments of Great Britain and Ireland*”

Meaning that the acts that make up the United Kingdom of Great Britain are the established acts and that the “Union of Great Britain and Ireland” was established under those terms.

The fact that Northern Ireland is able to dictate policy and law over Scotland, by lending its vote to one member of the United Kingdom of Great Britain through a confidence and supply agreement, shows that Northern Ireland is accepted as a third state within the treaty of the acts of the union, otherwise it would be in breach of both the “1707 Union with England Act” and the “1800 Act of Union (Ireland)”.

If Northern Ireland is not a third state of the United Kingdom of Great Britain then it should have no vote on matters relating to Great Britain, neither should it be allowed to interfere in the relationship of the two countries that make up the United Kingdom of Great Britain.

Section III of the Union with England Act 1707 states;

That the United Kingdom of Great Britain be Represented by one and the same Parliament to be stiled the Parliament of Great Britain

This section of the act has never been altered or repealed; therefore Northern Ireland if not accepted as a third state, should have no governance over matters directly relating to Scotland, there is no consensus for the United Kingdom of Great Britain to be replaced by the United Kingdom of Great Britain and Northern Ireland. As stated earlier the “1800 Act of Union (Ireland)” unites the Parliaments of Great Britain and Ireland and does not give governance of one over the other.

So therefore it is accepted, that Northern Ireland is a third state of the union of Great Britain as described under Article 36 of the Vienna Convention.

Treaties providing for rights for third States

1. *A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.*
2. *A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.*

So that being the case then the UK Governments proposals to grant one of the member states a different arrangement to that of the rest of the United Kingdom would be in breach of Sections IV and VI of the “Union with England Act 1707” and will leave Scotland at a disadvantage.

Section IV of the Union with England Act 1707 states;

That all the Subjects of the United Kingdom of Great Britain shall from and after the Union have full Freedom and Intercourse of Trade and Navigation to and from any port or place within the said United Kingdom and the Dominions and Plantations thereunto belonging And that there be a Communication of all other Rights Privileges and Advantages which do or may belong to the Subjects of either Kingdom except where it is otherwayes expressly agreed in these Articles

So it is clear from this that Scotland is entitled to that “***Freedom and Intercourse of Trade and Navigation***” and it is worth mentioning that the specific use of the phrase “*for ever from and after the Union*” tells us that these articles were recognised by both parties as unchangeable.

This leads us onto Section VI of the act, which states

Section VI

That all parts of the United Kingdom for ever from and after the Union shall have the same Allowances Encouragements and Drawbacks and be under the same Prohibitions Restrictions and Regulations of Trade and lyable to the same Customs and Duties on Import and Export And that the Allowances Encouragements and Drawbacks Prohibitions Restrictions and Regulations of Trade and the Customs and Duties on Import and Export settled in England when the Union commences shall from and after the Union take place throughout the whole United Kingdom

The Act is quite specific and states “**from and after the Union**” it is also states “**throughout the whole United Kingdom**”. So if it is the consensus that Northern Ireland is a third state and a part of the “**whole United Kingdom**” it cannot have differing regulations of trade or customs and duties on imports and exports than those of Scotland.

It has already been established that certain parts of the treaty are regarded as unchangeable such as those sections referring to the monarchy and freedom of trade. However, the UK Government claims that it has the right to change any part of the treaty including those parts that are deemed unchangeable, this right is claimed through an English act of parliament that pre-dates the acts of the union and I doubt very much that it would stand if challenged.

It is my opinion that any changes to, or repeal of, any part of the Union with England Act 1707 must be agreed by both parties, any changes to the act without the required consent of the Scottish People, would be considered a breach of the act.

Such a breach would result in the agreement being broken and if no resolution was found then Scotland would immediately be released from its commitments and duties under the act.

The fact that the UK Government has tried three times already to push through its “EU Withdrawal Agreement” that proposes a different trading relationship of one part of the United Kingdom to that of Scotland shows us that they are prepared to ignore the treaty in order to get a deal pushed through.

We need to let Westminster know that the people of Scotland do not agree to any legislation being passed, or agreements being made that will remove or hinder our “**full Freedom and Intercourse of Trade and Navigation to and from any port or place within the said United Kingdom**” as stated in section IV of the “Union with England Act 1707” and that we do not agree to any amendments to, or to the repeal of section VI of the “Union with England Act 1707” in order to facilitate “**a different trading or customs relationship**” for Northern Ireland that will leave Scotland at a disadvantage. We also need to make it known that any such breach of the “Union with England Act 1707” is unacceptable and will result in the agreement being broken, ending the union and releasing Scotland from it’s commitments and duties under the act.

HOW DO WE ACHIEVE THIS?

A breach of the act (which can be likened to a contract) would be enough to end the union if one sides democratically elected representatives decided the breach warranted an annulment.

Because the Union of the Kingdoms is a reserved matter by virtue of the 1998 Scotland Act, it would not be within the legislative competence of the Scottish Parliament to make a decision on this.

The 59 elected Scottish MP's are the only legally and democratically elected representatives of the Scottish people in the Parliament of the United Kingdom, so if the Union with England Act 1707 was deemed to have been broken then any decision regarding what action to take would be a matter for them to decide.

That legislation passed on the 22nd of October 2015, when the House of Commons approved Standing Order changes that introduced 'English votes for English laws' had the effect of re-instating an English Parliament.

The English representatives being the other party to the treaty may not agree that the Scottish representatives had the power to make such a decision, but as the Scottish Parliament could not make a decision by virtue of these matters being reserved then the decision falls by default on Scotland's MP's in Westminster where the matter is reserved to.

If the Majority of Scottish MP's sitting in the House of commons came to the decision that the act had been breached by the other side without the agreement of the representatives of the Scottish people, then it would be within their rights as democratically elected members of Parliament representing the Scottish people to revoke the act by notification in the House of Commons & then to inform Her Majesty of the same.

it is important to note that ONLY Scottish MP's would be involved in this decision making as we are referring to an Enactment of the Scottish Parliament, the English MP's being representatives of the other party, could not legally take governance over Scotland's representatives in this matter.

There would be no requirement for a Scottish referendum as the union by virtue of default would no longer exist. If at a later date there was a clear majority in Scotland to rejoin the union under new terms then a referendum could be held putting the question to the Scottish people & asking them to vote on the matter.

This is not a devolution issue so cannot be referred to the supreme court under the 1998 Scotland Act, and as there are no terms for arbitration written into the treaty of the acts of the union, then a decision made by a majority of the Scottish representatives must stand.

If there were to be any disagreement over the legality of Scotland's withdrawal from the United Kingdom then the UK Government is of course free to take the matter up with the United Nations if it so desired.

PARLIAMENT'S IMPLIED CLAIM OF SOVEREIGNTY

The UK Government's claim of Sovereignty over matters relating to the Union and its view that it can change the articles that make up the treaty (including those that are deemed as unchangeable) comes from out dated ENGLISH legislation much of which pre-dates the Acts of the Union. Old (and often outdated) English legislation is often cherry picked to back up parliament's claim of sovereignty and when these laws are challenged (or in some cases used against them), the UK Government simply introduces new laws to override them, such as the Parliament Act which was passed in order to stop the house of lords from vetoing any legislation passed in the commons, another typical example is the English 1689 Bill of Rights Act, while the protestants right to bear arms has been removed, article 9 is still cited to protect MP's from prosecution.

The parliamentary website describes this claim of sovereignty as follows:-

Parliament's authority - <https://www.parliament.uk/about/how/role/sovereignty/>

Parliamentary sovereignty is a principle of the UK constitution. It makes Parliament the supreme legal authority in the UK, which can create or end any law. Generally, the courts cannot overrule its legislation and no Parliament can pass laws that future Parliaments cannot change.

Parliamentary sovereignty is the most important part of the UK constitution.

Parliamentary sovereignty and the UK constitution

People often refer to the UK having an 'unwritten constitution' but that's not strictly true. It may not exist in a single text, like in the USA or Germany, but large parts of it are written down, much of it in the laws passed in Parliament - known as statute law. Therefore, the UK constitution is often described as 'partly written and wholly uncodified'. (Uncodified means that the UK does not have a single, written constitution.)

Developments affecting Parliamentary sovereignty

Over the years, Parliament has passed laws that limit the application of parliamentary sovereignty. These laws reflect political developments both within and outside the UK.

They include:

The devolution of power to bodies like the Scottish Parliament and Welsh Assembly.

The Human Rights Act 1998.

The UK's entry to the European Union in 1973.

The decision to establish a UK Supreme Court in 2009, which ends the House of Lords function as the UK's final court of appeal.

These developments do not fundamentally undermine the principle of parliamentary sovereignty, since, in theory at least, Parliament could repeal any of the laws implementing these changes.

But none of this answers the question of who holds sovereignty over an enactment made by the Scottish Parliament in 1707, especially those parts of the act that have been deemed as unchangeable.... Scotland is a part of the United Kingdom and the 1707 act is the very foundation on which the union was built. Those parts of the act which protect Scotland's freedom of trade and movement "*forever and after*" cannot be changed by one side just because it "*Claims*" to have Sovereignty over the other.

HOW DO WE PROCEED

We have already notified the Government of the United Kingdom of our challenge to the implied breach of section VI of the “Union with England Act 1707”, by means of a parliamentary petition that was accepted by members of the UK parliamentary petitions committee on the 16th of May 2019. The “*Parliamentary Petitions Committee*” is made up of UK Government backbenchers and opposition party MP’s.

Helen Jones (Chair) - Labour, Mike Hill - Labour, Daniel Zeichner - Labour
Damien Moore - Conservative, Paul Scully - Conservative, Martyn Day - SNP
Luke Hall - Conservative, Catherine McKinnell - Labour, Liz Twist - Labour
Michelle Donelan - Conservative, Steve Double - Conservative

Petition

The petition (numbered 259359) reads as follows;- To grant a section 30 order to allow a 2nd referendum on Scottish Independence.

In view of the recent changes that will affect the future of Scotland and its ability to make decisions on what direction that future should take, the people of Scotland ask that Westminster grants an order under section 30 of the Scotland Act to hold a second referendum for Scottish Independence.

More details

Since the 2014 referendum there have been many significant changes that have affected Scotland including the will of the Scottish people to remain in the EU & the proposals to allow part of the UK to trade differently, which is in direct contravention of Union with England Act 1707, Section VI which states "Regulations of Trade and the Customs and Duties on Import and Export settled in England when the Union commences shall from and after the Union take place throughout the whole United Kingdom"

The important part of the petition is the significant changes since 2014 and the references to the implied breach of the treaty.

An independent legal perspective* was obtained to check the validity of the question being submitted, the consensus of which, was that the Union with England Act 1707 would be breached if Northern Ireland were granted a differing relationship to that of Scotland.

*See attached document submitted by S Dewar

The online petition reached its goal of 10,000 signatures on the 2nd of July 2019

It took the UK Government 13 days to issue a response....

On the 15th of July, the petition received the following response from the UK Government via the Scotland Office;

Now is not the time for another referendum. In 2014 people in Scotland voted decisively to remain part of the United Kingdom. That result should be respected.

The UK Government has been clear that now is not the time for another referendum. Scotland had an independence referendum in 2014 on a promise that it would settle the issue for a generation. It was legal, fair and decisive and people in Scotland voted by a significant margin to remain part of the UK. The Edinburgh Agreement of 2012 committed both the UK and Scottish governments to respect the referendum's outcome. The UK Government will continue to respect the result of the 2014 referendum.

It was signed “Scotland Office.”

This response appears to be a cut and paste job from a previous government reply to a petition to hold a second referendum. A copy of which can still be seen online.

On the 16th of July I received an email from the Petitions team informing me of the Governments response, as I found the government’s response totally ignored the reasons for a second referendum and contained mis-information. The petitions committee can look into the response and press the Government to take action.

I sent the following reply to the petitions team;

Thank you for your email notifying me that the government has responded, I note that the petitions committee can look into the response and press the government for action and gather evidence.

Can you tell me what the next step would be, if it was considered that the response contained mis-information.

To date there has been no reply from the petitions committee.

POINTS TO NOTE ON THE UK GOVERNMENTS REFUSAL TO GRANT AN ORDER UNDER SECTION 30

The request for a second referendum on Scottish Independence is based on Scotland being taken out of the European Union against the wishes of the Scottish Electorate, who voted overwhelmingly to remain.

The UK Government has stated that in 2014 Scotland voted to remain in the United Kingdom and that they will continue to respect that decision.

However, all referendums in the UK are advisory and Westminster cannot use the 2014 result indefinitely as an excuse to overrule Scotland's request to hold a second referendum, especially now, given the fact that so much has changed in such a short time.

Plus, they have to take into consideration the fact that since the referendum in 2014, the people of Scotland have elected a government on a mandate of a second independence referendum and have twice returned a majority of Scottish pro-independence MP's to Westminster.

It is also worth remembering that on the 04th of July 2018, the House of Commons endorsed the principles of the Claim of Right for Scotland, agreed by the Scottish Constitutional Convention in 1989 and then ratified by the Scottish Parliament in 2012, and acknowledged the sovereign right of the Scottish people to determine the form of government best suited to their needs.

So given all that, it is absolute nonsense for anybody to suggest that a democratic country cannot go to the polls if a situation demands a response from the people.

Was it a “Once in a Lifetime” vote?

It may well have been a “once in a lifetime opportunity” for many, but nowhere in either the 2012 Edinburgh Agreement or in the 2013 Scottish Independence Referendum Act, does it mention a time scale for a second referendum, and there is certainly no reference to it being “once in a lifetime” nor is there any reference to a “*promise that it would settle the issue for a generation*” as has been stated in the official government reply to both mine and the petition replied to on the 25th of April 2019.

Furthermore, chapter 2:18 of the 2014 report of the Smith Commission for further devolution of powers to the Scottish Parliament stated “*that nothing in this report prevents Scotland becoming an independent country in the future should the people of Scotland so choose*”.

The UK Governments continued refusal to grant an order to hold a second independence referendum, removes the democratic rights of the Scottish people to make any kind of decision regarding the future of Scotland, which contravenes article two of the United Nations General Assembly resolution 1514 (XV).

POINTS TO NOTE ON ACCESS TO TRADE

Scotland must be afforded the same protection and rights of access to trade within the United Kingdom as it now enjoys.

The key point for Scotland throughout the negotiations of the union was that of access to trade, it is worth pointing out that the proposals for the union that were made during 1702/1703 fell because the English Parliament refused to give way on trade.

One of the key fundamentals of the Union With England Act 1707 was that of access to trade (this was enacted by articles 4 and 6) and the fact that those articles appear virtually word for word in both the England and the Scotland acts and have never been repealed, shows the importance and significance given to that of “access to trade” by both sides.

Articles IV and VI of both the Union with Scotland Act 1706 and of the Union with England Act 1707 are protected from change by the Scottish Government under Section 29 of the 1998 Scotland Act and the inclusion of these restrictions reflects the importance of protecting those articles.

c. 46 - Part I – Legislation - Section 29

(1) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

(2) A provision is outside that competence so far as any of the following paragraphs apply—

(c) it is in breach of the restrictions in Schedule 4,

SCHEDULE 4 - Enactments etc. protected from modification, Part I - The protected provisions - Particular enactments section 1

(1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, any of the following provisions.

(2) The provisions are—

(a) Articles 4 and 6 of the Union with Scotland Act 1706 and of the Union with England Act 1707 so far as they relate to freedom of trade

You will notice the key words here are “*so far as they relate to freedom of trade*” yet again emphasising the importance of access to trade.

The UK government cannot take away or make changes to such an integral part of the treaty of the acts of the union simply by passing legislation through the House of Commons unless it is with the agreement of “BOTH” parties.

The “Union with England Act 1707” is an enactment of the “Scottish” Parliament; it would therefore be conceivable to assume that it would be the Scottish Parliament who would have governance over this act.

Claims by the UK Government, that Westminster is Sovereign over Scotland and has the power to make or unmake any law is a matter of contention, especially given that Scotland now has its own Parliament with its own government and that the House of Commons endorsed the principles of the Claim of Right for Scotland on July the 4th 2018.

The power to make rulings on, or to modify the Union with England Act 1707 was withheld from the Scottish Government by means of the 1998 Scotland Act, and given that there are no longer any elected Scottish peers due to subsequent repeals of the relative sections of the Union with England Act 1707, then any decision making regarding changes to Scotland’s enactment would now fall upon the 59 elected members from Scotland sitting in the House of Commons.

It was never intended, neither was it legislated for by the Scottish Parliament of the time that changes to the Union with England Act 1707 could be made without the consent of Scotland’s elected peers or members of Parliament. It is quite clear that the treaty of the acts of the union was never intended to give England governance over Scotland, and that certain key articles of the treaty were accepted by both parties as being unchangeable.

The articles were worded in such a way and with a definitive meaning to give Scotland assurances of free trade and movement *“From and After the union”* and throughout the *“Whole United Kingdom”*. If such a key points were to be taken away, either by amendment or repeal of the said articles, then the fundamental framework of which the act was based will have been eroded.

Any proposal to the EU that negates Scotland's ability to trade under the same terms and freedoms as the rest of the United Kingdom is unacceptable and would be considered a breach.

If an amendment or a repeal of articles IV or VI of the Union with England Act 1707 is made without the consent of the people of Scotland or that of the democratically elected members from Scotland who represent them, then the treaty will have been broken.

If those sections are to be considered for repeal or amendment and if consent is given by a majority of the democratically elected members from Scotland, then any future legislation must apply to the whole United Kingdom in order to afford Scotland the same protection and rights as it now enjoys.

I would argue that any precedence previously set for changes to the Union with England Act 1707 by the UK parliament or the House of Lords, no longer applies due to the fact that both England and Scotland’s Parliaments have now reconvened and that the House of Commons has endorsed the principles of the Claim of Right for Scotland.

POINTS TO NOTE ON THE SCOTLAND ACT 1998

The Scotland Act is riddled with legislation designed to keep power within the hands of the UK Parliament, in effect taking away Scotland's ability of self governance which is in contravention of the Claim of Right for Scotland, agreed by the Scottish Constitutional Convention in 1989, ratified by the Scottish Parliament in 2012, which was endorsed by the House of Commons on the 04th of July 2018.

Take this section as an example.

The Scotland Act 1998 - c. 46 - Part I - Legislation - Section 28;

(7) This section does not affect the power of the "*Parliament of the United Kingdom to make laws for Scotland*".

The "POWER" to make laws for Scotland....

It is accepted that prior to the reconvening of the Scottish Parliament that matters relating to Scottish legislation subject to certain provisions were a matter for the Parliament of Great Britain as cited in the Union with England Act 1707, however it can be argued that since the majority of the people of Scotland chose to reconvene the Scottish Parliament and that since devolution it has been accepted that this Parliament is for the representation of the Scottish people, then all matters of legislation should now be the responsibility of the Scottish Government and that the Scotland act should be amended to remove the legislative competence over reserved matters and return all powers of legislation to the Scottish Government.

This would also be in accordance with article five of the United Nations General Assembly resolution 1514 (XV) of the 14th of December 1960 which states;

Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire.

It is also worth considering that the Scottish Parliament in Holyrood was granted the status of a Government by virtue of section 12 of the Scotland Act 2012 which states "*The Scottish Executive is renamed the Scottish Government*" and as the Government of Scotland, it should be allowed to govern its own country without any restrictions being imposed on it by the government of another country.

The Scotland Act also prohibits the Scottish Parliament from making changes to the Acts of the Union, articles 4 and 6 are specifically mentioned, stressing the importance of those parts of the act and the need to protect the freedom of trade and movement throughout the whole of the United Kingdom.

CALLING UPON THE DECLARATION OF ARBROATH

The letter to Pope John XXII dated the 6th of April 1320 carrying the names of eight earls and thirty one barons as well as their seals and the seals of others, was in effect a declaration by the people of Scotland that they would never be subjected to English rule.

One paragraph stands out above all others and although translations vary slightly, the meaning is the same.

Quia quamdiu Centum ex nobis viui remanserint, nuncquam Anglorum dominio aliquatenus volumus subiugari.

The Fergusson translation... “*for, as long as but a hundred of us remain alive, never will we on any conditions be brought under English rule*”

The revised version by Alan Borthwick... “*for, as long as a hundred of us remain alive, never will we on any conditions be subjected to the lordship of the English*”

The letter clearly stated that the people of Scotland had no wish to be ruled (or lorded over) by the English. The letter was accepted as a representation of the wishes of the Scottish people by Pope John XXII despite it only containing 39 names plus a small number of additional seals.

So by the wording of this letter (or declaration as it has come to be known) it can be argued that the Scottish people do have the right to stand together to reject English rule....

Is the document a legal entity that can be called upon as proof that historically the Scots have never accepted English rule and through subsequent enactments and treaties that the same stands now nearly 700 years later? In my opinion it does....

It now falls upon the democratically elected Scottish representatives in Westminster to protect Scotland from becoming subservient to England and subject to English rulings that go against the wishes of the people of Scotland, through England’s continued dominance in the House of Commons.

Given the circumstances that the people of Scotland are faced with at this very moment in time, then the words written by our earls and peers all them years ago, mean as much today as they did back then.....

For as long as but a hundred of us remain alive, never will we on any conditions be brought under English rule.

It is in truth not for glory, nor riches, nor honours that we are fighting, but for freedom - for that alone, which no honest man gives up but with life itself

HOW THE UNITED NATIONS CAN HELP SCOTLAND'S CASE

Article 21 of the “Universal Declaration of Human Rights” has two key sections that can be referred to in support of both this proposal as well as the case for Scottish Independence and the UK government’s refusal to facilitate a second referendum.

So, with regards to this proposal, we can call upon Section 1 which states that *“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives”*. This, I believe gives us the right to raise objections either directly or through a chosen representative from Scotland to the UK Parliament. It is also worth pointing out that the majority of the people in Scotland did not vote for the UK’s Conservative Government.

With regards to Scottish Independence, and the UK government’s refusal to facilitate a second referendum we can call upon Section 3 which states;

“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”.

The UK government’s reason for refusing to grant Scotland a section 30 order to hold a second independence referendum is because the people of Scotland voted to remain a part of the United Kingdom in 2014. However, since that referendum took place, the people of Scotland have elected a government on a mandate of a second independence referendum add to that the fact that the people of Scotland have twice returned a majority of Scottish pro-independence MP’s to Westminster, both of these election results have occurred after the 2014 referendum, clearly expressing the will of the people of Scotland to be independent.

Now we move onto the “Declaration on the Granting of Independence to Colonial Countries and Peoples” which was adopted by General Assembly resolution 1514 (XV) of 14th of December 1960, which makes for some interesting reading. Although it is aimed primarily at Colonies and Non-Self-Governing Territories, it does make some valid points regarding independence and the right to self determination which could be argued on Scotland’s behalf.

Article two of the declaration states:

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The UK government will say that Scotland is not independent and already has self-determination by virtue of its own parliament and government and that it has the freedom to pursue its own economic, social and cultural development, but in reality Scotland has a restricted parliament because so many key areas are reserved to Westminster and as such hampers our ability to make our own decisions.

Let us now take a look at article five...

Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

The UK Government may argue that Scotland is not a “Trust” and as it has its own Parliament it is not a “Non-Self-Governing Territory” neither is Scotland a colony, (although it often feels that way) and as such this doesn’t apply. They may also argue that the people of Scotland voted in 2014 to remain a part of the United Kingdom so the UK government is acting “*in accordance with their freely expressed will and desire*” by not allowing Scotland an opportunity to leave the Union, totally ignoring the fact that circumstances have since changed significantly.

However, as Scotland has not yet attained independence, it can be argued that this does indeed apply to Scotland, and as such all powers should be returned, without any conditions or reservations such as those imposed by virtue of the 1998 Scotland Act, which reserves key powers to Westminster, by putting them outside of the Scottish governments legislative competence.

This brings us to article six...

Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

The UK government could claim that Scottish Independence would be a disruption to the national unity of the United Kingdom, although this would mean that they see Scotland as a province or territory and not as a country.

It matters not how the UK Government in Westminster argues its case, the fact remains that Scotland is a Country, and as such has the right to independence and self determination if the people so wish it..

So how does all this help Scotland’s case for independence?

As the UK is a member of the United Nations and is a signatory to both declarations referenced above, then the UK government has a sworn duty to uphold those rights that it has pledged to support.

By continually denying us our right to self determination, by retaining powers in key areas that would allow us to make our own decisions, and by refusing to grant a section 30 order to hold a second independence referendum, the UK Government is going against the expressed will of the Scottish people (which is one of our fundamental human rights) this in my opinion opens up the option to refer the matter if needed, to the “International Court of Justice”

LOOKING AT THE VIENNA CONVENTION ON THE LAW OF TREATIES

The acts of the union is a treaty between England and Scotland both of which are countries, this makes it an international treaty and as such falls under the auspices of the United Nations, Vienna Convention on the Law of Treaties, which the United Kingdom of Great Britain & Northern Ireland ratified on the 25th of June 1971.

Article 2 (1) (a), defines a treaty as;

"treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

It is also my opinion that Northern Ireland became a third state of the union as referenced under Article 36 of the Vienna Convention.

Treaties providing for rights for third States

1. *A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.*
2. *A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.*

Ireland assumed the role of a third state when it took seats in the parliament of the United Kingdom of Great Britain in 1801 when the parliament became the parliament of the United Kingdom of Great Britain and Ireland, that role continued following Irish Independence when in 1927 the parliament was renamed the parliament of the United Kingdom of Great Britain and Northern Ireland. At no point has Ireland or its successor Northern Ireland been excluded from debating in, making decisions on, or from voting on legislation relating to Scotland.

The position of Northern Ireland as a third state has been accepted as such. During the run up to the 2014 Scottish Independence referendum Ministers from Northern Ireland took part in many of the House of Commons Debates regarding Scotland, one that springs to mind was on the 15th of January 2013, which was a debate on the Sixth Report of the Scottish Affairs Committee, on The Referendum on Separation for Scotland and the proposed Section 30 Order. During that debate DUP member Jim Shannon made an intervention setting out concerns for Northern Ireland (Hansard Column 775). Sir Malcolm Bruce took the intervention and took note of his encouragement, again confirming Northern Irelands position as a third state and its right to speak on a matter concerning Scotland. There are of course many more examples that can be cited.

TO SUMMARIES

That Northern Ireland became a third state in the United Kingdom of Great Britain by virtue of the Union with Ireland Act of 1801 (as amended in 1927) which states *That Great Britain and Ireland shall upon Jan. 1, 1801, be united into one kingdom*

That Northern Ireland is accepted as a third state of the United Kingdom of Great Britain under Article 36 of the Vienna Convention.

That Northern Ireland has exercised its right as a third state by debating and voting on matters relating to Scotland.

That Articles IV and VI of the Union with England Act 1707 (also known as the Treaty of the Acts of the Union) have been breached by virtue of one member state being offered or granted a different arrangement to that of Scotland, and as such the treaty of the Union with England Act 1707 is broken.

That as matters relating to the union are reserved to Westminster by virtue of the 1998 Scotland Act, then it falls upon our democratically elected Scottish MP's in Westminster to debate the matter.

That those Democratically Elected Scottish Members of Parliament be granted leave to debate the issue as a matter for Scotland to decide in the same respect and manner that has been granted by the House of Commons for English Votes for English Laws.

That should the outcome of such a debate result in a consensus being reached by a majority of the Scottish MP's that the act has been breached, then Scotland has the right through its democratically elected representatives to make a political statement in the House of Commons, declaring that the Union with England Act 1707 is annulled with immediate effect ending the union and releasing Scotland from its commitments and duties under the aforementioned act.

That once the House of Commons has been informed of the withdrawal of Scotland from the United Kingdom of Great Britain that Her Majesty be notified of the same.

That the dissolution of the Treaty ending the Union will immediately grant Holyrood legislative powers over all reserved matters.

That the Scottish Government being the democratically elected representatives of the Scottish people should immediately and without delay make a political declaration and recall Scotland's Representatives, MP's and Peers from the House of Westminster and begin negotiations with the UK Government on matters relating to the separation of the two Kingdoms.

That the democratically elected representatives of the Scottish people make legislation in the Scottish parliament to allow Scotland to move forward as a country independent of the Union formally known as the United Kingdom of Great Britain.

FINALLY

It is important to remember, that we are not asking for, or demanding anything, it is the duty of Scotland's democratically elected representatives to protect our rights and privileges under the Union with England Act 1707, and if there is a breach to that act by the other party, then it is their duty to take such action as they deem necessary to protect the interests of the people of Scotland who elected them.

The former brexit secretary David Davis when talking about the UK's relationship with the EU stated;

“There is no other treaty in the world that I am aware of where a sovereign nation agrees to join up and can only leave when the other side says so”

It falls upon us, the people of Scotland to empower our Members of Parliament in Westminster, with the authority of the Scottish people, to repeal the Union with England Act 1707 if the treaty is deemed to have been broken by the other party.

The UK Government may object all it wants and as we all know it can quote many acts when trying to justify its sovereignty over Scotland, but in reality it has no legislative power to stop Scotland from withdrawing from the union, especially if the treaty has been breached by them and the Scottish Members of Parliament have debated and voted on it.

Article 9 of the Bill of Rights Act 1689: “freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”

So let me ask you, how much longer are we going to sit cowering in the corner waiting for our abusive partner to return and give us another kicking, how many more times will we have to go cap in hand begging and pleading for money that is rightfully ours, do we sit down and shut up while our unique brands and our very identity as a nation is replaced by the symbol of a fading empire, and are we going to sit idly by while Scotland's rights to trade freely within this union are taken away from us, or do we instruct our democratically elected representatives in Westminster to act now, end the union and protect the future of Scotland...

The people of Scotland need to empower our Members of Parliament in Westminster, to repeal the Union with England Act if the treaty is deemed to have been broken by the other party.

This can be done in two ways, by instruction from the SNP members to its party representatives in Westminster, or by notification from individual residents of Scotland to our Scottish MP's.

----- **END** -----

PART TWO

PROTECTING OUR RIGHTS & EMPOWERING OUR MP's

It is proposed that we deliver a notification (with supporting documents if requested) to our Scottish MP's in Westminster formally objecting to any proposed changes in legislation that would alter, amend or repeal any parts of the "Union with England Act 1707", unless it is to repeal the act in its entirety releasing Scotland from its commitments and duties under the act, in effect ending the union.

Remember that this is an enactment of the Scottish Parliament so is therefore a legislative matter for Scotland's MP's to debate and decide on and NOT the English MP's or the UK Government.

The "Universal Declaration of Human Rights" Article 21 Section 1 states;

"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives".

And we can exercise that right by notifying our freely chosen representatives in Westminster of our objections by a declaration signed and witnessed under the Statutory Declarations Act 1835.

This will make it a legal document that cannot be ignored and as such will give our MP's something to fight with until conference has had the chance to debate and vote on this proposal.

It matters not whether your freely chosen representative is your constituency MP as you are making the notification as a concerned resident of Scotland.

Fill in your declaration, get it notarised and send copies to all of our Scottish Members of Parliament. It's time for the Scottish people to empower our MP's in Westminster so the next time they are told to "F... Off" back to Scotland they can do so and take Scotland back with them....



www.declaration.scot

COVERING LETTER TO YOUR SELECTED MP

You will need to complete the declaration and have your signature witnessed (details are on the form) you should then send your completed declaration to the "**House of Commons, London, SW1A 0AA**" for the attention of the MP that you have selected as your freely chosen Scottish representative.

(your name and full address)

Dear (insert MP's name)

Any deal that facilitates a different trading arrangement for Northern Ireland over that of the rest of the UK will in my opinion be a clear breach of the 1707 Treaty of the Acts of the Union.

Northern Ireland is accepted as a third state of the Union as defined under Article 36 of the Vienna Convention on the Law of Treaties and as such under Articles 4 and 6 of the Treaty of the Acts of the Union cannot be offered or granted a different arrangement to that of Scotland.

As matters relating to the union are reserved to Westminster, and given that this is a Scottish Enactment, then it falls upon Scotland's (Not England's) MP's to debate the matter on our behalf. Should the majority of Scotland's MP's agree that a breach has occurred, then Scotland has the right to end the union releasing us from our commitments and duties under the act.

It is the duty of Scotland's democratically elected representatives to protect our rights and privileges under the Act, and if there is a breach by the other party, then it is their duty to take such action as they deem necessary to protect the interests of the people of Scotland who elected them.

A document has been prepared along with legal arguments which can be viewed and downloaded online at www.declaration.scot under the heading of "Ending the Union"

I am contacting all SNP MP's individually to notify them of my objection to any trading arrangements for Northern Ireland that will not be made available to the rest of the UK, I am also objecting to any changes in the Union with England Act in order to facilitate a different trading or customs relationship for Northern Ireland that will disadvantage Scotland.

The "Universal Declaration of Human Rights" Article 21 Section 1 states;

"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives"

And I am exercising that right by notifying you as my "freely chosen representative" in Westminster of my objections through a declaration signed and witnessed under the Statutory Declarations Act 1835. This makes it a legal document and as such can be presented as a sworn statement of my objection.

It matters not whether you are my constituency MP, as I am raising this objection as a concerned resident of Scotland.

Regards

(your signature and name)

TO

SCOTLAND'S MEMBER OF PARLIAMENT IN WESTMINSTER

As a democratically elected Member of Parliament and legally appointed representative of the people of Scotland you are duty bound to act in the best interests of the Scottish people. The "Universal Declaration of Human Rights" Article 21 Section 1 states;

"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives"

And I exercise that right as a concerned citizen domiciled in Scotland, by delivering this notification by virtue of the provisions of the statutory declarations act 1835, to you as my "*freely chosen representative*" in the House of Commons.

STATUTORY DECLARATION BY _____ (your name)

I _____ (your name) **OF** _____

(your full postal address including postcode)

DO SOLEMNLY AND SINCERELY DECLARE

That I do not consent or agree to any alterations, amendments or to the repeal of Articles 4 or 6 of the "Union with England Act 1707" in order to facilitate a different trading or customs relationship for Northern Ireland that will disadvantage Scotland.

Furthermore, I do not consent or agree to any amendments or changes to, or to the repeal of any articles, sections or wording of the enactment entitled the "Union with England Act 1707" unless it is the dissolution of the act in its entirety, ending the union and releasing Scotland from its commitments and duties under the aforementioned act.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed _____

DECLARED AT _____

THIS DAY _____

BEFORE ME _____

(details of authorised person)

PRINT NAME _____

In Scotland councillors have the power to witness the signing of a declaration under Section 76 of the "Criminal Proceedings etc. (Reform) (Scotland) Act 2007"

*The words "**member of a local authority**" must appear on it adjacent to the member's signature.*

Section 76 F3 (5) of the act states "A JP or member of a local authority may not charge a fee for exercising signing functions."

Please take proof of Scottish residence, (driving license, passport or photo ID) showing your address with you to the signing in case it is requested.

A LEGAL PERSPECTIVE ON THE PETITION

SUBMITTED TO THE UK PARLIAMENT

Understanding of the question.

Whether the making by Westminster of arrangements concerning regulation of trade or customs duties for one part of the united kingdom which are different from those applying to other parts and which are imposed without the agreement of both parties to the Act of Union would be considered a breach of the Act of Union?

And is it true that unless any changes to the Act of Union are agreed by both parties, and have the consent of the Scottish people, then such changes could be considered a breach of the Act of Union and therefore capable of ending the union between Scotland and England?

The Short answers:-

a) Is the interpretation on the petition correct?

Yes, in my opinion it is correct. I would say that the proposals of the UK Gov to grant one of its members a different arrangement to that of the rest of the UK would, because it disadvantaged/discriminated against Scotland be considered a fundamental breach of the Union between Scotland and England, and end Scotland's membership of the UK union.

I would also say that a referendum is not strictly necessary, there is no provision in UK parliament for veto of such repeal by the Scottish MPs alone, so Scottish MPs could not vote effectively to prevent discrimination against Scotland, they are out numbered, There is no provision in the present constitution of the UK for Scotland to negotiate as an equal partner, only for it to be represented and not discriminated against. But these days, now the voting franchise is a lot wider than in 1707

There would have to be agreement by the people of Scotland that the situation warranted an ending of the Union, and that is a political judgement, a Yes vote in a referendum would be a very powerful mandate. However the EU remain vote in the context of a threat to repeal or a breach of Article vi could be taken to have delivered the same level of mandate.

So a repeal would happen and the union, would be ended, the Scottish MPs would then have to return to Scotland and any dispute with England as to whether Scotland's union with England had ended, or not, would then be a matter for the United Nations.

b) The basic idea is correct, a suggestion of a different solution for Northern Ireland does break Article vi of Treaty of Union between Scotland and England.

c) If the Treaty of Union Between Scotland and England can be shown to have been broken a referendum is not strictly necessary.

d) Yes the Northern Ireland Act does affect the UK.

e) Why was Article vi not repealed in 1998, can't be sure of this without going through a lot more research but the answer probably is that it wasn't necessary to consider it because nobody thought membership of the EU would end.

The long answer

There are two Acts:-

The Scottish Act called the Union with England Act 1707 Act Ratifying and Approving the Treaty of Union of the Two Kingdoms of SCOTLAND and ENGLAND

The preamble refers to the Articles of Union being agreed on the 22 July 1706 by the commissioners nominated by Scotland (as 'this Kingdom') and the seal of Scotland being applied by the queen (same person-union of crowns).

Section 1 of the Scottish Act provided that the Two Kingdoms of Scotland and England shall upon the first day of May next ensuing the date hereof and forever after be United into One Kingdom by the Name of Great Britain

The English Act called the Union with Scotland Act 1706 11 6 Ann An Act for an Union of the Two Kingdoms of England and Scotland (the different date is because of two different calendars).

The preamble also refers to "said Treaty or Union"

Section 1 of the English Act provides:- That the two Kingdoms of England and Scotland shall upon the First day of May which shall be in the year One thousand seven hundred and seven and for ever after be united into one Kingdom by the name of Great Britain

This is where the name Great Britain comes from.

So the first important thing is that two international states went in, both (although their heads of state were, because of the union of crowns, the same person) are recited by their Great Seals and coats of arms, it was not, in law, a 'conquering' the continuing existence of two countries remains. The closest analogy is the European Union where each member state agrees that the EU law will take precedence in such matters as states agree, and EU states can leave. The UK is not the same as the USA where it is not possible for one American state to leave that federation.

However there is a unionist interpretation that when the Union Agreement took effect on 1 May 1707 two states ceased to exist and the UK was born, that view found favour with Lord Hope in 1999 (see below) then he declined to deal with it, and said it was for the courts to decide (as a law lord would)

In the Scottish Act article or section vi says:-

That all parts of the United Kingdom for ever from and after the Union shall have the same Allowances Encouragements and Drawbacks and be under the same Prohibitions Restrictions and Regulations of Trade and lyable to the same Customs and Duties on Import and Export And that the Allowances Encouragements and Drawbacks Prohibitions Restrictions and Regulations of Trade and the Customs and Duties on Import and Export settled in England when the Union commences shall from and after the Union take place throughout the whole United Kingdom .

In the English Act Article vi says:-

That all parts of the United Kingdom for ever from and after the Union shall have the same Allowances Encouragements and Drawbacks and be under the same prohibitions restrictions and regulations of Trade and liable to the same Customs and Duties on Import and Export And that the Allowances Encouragements and Drawbacks prohibitions restrictions and regulations of Trade and the Customs and Duties on Import and Export settled in England when the Union commences shall from and after the Union take place throughout the whole United Kingdom

(So both those parts of the Acts are the same, and recite the Articles of Union themselves the only difference is the spelling of lyable).

Conclusion of this bit, There is in existence a Treaty between two countries who were then two separate states, both states agreed to remain countries but function as one state. Article vi means that the terms of trade within the UK shall be the same for all parts of it and that the UK

shall engage in international trade as a whole State, that different parts are not to engage with external states on their own terms.

(A 'treaty' is an old and formal way of expressing the concept of an agreement, it can be between individuals or states but not by anybody or any country that does not have the deciding power to enter into it. Treaties between individuals could be for buying houses or cars or tins of beans. Treaties between states decide how the states will exercise their powers relative to each other after the treaty is made. Treaties decide how rights will operate after the treaty is made. Treaties can only be entered into between people or states that have equal decision making power.)

What sort of Treaty, what concept of 'union'?

Some treaties are capable of being completed and once they have they cannot be undone, eg for the purchase of a house. Does that mean that because of the payment, at the time, of money by England to Scotland the existence of the uk forever was assured? NO it doesn't because:-
a) Nowhere in either Act is the payment of money as a 'price' or consideration referred to as having anything to do with it. (the thing that seems to have been of such importance that it is mentioned in the preambles is religion).

b) The Acts, which each recite the Articles of the Treaty, contain and create the ongoing obligations and expectations each country is entitled to have. So that if one does something against the Articles the other is entitled not to like that.

So what was meant by 'union'? The most readily understood way in which the term was used, at the time, in a way which is consistent with the usage of the word now, is marriage, which then had rules the breach of those rules/expectations could (leaving aside the difficulties in obtaining divorce then) mean the end of the marriage whilst each of spouses remained alive. The concept was of entry to a different state of existence by two individuals of equal decision making power who agreed to live in a form of union. So it is fair to conclude that in the early 1700s the concept operating throughout, including all the negotiations between the Commissioners, would have been analogous to an idea that the two Kingdoms were getting married.

So first important thing is that two international states went in, both (although their heads of state were, because of the union of crowns, the same person) are recited by their Great Seals and coats of arms, it was not, in law, a 'conquering' the continuing existence of two countries remains. The closest analogy is the European Union where each member state agrees that the EU law will take precedence in such matters as states agree, and EU states can leave. The UK is not the same as the USA where it is not possible for one American state to leave that federation.

However there is a unionist interpretation that when the Union Agreement took effect on 1 May 1707 two states ceased to exist and the uk was born, that view found favour with Lord Hope in 1999 (see below) then he declined to deal with it, and said it was for the courts to decide (as a law lord would)

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A ‘treaty’ is an old and formal way of expressing the concept of an agreement, it can be between individuals or states but not by anybody or any country that does not have the deciding power to enter into it. Treaties between individuals could be for buying houses or cars or tins of beans.

Treaties between states decide how the states will exercise their powers relative to each other after the treaty is made. Treaties decide how rights will operate after the treaty is made. Treaties can only be entered into between people or states that have equal decision making power.)

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Some treaties are capable of being completed and once they have they cannot be undone, eg for the purchase of a house. Does that mean that because of the payment, at the time, of money by England to Scotland the existence of the uk forever was assured? NO it doesn’t because:-

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b) The Acts, which each recite the Articles of the Treaty, contain and create the ongoing obligations and expectations each country is entitled to have. So that if one does something against the Articles the other is entitled not to like that.

So what was meant by ‘union’? The most readily understood way in which the term was used, at the time, in a way which is consistent with the usage of the word now, is marriage, which then had rules the breach of those rules/expectations could (leaving aside the difficulties in obtaining divorce then) mean the end of the marriage whilst each of spouses remained alive. The concept was of entry to a different state of existence by two individuals of equal decision making power who agreed to live in a form of union. So it is fair to conclude that in the early 1700s the concept operating throughout, including all the negotiations between the Commissioners, would have been analogous to an idea that the two Kingdoms were getting married.

3) Is this a Treaty capable of breach?

In 1999 the Westminster House of Lords Committee on Privileges, against the background of reform of the House of Lords by the then House of Lords Bill, had a question referred to it by the Westminster House of

Lords.<https://publications.parliament.uk/pa/ld199899/ldselect/ldprivi/108i/10810.htm> and follow the links at the bottom of the page.

The question the committee had to decide was “whether the House of Lords Bill (as amended on Report) would, if enacted, breach the provisions of the Treaty of Union between England and Scotland”.

The answer the committee gave was “that it is the unanimous opinion of the Committee that the House of Lords Bill (as amended on Report) would not, if enacted, breach the provisions of the Treaty of Union between England and Scotland”.

(It is also important to note that this committee was considering the position after the coming into force of the Scotland Act 1998 which says that the Acts of Union are subject to that 1998 Act).

The important thing for present purposes is why and how the committee came to that conclusion. The Articles of Union, at Article xxiii, provide for sixteen Scottish peers to sit in the House of Lords. Westminster was trying to cut that number.

Lord Lynn, concluded that the Bill could not breach the Acts because the part of the English Act dealing with article xxii was repealed in 1993, so he went to the Treaty (therefore he considered the Treaty has a life separate from the Acts, the Acts can be changed by Parliament, the Treaty cannot).

Lord Lynn "I would accept that there was an international treaty between England and Scotland (as it has so often been called in the past), but since neither state has existed as such since 1707 there is no party to the treaty which could enforce it"

(Lord SLynn was writing in 1999 and Scotland has rebuilt itself as a state since then, he was also reflecting unionist views.)

Lord Lynn then considered if the Bill would violate Art xxii as an 'entrenched' part of the constitution of the UK, he doubted that the constitution could not be changed by parliament, and noted that changes have occurred relating to the composition of parliament (including measures of devolution) but that 'entrenched' parts of the constitution parliament cannot change. On Article xxii itself he concluded that "it must have been intended that changes could be made with changed times, so long as Scotland was not discriminated unfairly in comparison with England." and effectively the proposed changes to 16 peers did not discriminate against Scotland.

Lord Hope, noted the Bill treated all hereditary peers (Scottish and English) the same so did not discriminate against Scotland.

Lord Hope considered whether or not the Treaty was actually still enforceable after the taking effect of the Union Agreement on 1st May 1707, and sidestepped the point saying "I do not think that this issue is one which the committee needs to resolve. The matter is ultimately one for the courts to decide. It is sufficient for present purposes to say that, leaving aside the question whether or not it is right to regard the treaty as having been executed when the Union Agreement took effect on the 1 May 1707 and the two states which had entered into treaty went out of existence, the argument that the legislative powers of the new parliament of Great Britain were subject to the restrictions expressed in the Union Agreement by which it was constituted cannot be dismissed as entirely fanciful." He then discussed Art xxii and concluded that the Bill, ending the right of the (hereditary) peers of Scotland to sit and vote in the House (of Lords) "will deprive Scotland of a continuing and effective representation in this part of the legislature." (because there were life peers who could represent Scotland).

Lord Nicholls said "the terms on which union took place are to be found exclusively, not in a treaty as that expression is normally understood today but in enabling legislation enacted separately, by the two countries before they became 'forever....united into one kingdom' (article1)" he then considered the effect of the Bill on representation, and noted that over time representation changes. For present purposes his interesting comment is that "As already noted, there is room for argument that the Treaty of Union would be breached if Scotland ceased to have adequate representation in both Houses of the United Kingdom Parliament. If that politically unthinkable event were to happen, there would be scope to contend that this constituted a breach of a condition implicit in the Treaty." Earlier in his opinion he said "the inescapable fact is that, and this is what matters, is that the union took place on the basis of the Articles thus described."

Conclusion of this bit:

There is an (English) view that the Treaty having been brought into effect there are no longer any separate states existing that could enforce it, however that view is merely voiced, the question sidestepped and not decided upon. All the opinions note that constitutional change can happen. (If Westminster does not have the power to change 'entrenched parts of the constitution' that is where referendums come in.)

The important things to note in the committees conclusions,-

- a) the existence of a Treaty that can be breached is agreed,
- b) the view that the UK parliament is subject to the Treaty of Union is also agreed (though the mechanism by which enforcement happens is sidestepped)
- c) There can be no discrimination against Scotland,
- d) Some Treaty Articles are more fundamental than others
- e) it is the articles and not the Acts which are most important,

f) Even if a section of either the Scottish or the English Act have been repealed the corresponding Articles of the Treaty those Acts gave effect are still capable of having force if they relate to a fundamental term of the Treaty.

What the committee did not do was consider the effect of a breach upon the Union, though, generally the potential effect of a breach of a fundamental condition of an agreement is to end that union, hence the analogy with marriage earlier. And as it is agreed that two states went into union, logic would say that two would come out. (and that is probably why the question is sidestepped).

So Article vi is capable of breach, if Scotland is discriminated against by anything UK does.

IT IS VERY IMPORTANT TO NOTE THE PRINCIPLE OF NOT DISCRIMINATING AGAINST 'SCOTLAND' WAS ACCEPTED by the committee.,

In my view this idea can be distinguished entirely from any idea that Scotland cannot be discriminated against simply because it is functioning as part of UK. So anything which treats (note choice of word) one part of the UK differently from Scotland and concerns a fundamental term of the Articles of Union between Scotland and England and has the effect of discriminating against Scotland can be considered as a breach of the Union.

Definition of UK,

Neither Act defines it, neither says uk = Scotland + England, only that it is formed from both. (There are parts of these islands, eg Isle of Man which are not included in uk). And the UK grew to include Ireland then Northern Ireland only, when that happened Scotland was represented in the UK Parliament and the expansion of the UK could not now be said to discriminate against Scotland.

Article vi of the Treaty between Scotland and England contemplates that the UK has 'all parts', 'all' implies more than two, and "for ever from and after" envisages the possibility that it would grow. This interpretation is supported by the Northern Ireland Act of 1998, which says that:- It is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.

Has Article vi been breached and if so when?

The answer to this is yes,

The Northern Ireland Act of 1998 empowered the Northern Ireland Assembly and the various cross border institutions, the powers of the Northern Ireland Assembly are different from those of the Scottish Parliament, see <https://www.gov.uk/guidance/devolution-settlement-northern-ireland#understanding-what-has-been-devolved>

from the list on that page it is seen that Import and export controls and international trade and financial markets are reserved to Westminster the difference is that for Northern Ireland a reserved matter is one "where legislative authority generally rests with Westminster, but where the Northern Ireland Assembly can legislate with the consent of the Secretary of State".

But for Scotland Schedule 5 of the Scotland Act 1998

<http://www.legislation.gov.uk/ukpga/1998/46/schedule/5> provides that:

Fiscal, economic and monetary policy, including the issue and circulation of money, taxes and excise duties, government borrowing and lending, control over United Kingdom public expenditure, the exchange rate and the Bank of England

International relations, including relations with territories outside the United Kingdom, the European Union (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.

are matters reserved to Westminster. As the Gov.uk Website <https://www.gov.uk/guidance/devolution-settlement-scotland> puts it “Schedule 5 to the act sets out those matters which are reserved to the UK Parliament”

There is a difference between Northern Ireland legislating on reserved matters if the Northern Ireland Secretary allows it and the Scottish Parliament not being allowed to legislate at all. Also the list of reserved matters so far as the Northern Ireland Assembly is concerned is contained in schedule 3 to the Northern Ireland Act 1998

<https://www.legislation.gov.uk/ukpga/1998/47/schedule/3> which contains the following:-
20 Import and export controls and trade with any place outside the United Kingdom but not—
(a) the furtherance of the trade of Northern Ireland or the protection of traders in Northern Ireland against fraud;
(b) services in connection with, or the regulation of, the quality, insurance, transport, marketing or identification of agricultural or food products, including livestock;
(c) the prevention of disease or the control of weeds and pests;
(d) aerodromes and harbours;
(e) any matter within paragraph 4 of Schedule 2.

And sched 2 para 4 is:-

4 The defence of the realm; trading with the enemy; the armed forces of the Crown but not any matter within paragraph 10 of Schedule 3; war pensions; the Ministry of Defence Police

Conclusion of this bit

So the devolution settlement for Northern Ireland expressly created the possibility that Article vi of the Treaty of Union as between Scotland and England could, at some point in the future become broken. It maybe possible to say that it was broken at the time but as the Northern Ireland Secretary could be called to account by a Westminster parliament that included representation of Scotland and membership of the EU, that is not a very strong argument.

Back in 1998 the UK and Eire were both in the EU, therefore it was impossible for any of the constituent parts of the UK to be treated any differently from any other because EU trade terms applied to all, the question of Article vi of the Treaty of Union between Scotland and England simply did not come into play,

Ireland joined the EU in 1973 and the UK in 1973, with a second confirmatory referendum in 1975.

Now the possibility of Brexit means that for the Good Friday Agreement and the Northern Ireland Assembly to continue to have effect, there has to be a difference of arrangement for Northern Ireland. And that difference of arrangement will mean that trade across the border with Eire becomes a very different animal from trade between Scotland and Eire this means that Article vi of the Treaty of Union between Scotland and England will be evidenced to have been broken.

Would the difference in trade arrangements discriminate against Scotland?

Yes they would all, Northern Ireland trade would access the EU on different terms (or ease) from Scottish trade (I suspect even if the Scottish trade went physically through that border). That discrimination is against the terms of the treaty even if the relevant section of the Acts has been repealed.

Also through the institutions set up by the Northern Ireland Act and Good Friday Agreement, Northern Ireland is able to interact with a independent country (albeit only the one and only in a very restricted way) in a way that Scotland has not been able to since 1707. That of it self could be a breach of article vi.

More Links

The Good Friday Agreement of 1998 /aka the Belfast Agreement

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf) gave Northern Ireland through the institutions set up as a consequence of that and the Northern

The website of the Northern Ireland Assembly can be found.

For a European interpretation of 'The Backstop' and position of Northern Ireland
[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596826/IPOL_STU\(2017\)596826_E_N.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596826/IPOL_STU(2017)596826_E_N.pdf) is worth a read.

Article iv of the Treaty of Union between Scotland and England

Provides:-

That all the Subjects of the United Kingdom of Great Britain shall from and after the Union have full Freedom and Intercourse of Trade and Navigation to and from any port or place within the said United Kingdom and the Dominions and Plantations thereunto belonging And that there be a Communication of all other Rights Privileges and Advantages which do or may belong to the Subjects of either Kingdom except where it is otherwayes expressly agreed in these Articles This is the basis of the Common Travel Area, it applies to people who are UK citizens travelling and trading within the UK, the terms upon which the constituent parts of the UK trade are provided for by article vi.

How did Northern Ireland come to be part of the UK and is it a Dominion?

The Union with Ireland Act of 1800 provided that:-

That Great Britain and Ireland shall upon Jan. 1, 1801, be united into one kingdom; and that the titles appertaining to the crown, &c. shall be such as his Majesty shall be pleased to appoint.

And

That the United Kingdom be represented in one Parliament.

Thus the whole of Ireland, in 1801, became united with the then existing Scotland and England United Kingdom of Great Britain. Then in 1949 (a large number of years after the events) the independence of Eire (the parts of Ireland also in some places thought of as the southern Irish counties) from the UK was recognised by Westminster.

The position was confirmed in the 1998 Northern Ireland Act (see above).

Now 2019 Northern Irish MPs sit in the Westminster Parliament and have the right to vote on all matters which are reserved to the UK parliament and they can do that just as English MPs and Scottish MPs do, whether there is a convention that they do not vote on matters solely relating to Scotland or England I don't know. The right of Northern Irish MPs to sit at Westminster does not come from custom it comes from the Union with Ireland Act of 1800, the right of Scottish MPs to sit there comes from the Acts of Union of 1707/1706.

There are not two separate UKs.

Is Northern Ireland a dominion?

The term dominion refers to those places the sovereign of the UK rules over, all parts of the UK (including Northern Ireland) are within the monarchs dominions, it is not either UK or dominion, the monarch has dominions (which are also called realms and territories) that are not in the UK. For example, the Interpretation Act 1978 refers to:-

"British possession" means any part of Her Majesty's dominions outside the United Kingdom; as distinct from those inside the UK British possessions are also known as British Overseas Territories, for example, Gibraltar, The Falklands, Antarctica Territory, Bermuda.

END

LINKS TO SUPPORTING DOCUMENTS

Petition to the UK Government

<https://petition.parliament.uk/petitions/259359>

The Articles of the UNION as passed in the Parliament of Scotland January 16th 1707

<https://www.handsoffscotland.co.uk/wp-content/uploads/2018/06/Articles-of-the-UNION-as-passed.pdf>

Union with England Act 1707 with repeals and revisions

<https://www.handsoffscotland.co.uk/wp-content/uploads/2019/06/Union-with-England-Act-1707.pdf>

United Nations, Vienna Convention on the Law of Treaties, 23 May 1969

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-3&chapter=23&clang=_en

Devolution Guidance Note 14 – Orders made under Section 30(2) of the Scotland Act (Alterations to Legislative Competence)

https://www.handsoffscotland.co.uk/wp-content/uploads/2019/06/Devolution_Guidance_Note_14_orders_made_under_section_30_2_of_the_scotland_act_alterations_to_legislative_competence.pdf

Declaration of Arbroath – Transcription and Translation

<https://www.handsoffscotland.co.uk/wp-content/uploads/2019/06/declaration-of-arbroath-transcription-and-translation.pdf>

The Good Friday Agreement

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

Schedule 3 to the Northern Ireland Act 1998

<https://www.legislation.gov.uk/ukpga/1998/47/schedule/3>

Schedule 5 of the Scotland Act 1998

<http://www.legislation.gov.uk/ukpga/1998/46/schedule/5>

European interpretation of 'The Backstop' and position of Northern Ireland

[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596826/IPOL_STU\(2017\)596826_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596826/IPOL_STU(2017)596826_EN.pdf)

Select Committee on Privileges Second Report - APPENDIX 2 - Case for the Lord Gray

<https://publications.parliament.uk/pa/l199899/lselect/lprivi/108i/10810.htm>

Select Committee on Privileges Second Report - APPENDIX 3 - Case for Her Majesty's Government

<https://publications.parliament.uk/pa/l199899/lselect/lprivi/108i/10811.htm>

2012 Edinburgh Agreement

<https://www2.gov.scot/Resource/0040/00404789.pdf>

Scottish Independence Referendum Act 2013

http://www.legislation.gov.uk/asp/2013/14/pdfs/asp_20130014_en.pdf

Scottish independence: constitutional implications of the referendum

<https://publications.parliament.uk/pa/l201314/lselect/lconst/188/18804.htm>

Statutory Declarations Act 1835

<http://www.legislation.gov.uk/ukpga/Will4/5-6/62/contents/scotland>

Councillors' New Signing Powers: Information On Their Use

<https://www2.gov.scot/Publications/2012/09/4962/2>

Criminal Proceedings etc. (Reform) (Scotland) Act 2007

<http://www.legislation.gov.uk/asp/2007/6/section/76>

Universal Declaration of Human Rights

<https://www.un.org/en/universal-declaration-human-rights/index.html>

Declaration on the Granting of Independence to Colonial Countries and Peoples

<https://www.un.org/en/decolonization/declaration.shtml>

Scotland Act 1998

<https://www.legislation.gov.uk/ukpga/1998/46/contents>

The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 – General Definitions

<http://www.legislation.gov.uk/uksi/1999/1379/schedule/2/made>

Scotland Act 2012

<http://www.legislation.gov.uk/ukpga/2012/11/section/12/enacted>

House of Commons Debates 15 January 2013, the Sixth Report of the Scottish Affairs Committee, on The Referendum on Separation for Scotland: The proposed Section 30 Order

<https://publications.parliament.uk/pa/cm201213/cmhansrd/cm130115/debtext/130115-0002.htm>

Claim of Right for Scotland - Commons debate

<https://hansard.parliament.uk/Commons/2018-07-04/debates/1807045500001/ClaimOfRightForScotland>

ACTS, DECLARATIONS, TREATIES & OTHER DOCUMENTS CITED IN THIS PROPOSAL

- Treaty of the Acts of the Union comprising of; The Union with England Act 1707
The Union with Scotland Act 1706
- The Union with Ireland Act of 1800 as amended in 1927
- The Scotland Act 1998
- The 2012 Edinburgh Agreement
- The 2013 Scottish Independence Referendum Act
- Report of the Smith Commission 2014
- Joint Committee on Parliamentary Privilege - First Report
- Select Committee on Privileges Second Report - APPENDIX 3 - Case for Her Majesty's Government
- Membership of House of Lords: Scottish Peers (No. 9) (Hansard, 22 June 1999)
- Withdrawal Agreement and Political Declaration on the future relationship between the UK and EU as endorsed by leaders at a special meeting of the European Council on 25 November
- The Belfast (Good Friday) Agreement 1998
- The Vienna Convention on the Law of Treaties 1969
- UN Volume I Resolutions and Decisions, 10 January – 14 February 1946 - NR075139
- UN Volume II Resolutions and Decisions, 23 October – 15 December 1946 - NR076727
- The United Nations Universal Declaration of Human Rights
- The United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples
- The United Nations General Assembly Resolution 1514
- The Declaration of Arbroath 1320
- The Claim of Rights Act 1689
- The Claim of Rights for Scotland 2012
- The Bill of Rights Act 1689
- Parliamentary Privilege - First Report, Chapter 2: Freedom of Speech and Article 9 of the Bill of Rights
- The 2015 English Votes for English Laws Standing Orders
- The Statutory Declarations Act 1835

*This land which was sold so cheaply to
the elite for a handful of gold coins by
unelected lords and barons,*

*Who allow a government to mock our
people, steal our wealth and abuse our
rights, will one day be returned to the
people of Scotland*

*Scotland will rise again, the day will
come when we will regain what is
rightfully ours,*

*The people of Scotland are Sovereign
and we will continue in our campaign
to win our freedom and we shall not
stop until Scotland has gained its
independence*

and is free from London's rule...

scott4indy