

Westminster is very unwise to challenge Scotland's ca...

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For the first time since devolution happened the Westminster government has decided to over-rule legislation passed by the Scottish parliament.

The legislation itself is on a difficult and intensely controversial issue. I will be honest and say I am not sure that anyone has yet found the right solution to gender identification issues, just as I am quite sure that that issue is real and needs to be addressed sympathetically.

But, and this is my point, using sledge hammers is not the way to deal with this issue, not least constitutionally. The balance of issues requires something much more subtle. The UK government has decided otherwise, and a veto is their response.

The Scottish parliament's decision on this issue is, as anyone who follows it knows, controversial. It may not reflect the settled will of the people of Scotland at large, although no one has asked them. We know heated differences have emerged and will continue.

However, I suspect that few in Scotland will see interference from Westminster as helping on this issue. I strongly suspect that most in Scotland will think it perfectly capable of finding its own solutions to the issues it faces.

Westminster's position is that the Scottish law creates uncertainty in the application of law in the rest of the UK. The weakness in that argument is that the UK recognises gender recognition certificates from outside the UK, making it harder to argue that it should not do so from Scotland, which does have its own legal system.

Irrespective of opinion on the underlying issue the choice by the UK government to veto this Act is of massive political consequence. Either Scotland has capacity, or not. Whatever section 35 of the Scotland Act that permits this veto might say, the question will, within the political rather than the legal domain, turn on this issue of capacity.

Westminster has confronted Scottish capacity. I think that most unwise of it if its wish is to retain the Union. Westminster will appease some in Scotland by being

confrontational, but those in question were never going to have sympathy with the Scottish cause. The majority who now do support that cause, and those wavering in its direction will be affronted.

I think the Tories have just gifted more support to the cause of Scottish independence. I am bemused as to why they would want to do that, but am not complaining.