IN THE SUPREME COURT OF THE UNITED KINGDOM UKSC 2016/196
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION (DIVISIONAL COURT)

BETWEEN:-

THE QUEEN
on the application of
(1) GINA MILLER
(2) DEIR TOZETTI DOS SANTOS
Respondents
-and-
THE SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION
Appellant

FURTHER SUPPLEMENTARY SUBMISSION ON BEHALF OF LAWYERS FOR BRITAIN LIMITED

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1. The Fifth Intervener ("*LFBL*") respectfully asks the Court for permission briefly to further supplement its existing written submissions. This is to enable it to address one aspect only, the provisions of the European Union (Amendment) Act 2008, addressed in the Supplemental Note for Mr George Birnie & Others ("*the SN*"). The effect of the 2008 Act was one of the two matters on which LFBL was granted permission to intervene.

2. Paragraph 4(b) of the SN states that the Treaty of Lisbon introduced the Simplified Revision Procedure (SRP), *"by which amendments could now be made to treaties without further international agreement"*). If "*without further international agreement*" means without a new treaty or ancillary treaty, as distinct from an agreement reflected in a European Council decision, this is correct.

3. In addressing sections 5 and 6 of the 2008 Act at paragraphs 6 and 7, the SN states that "*further Parliamentary control*" was necessary, inter alia, *"because the SRP could otherwise be used to amend treaties … thus avoiding the statutory scheme of control which Parliament enacted in the 1972 Act as to the scope of implementation of EU law in domestic law",* and that the 2008 Act addressed *"'Trojan Horse' provisions (such as the SRP) first introduced by the Treaty of Lisbon which could be used to change domestic law in a manner that side-stepped the statutory scheme under section 1(2) and 1(3) of the 1972 Act."*

4. This reveals a contradiction at the heart of the Respondents' case about the 2008 Act. If the Respondents' submissions were correct, the SRP could *not* have been used to amend the treaties in any way which affected the content of domestic law. On *their* case this would already have required primary legislation. Thus the only reason it could ever have been considered necessary to enact section 6(1)(a) of the 2008 Act – which required approval by Parliamentary motion for any Ministerial vote or support for a decision

under the SRP – is that Parliament was legislating on a basis that contradicts the Respondents' case. It follows that the existence of section 6(1)(a) is irreconcilable with the Respondents' case. It negates any possible implication that the legislation (read as a whole) has abrogated the treaty-related powers that would otherwise exist. On the contrary, section 6(1)(a) makes sense only on the assumption that those powers continue in full force save to the extent that Parliament has expressly restricted them in the 2008 and 2011 Acts. That is the fundamental point made in §§ 19-23 of LFBL's original submission which, it is submitted, no party has satisfactorily answered.

5. LFBL's Supplementary Submission refers to Hansard in relation to the 2008 Act, in order to rebut an unsubstantiated assertion by counsel for the First Respondent in oral argument (quoted in § 3 of LFBL's Supplementary Submission) that the legislative purpose of section 6(1)(a) was to *relax* the degree of Parliamentary control that would otherwise exist.

6. This reference was an entirely orthodox use of Parliamentary materials to address the 'mischief' at which the statute was aimed. It is well established that such materials may be used in order to help identify (in the words of Lord Nicholls quoted in § 27 of LFBL's original submission) *"the 'mischief' Parliament was seeking to remedy"* i.e. *"the legislative object"*. Further, it is no part of the ratio of *Pepper v Hart* that such reference may be made only in argument *against* the Government. Citizens other than the Government itself have an interest in Acts being properly construed in accordance with Parliament's intentions as revealed in Hansard, so that (in this case) the Crown is able to give effect in a timely way to the decision made by the British people in the referendum.

MARTIN HOWE QC
THOMAS SHARPE QC
SIMON SALZEDO QC
ANDREW HENSHAW QC
THOMAS ROE QC
JAMES BOGLE

Instructed by
Clive Thorne
Wedlake Bell LLP
Solicitors for Lawyers for Britain Ltd
19 December 2016