

Brexit

Parliamentary Approval Required to Trigger EU Exit: UK Supreme Court upholds High Court judgment on Article 50

The Decision

On 24 January 2017, the UK Supreme Court handed down its judgment in *R (Miller) v Secretary of State for Exiting the European Union* ([see here](#)). By an 8:3 majority, the Supreme Court upheld a November 2016 High Court judgment ([see here](#)) to the effect that the UK's constitutional arrangements require an Act of Parliament authorising ministers to give notice of the UK's decision to withdraw from the European Union.

This decision is binding on the UK Government. The immediate consequence is that the UK Government will present a short "Brexit" Bill seeking the approval of Parliament (both the House of Commons and the House of Lords) to ministers giving notice under Article 50 of the Treaty on European Union.

The reasoning of the Supreme Court was:

- That the effect of the European Communities Act 1972 (ECA) is to partially transfer law-making powers to the institutions of the EU unless and until the UK Parliament decides otherwise.
- That it is impermissible as a matter of UK constitutional law for the Government to alter or remove the rights of citizens without express Parliamentary approval.
- That the inevitable effect of the Government giving an Article 50 notice will be to fundamentally change the UK's constitutional arrangements (i.e. by cutting off EU law). Again, such changes under the UK constitution cannot be made without express Parliamentary legislation.
- The Government's arguments that the ECA should be interpreted as allowing ministers to exercise powers to withdraw from EU Treaties were unsustainable: the ECA did not express in the clear words that would have been necessary to reserve such a power to ministers; the correct interpretation of the ECA envisages ministers participating in EU law-making, rather than doing the very opposite by withdrawing from the EU entirely.

In the same judgment, the Supreme Court also ruled on the question of whether consultation with, or consent from, the devolved legislatures of Northern Ireland, Scotland and Wales is required before the UK gives notice of withdrawal from the EU. In relation to these devolution issues, the Supreme Court held that the terms of devolution and associated Parliamentary conventions did not give rise to any legally enforceable obligation for the UK Government to consult or obtain the consent of the devolved institutions. In practical terms, this part of the decision is extremely important for the Government, as it will not now be required to embark on a potentially time-consuming consultation process that may well have jeopardised its ambition to give formal notice of withdrawal by the end of March 2017.

What Next?

The UK domestic legal process is now over. What follows is therefore political. A short Bill comprising of a few lines seeking the authority of both Houses of Parliament to the Government giving notice of withdrawal from the EU under Article 50 will be presented in the next few days. Whether the Government will be able to keep to its timetable remains to be seen, and will depend to a very large extent on the degree of resistance put up by opposition parties (and, potentially, the House of Lords) in parliament. In particular, if those parties seek to force the Government to set out more detail on its "post-Brexit" plan, the passage of the Bill (and, consequently, the UK's Article 50 notice) may be delayed significantly.

In practical terms, this means a period of further uncertainty for the UK. It remains important for businesses to plan for all possible outcomes, especially for the possibility of a "hard" Brexit and the corresponding loss of access to the EU single market.

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