

Brexit

Parliamentary Approval Required for the UK to Leave the EU

On November 3, 2016 the High Court of Justice ruled in *R (Miller) v Secretary of State for Exiting the European Union* that as a matter of constitutional law the UK Government does not have authority under prerogative powers to give notice under Article 50 of the Treaty on European Union for the UK to withdraw from the EU. The decision may very well delay the filing of the UK's Article 50 notice adding further uncertainty over the terms and timing of the UK's exit from the EU. It is important to note that the decision does not overrule or reverse the effect of the referendum result: it only relates to the constitutional process necessary in order to achieve withdrawal from the EU.

The Court's central conclusions were (i) a notice under Article 50 would change UK law because, once given, it will have a direct effect on rights contained within the European Communities Act 1972, and (ii) that the Government cannot through the exercise of its prerogative powers alter domestic law or modify rights acquired as a result of the effect of domestic law.

If the judgment stands the Government will have to obtain Parliamentary approval before giving the notice to withdraw, which is likely to take the form of an Act of Parliament authorising the Government to file an Article 50 notice.

The UK Government has confirmed that the decision will be appealed. An expedited appeal hearing will take place in December 2016 in the Supreme Court. It is likely that the Supreme Court will sit as a specially constituted panel of at least 9 Judges to consider the merits of the Government's appeal. Judgment may not be given until January 2017.

As a result of these developments it is unclear whether the Government's timetable for notice of withdrawal to be given before the end of March 2017 remains achievable.

Please click [here](#) to read the judgment in full.

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