

Supreme Court rules that an Act of Parliament is required before activation of Article 50 procedure for UK withdrawal from the European Union

The UK Supreme Court ruled today that Government ministers are not able to activate the Article 50 procedure for withdrawal by the United Kingdom from the European Union without the prior approval of Parliament.

In upholding the High Court's judgment of 3 November 2016 in *R (Miller) v The Secretary of State for Exiting the European Union*, the Supreme Court rejected the Government's case that ministers could invoke Article 50 in reliance on the Royal Prerogative. The Court also rejected additional references and interventions asserting that consultation with, or the agreement of, the devolved legislatures of Scotland, Wales and Northern Ireland was required.

In an implicit rebuttal of media criticism of the High Court's ruling, the Court emphasised that the proceedings had "*nothing to do with political issues such as the merits of the decision to withdraw, the timetable and the terms of so doing, or the details of any future relationship between the UK and the EU.*" The Court stressed that the issues in the case concerned the United Kingdom's constitutional requirements and, as such, were to be determined by UK judges.

The Court stated that it is a fundamental principle of the UK constitution that, unless primary legislation permits it, the Royal Prerogative does not enable ministers to change statute law or common law. It said that withdrawal from the European Union would constitute as significant a constitutional change as becoming a member, stating that "*We cannot accept that such a major change to UK constitutional arrangements can be achieved by ministers alone.*" Accordingly, as withdrawal from the European Union would have such effects, Parliamentary approval was required.

In reaching this conclusion the Court rejected various arguments of the UK Government relating to the intention and effects of the European Communities Act 1972, which is the legal basis for the United Kingdom's membership of the European Union. The Court stated that that 1972 Act could have provided that ministers could withdraw the United Kingdom from the EU Treaties, but that it had not done so.

The Court also rejected the argument that Parliament would inevitably be involved in the withdrawal process, stating that if ministers gave notice under Article 50 without prior Parliamentary approval, the die would have been cast before Parliament had become formally involved.

On the subject of the referendum of 23 June 2016, the Court stated that the 2015 Act which authorised it had not provided for the consequences of either possible outcome. Observations by ministers were statements of political intention, not law. Accordingly, the force of the referendum was political not legal.

As to the form of any legislation authorising the activation of the Article 50 procedure, the Court said that this was entirely a matter for Parliament, and that that there was no equivalence between the constitutional importance of a statute and its length or complexity. The Court stressed that only legislation that was embodied in a statute would suffice, and that a resolution of the House of Commons was not legislation.

The Government is now expected to put a short Bill before Parliament, and does not anticipate that this will affect its self-imposed timetable of serving notice under Article 50 by the end of March 2017. Although a substantial majority of MPs are expected to support the proposed legislation, it remains to be seen what

proposed amendments will be tabled and what the impact of these will be. The fact that the Court neither prescribed the form of any legislation nor required the formal involvement of the devolved legislatures removes two potential hurdles.

Other legal proceedings relating to the Article 50 procedure are pending. These include a further judicial review, directed at the Government's plans to leave the European Single Market without the approval of Parliament; this challenge will seek confirmation that leaving the European Economic Area, which was neither mentioned in the legislation providing for the 2016 referendum nor in the referendum itself, requires separate Parliamentary approval and the service of 12 months' notice under Article 127 of the EEA Agreement. In addition, it has been reported that legal proceedings are to be brought in Ireland with a view to seeking a reference to the European Court of Justice as to whether an Article 50 notice may be revoked once served.

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