

UK Parliament Must Decide On 'Brexit' - UK Supreme Court Issues Key Constitutional Judgment

January 24, 2017 Simon Curtis, Glenn Kangisser

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In its most important constitutional judgment ever, the UK Supreme Court has this morning confirmed that the UK Parliament in Westminster, rather than the British Government, must decide on the UK's withdrawal from the European Union (EU). The Court has in this respect upheld the decision of the High Court as reported in our ["Brexit Update."](#)

The issue before the Court was whether it was open to the UK Government to exercise prerogative powers to invoke the "exit" process by which Member States can leave the EU. The triggering of such process is achieved by a so-called "Article 50 Notice," given by the departing Member "in accordance with its own constitutional requirements," which commences a two year period in which all Member States are required to negotiate and agree upon detailed departure terms. Following the UK referendum vote in June 2016 to leave the EU, the UK Government, led by Prime Minister Theresa May, has committed itself to issuance of the Article 50 Notice within March 2017.

Certain private UK residents had, however, challenged the Government's view that it was entitled to issue such a notice without first seeking the prior authorization of the UK Parliament. They argued that the Parliamentary legislation by which the UK had acceded to the EU, in particular the European Communities Act 1972 (the "ECA"), together with subsequent EU legislation which had been given effect by the ECA, conferred personal rights upon them which could not be removed or altered without an Act of Parliament. Intervening at a late stage of the proceedings the Scottish, Welsh and Northern Irish devolved legislatures also argued before the Supreme Court that their respective approvals were required for the giving of the Article 50 Notice.

By an 8-3 majority, the Supreme Court accepted the arguments presented on behalf of the private petitioners – the Court decided that it is constitutionally impermissible for the UK Government to affect rights currently enjoyed by UK residents by giving an Article 50 notice without prior Parliamentary approval. The Court also concluded, however, that no approval is legally required to be given by any of the governments or legislatures of Scotland, Wales and Northern Ireland. There is no further appeal possible from either decision.

The Judgment on the principal issue, although embarrassing to the UK Government (which opted to pursue the appeal with only limited prospects of success), is likely at most only to delay, rather than to defeat, the Brexit process. In response to the Judgment, the Government indicated its intention to issue "the most straightforward bill possible" to give the Government power to invoke Article 50, which will be placed before Parliament "within days." The Government's expectation is that it will still be able to issue an Article 50 notice within its chosen timetable of March 2017 although there is a possibility that amendments tabled to the bill may delay a final vote and possibly prevent the issuance of the notice within such period. Approval will also be required from the UK's upper chamber, the House of Lords, but this body can in practice only delay, rather than prevent, the passage of the legislation.

Substantial uncertainties therefore remain, particularly as regards the timing of Brexit. The UK Government has meanwhile indicated strongly that it wishes to develop a range of bilateral trading relationships on a global, rather than a purely European, basis. The UK Government has made clear that the United States represents the most important of these “new” trading partners and Prime Minister May’s visit to Washington tomorrow clearly signals the direction in which the UK wishes to travel post-Brexit.

The Judgment is reported at [\(1\) R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#) [2017] UKSC 5.

Should you wish to discuss any aspect of the above or to receive any further information, please contact one of the lawyers listed below. We will continue to provide updates on this issue from time to time as the process moves forward.