

HOUSE OF LORDS

Select Committee on the Constitution

8th Report of Session 2016–17

European Union (Notification of Withdrawal) Bill

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Select Committee on the Constitution

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Committee staff

The current staff of the committee are Antony Willott (Clerk) and Hadia Garwell (Committee Assistant). Professor Stephen Tierney and Professor Mark Elliott are the legal advisers to the Committee.

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European Union (Notification of Withdrawal) Bill

1. The European Union (Notification of Withdrawal) Bill was introduced in the House of Commons on 26 January 2017 and received its second reading on 31 January and 1 February. Report stage and third reading took place on 8 February, before passing to the House of Lords. The Bill is being ‘semi-fast-tracked’, in that the House is being asked to waive the recommended minimum intervals between the stages of the Bill. In the House of Lords, the Bill had its second reading on 20 and 21 February, with committee stage expected to take place on 27 February and 1 March, followed by report stage and third reading on Tuesday 7 March.
2. The Bill is a very short measure, comprising only one substantive clause. It is intended to give the Prime Minister the power to notify the European Council of the United Kingdom’s intention to withdraw from the European Union.

Background

3. Article 50(2) of the Treaty on European Union (TEU) provides that if a Member State decides to withdraw from the European Union it must notify the European Council of its intention. Following the vote by the British people in the referendum on 23 June 2016 to leave the EU, the Prime Minister announced at the Conservative Party Conference on 2 October 2016 that the Government would commence the formal process of leaving before the end of March 2017.¹
4. In a Command Paper published in February 2016, the Government accepted that the rules for exit set out in Article 50 of the TEU provided “the only lawful route available to withdraw from the EU”,² and it is on this basis that it intends to serve formal notice of intention to withdraw upon the European Council.
5. On 24 January 2017, the Supreme Court of the United Kingdom, substantially upholding an earlier decision by the Divisional Court, came to the view that the invoking of Article 50 could not be effected by way of the royal prerogative power, but instead required the express authorisation of an act of Parliament.³ The Bill is intended to satisfy this requirement.

Fast-tracking

6. The Government has asked Parliament to expedite the Bill’s progress by ‘fast-tracking’ the Bill—in this instance by reducing the recommended minimum intervals between Bill stages. As has now become customary, the Explanatory Notes justify why, in the Government’s opinion, it is necessary to fast-track the Bill.

1 See BBC News, *Brexit: Theresa May to trigger Article 50 by end of March* (2 October 2016): <http://www.bbc.co.uk/news/uk-politics-37532364> [accessed 21 February 2017]

2 Foreign and Commonwealth Office, *The process for withdrawing from the European Union*, Cm 9216, February 2016, pp 7 and 13: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503908/54538_EU_Series_No2_Accessible.pdf [accessed 21 February 2017]; Constitution Committee, *The invoking of Article 50* (4th Report, Session 2016–17, HL Paper 44), para 8

3 *R (on the application of Miller and Dos Santos) v Secretary of State for Exiting the European Union* (2017) UKSC 5.

7. The justification offered is as follows:

“The judgment of 24 January 2017 required the Government to complete an additional (and unexpected) step before the formal process of leaving the European Union can commence. Completing this step through the normal Bill timetable would delay commencing the formal exit process, making it impossible to do so before the end of March 2017. In the government’s view, this would generate uncertainty as to the timetable for the United Kingdom’s exit from the European Union.”

8. The decision to fast-track the Bill was therefore driven by a desire to ensure that the Prime Minister could fulfil her commitment to invoke Article 50 by the end of March 2017, since this deadline could not realistically be met if the Bill proceeded by way of ordinary legislative procedure using the standard parliamentary timetable. We note, however, that this date has no constitutional significance—it is a purely political deadline, announced by the Prime Minister in a speech at the Conservative Party Conference in October 2016. We would not normally accept an arbitrary political deadline as sufficient justification for fast-tracking a Bill.

9. However, we recognise the political imperatives behind the passage of this Bill, and the fact that it is permitting the Government to implement the result of a referendum. In addition, concerns that might arise from the curtailment of full parliamentary scrutiny as a result of fast-tracking are mitigated, to a large extent, by the brevity and simplicity of the Bill. We note that of the many concerns expressed by members of the House of Lords during the second reading debate on this Bill, none related to the fact it was being fast-tracked.

Commencement

10. We note that the Bill does not contain a commencement date and so will commence upon Royal Assent. Nor does it include a sunset clause (justified by the Government on the grounds that one is unnecessary “due to the nature and content of the Bill”). It therefore gives the Prime Minister unlimited discretion as to when to submit notification to the European Council. We consider, however, that any concern that might normally arise from the conferral of such wide discretion upon the Executive is mitigated by the political context within which the Bill is being considered.

Legislative consent

11. In its judgement of 24 January 2017, the Supreme Court found that relations with the EU are a reserved matter. It did not, however, rule as to whether a bill authorising the notice of withdrawal under Article 50 would affect devolved matters for the purposes of the Sewel convention, which states that the UK Parliament will not normally legislate with regard to devolved matters except with the agreement of the devolved legislature(s). The Court recognised the Sewel Convention and considered it to be “important”,⁴ but in doing so it also found unanimously that the Sewel Convention did not have the force of law and that it was not for the courts to police its scope. There is therefore no legal requirement for the consent of the devolved legislatures to be sought in relation to the notice of intention to withdraw from the EU.

⁴ *R (on the application of Miller and Dos Santos) v Secretary of State for Exiting the European Union*, para 151 per Lord Neuberger et al.

12. The question as to whether the legislative consent of the devolved institutions is required for this Bill is therefore a matter for the Government, Parliament and the devolved institutions to resolve. The Explanatory Notes to the Bill make clear the Government's position: "The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly."⁵

Conclusion

13. **We recognise the political imperatives that lie behind the decision to fast-track the European Union (Notification of Withdrawal) Bill, and any concerns we might have about the curtailment of parliamentary scrutiny of such an important constitutional measure are alleviated by the brevity and simplicity of the Bill. We note, however, that fast-tracking a Bill of such constitutional significance is an exceptional procedure. This occurrence ought not to be used as a precedent in relation to future measures of constitutional significance, such as the 'Great Repeal Bill' and other Brexit-related legislation.**

5 [Explanatory Notes to the European Union \(Notification of Withdrawal\) Bill 2017](#) [HL Bill 103 (2016–17)-EN], para 9.