



In Focus

European Union (Notification of Withdrawal) Bill

Key Provisions

The [European Union \(Notification of Withdrawal\) Bill](#) was introduced in the House of Commons on 26 January 2017. The Bill would give the Prime Minister power to notify the European Council of the UK's intention to withdraw from the European Union. The Bill consists of two clauses (the second of which simply sets out the Bill's short title). Clause 1, the operative clause, provides that:

- (1) The Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU.
- (2) This section has effect despite any provision made by or under the European Communities Act 1972 or any other enactment.

Clause 1(1) would give the Prime Minister the power to trigger Article 50, but it does not contain an obligation to do so. The Bill does not specify any deadline or timescale for exercising this power. The Government has stated that clause 1(2) would confer this power "regardless of any restrictions which may arise from any other legislation, including the European Communities Act 1972" (ECA).¹ The ECA legislated for the UK's accession to the EU. It enables EU law to have effect in the UK, and gives effect to the doctrine of supremacy of EU law. The Government intends to introduce a Great Repeal Bill in the next Queen's Speech to repeal the ECA so that it would cease to apply from the day of the UK's exit from the EU.²

Background

Following the vote in the June 2016 referendum in favour of leaving the European Union, the Prime Minister, Theresa May, announced in October 2016 that she would trigger Article 50 of the [Treaty on European Union](#) by the end of March 2017.³ Article 50 sets out a process for member states to follow should they decide to leave the EU. It provides that once a member state has taken the decision to "withdraw from the Union in accordance with its own constitutional requirements", it shall "notify the European Council of its intention", whereupon a formal exit negotiation process can begin.

The Government took the view that it was "constitutionally proper and lawful for the Government to begin to give effect to the decision of the people by the use of prerogative powers to invoke Article 50" and that "legally there [was] no obligation to consult Parliament on triggering Article 50".⁴ However, in 2016 a number of claimants brought claims for judicial review against the Government, arguing that "owing to the well-established rule that prerogative powers may not extend to acts which result in a change to UK domestic law, and withdrawal from the EU Treaties would change domestic law, the Government cannot serve a notice [under Article 50] unless first authorised to do so by an Act of Parliament".⁵ On 3 November 2016, the High Court of England and Wales handed down a judgment in which it held that the Secretary of State did not have power under the Crown's prerogative to give

notice pursuant to Article 50.⁶ The Court accepted the claimants' arguments that the Crown could not change domestic law and nullify rights under the law unless Parliament had conferred upon the Crown authority to do so by an Act of Parliament, and that the ECA did not give the Crown the necessary authority.⁷

The Government's appeal against the High Court ruling was heard by the Supreme Court in December 2016, and the Supreme Court judgment was handed down on 24 January 2017. By a majority of eight to three, the Supreme Court dismissed the appeal and held that an Act of Parliament is required to authorise ministers to give notice of the UK's decision to withdraw from the European Union.⁸

In response, David Davis said "it goes without saying" that the Government would respect the Supreme Court judgment.⁹ He made clear that it did "not change the fact the UK will be leaving the European Union" and that the Government would "deliver on the instruction that the people of the UK have given us". He said that within days he would introduce legislation to give the Government legal power to trigger Article 50 and begin the formal process of withdrawal. He also stated that the Government's timetable for invoking Article 50 by the end of March still stood. Mr Davis acknowledged that Parliament would "rightly scrutinise and debate this legislation", but said he "trust[ed]" that no-one will seek to make it a vehicle for attempts to thwart the will of the people, or frustrate or delay the process of our exit from the European Union".¹⁰

Reaction to the Bill

Responding to the Supreme Court judgment, Jeremy Corbyn, Leader of the Labour Party, said that Labour respected the result of the referendum and would not frustrate the process for invoking Article 50.¹¹ He confirmed in an interview with Sky News on 26 January 2017 that he had issued a three-line whip for Labour MPs not to block the Bill.¹² Prior to the Bill's publication, Mr Corbyn said that Labour would seek to amend it to "prevent Conservatives using Brexit to turn Britain into a bargain basement tax haven off the coast of Europe".¹³ Keir Starmer, Shadow Secretary of State for Leaving the European Union, said on the day of the Supreme Court judgment that Labour would be seeking to lay amendments to "ensure proper scrutiny and accountability throughout the process", starting with the publication of a white paper by the Government.¹⁴ A number of MPs from the Conservative Party, the Scottish National Party (SNP) and Plaid Cymru echoed Labour's calls for a white paper.¹⁵ The following day, Theresa May confirmed that the Government would publish a white paper, although she said that the timing of its publication was a "separate question" from the publication of the Bill.¹⁶

Labour tabled a number of amendments to the Bill on the day it was published, which it said were intended to:¹⁷

- Allow a "meaningful" vote in Parliament on the Brexit deal.
- Establish a number of "key principles" the Government must seek to negotiate during the process, including protecting workers' rights, securing full tariff and impediment free access to the single market.
- Ensure "robust and regular" parliamentary scrutiny by requiring the Secretary of State to report to the House at least every two months on progress of Brexit negotiations.
- Guarantee legal rights for EU nationals living in the UK.
- Require the Government to "consult regularly" with the governments in Wales, Scotland and Northern Ireland, and put the Joint Ministerial Committee on a statutory footing.
- Ensure "greater clarity" on the likely impact of the Government's decision to exit the single market and seek a new relationship with the customs union by requiring the publication of any impact assessments conducted since the referendum.
- Ensure the Government must seek to retain all existing EU tax avoidance and evasion measures post-Brexit.

Tim Farron, Leader of the Liberal Democrats, said that his party would “vote against Article 50 unless the people are given their say on the final deal”.¹⁸ Tom Brake, the Liberal Democrat Spokesman for Foreign Affairs, said that the Liberal Democrats would seek to amend the Bill to “give the people their first say on the terms of the UK’s future relationship with the European Union”.¹⁹

The SNP said that its MPs would introduce a reasoned amendment to reject the Bill because it “fails to deliver on effective consultation with devolved administrations; does not guarantee the position of EU nationals and still leaves far too many unanswered questions about the full implications of withdrawal from the single market”.²⁰ The SNP said it would introduce a further 50 amendments to the Bill.²¹ As of 26 January, it had tabled four amendments which would:²²

- Prevent the Prime Minister from triggering Article 50 until at least a month after all members of the Joint Ministerial Committee on European Negotiation had agreed a UK-wide approach and objectives for the Brexit negotiations.
- Prevent the Prime Minister from triggering Article 50 until a white paper had been laid before Parliament.
- Prevent the Prime Minister from triggering Article 50 until at least a month after obtaining agreement from the European Council that the UK would remain a member of the EU if exit terms could not be agreed.
- Guarantee the rights of EU nationals living in the UK.

Nigel Dodds, the Democratic Unionist Party (DUP) spokesperson for Foreign Affairs and Reform and Constitutional Issues, said that legislation to deliver Brexit would be “in the national interest”.²³ Colum Eastwood, Leader of the Social Democratic and Labour Party (SDLP) and member of the Northern Ireland Assembly, said that the party’s MPs at Westminster would vote against any Bill that triggered Article 50.²⁴ Tom Elliott and Danny Kinnahan, the Ulster Unionist Party’s two Westminster MPs, said that they would vote in favour of triggering Article 50.²⁵ Hywel Williams, Plaid Cymru’s Leader at Westminster, said that his party would submit amendments to the Bill and would “be supporting other parties in ensuring the views of all the UK’s countries [...] are represented, respected and reflected in the Bill”.²⁶ Caroline Lucas, co-Leader of the Green Party, called on Labour to “rethink” its support for triggering Article 50 “prematurely” and to “refuse to be pushed into Theresa May’s artificial Brexit timetable”.²⁷ She said she would table an amendment to block the Bill’s second reading.²⁸ Douglas Carswell, UKIP MP for Clacton, warned Parliament not to try to “subvert the will of the people” by opposing the triggering of Article 50.²⁹

Devolution Issues

The Supreme Court also considered devolution issues relating to the Government’s power to trigger Article 50. Devolution arguments relating to Northern Ireland were raised in proceedings brought by four members of the Northern Ireland Assembly—Stephen Agnew (Green), Colum Eastwood (SDLP), David Ford (Alliance) and John O’Dowd (Sinn Féin)—and by campaigner Raymond McCord. Their applications for judicial review were rejected by the High Court of Justice of Northern Ireland in October 2016, but on application by the Attorney General of Northern Ireland, the judge referred four issues in the Agnew case to the Supreme Court.³⁰ Following an appeal against the High Court decision, the Northern Ireland Court of Appeal also referred one issue in *McCord* to the Supreme Court. Scotland’s Lord Advocate and the Counsel General for Wales intervened in the Supreme Court case on behalf of the Scottish and Welsh Governments. The Supreme Court noted that:

Most of the devolution issues arise from the contention that the terms on which powers have been statutorily devolved to the administrations of Scotland, Wales and Northern Ireland are such that, unless Parliament provides for such withdrawal by a statute, it would not be possible

for formal notice of the United Kingdom's withdrawal from the EU Treaties to be given without first consulting or obtaining the consent of the devolved legislatures.³¹

Having decided on the main issue that legislation was required to trigger Article 50, the Supreme Court went on to consider whether the consent of the Northern Ireland Assembly was required before the relevant legislation was enacted. It noted that this question "raises in substance the application of the Sewel Convention".³² According to the Sewel Convention, the Westminster Parliament does not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The convention was set out in a memorandum of understanding between the UK Government and the devolved administrations in 2001. The current memorandum of understanding was agreed between the UK Government and the devolved administrations in September 2012 and published in October 2013.³³ The Sewel Convention is recognised in section 2 of the Scotland Act 2016 and a substantially identical provision is proposed in the Wales Bill that is currently before Parliament.³⁴

The Supreme Court judges unanimously concluded that the Sewel Convention does not give rise to a legally enforceable obligation.³⁵ In reaching this conclusion, they said that:

[...] we do not underestimate the importance of constitutional conventions, some of which play a fundamental role in the operation of our constitution. The Sewel Convention has an important role in facilitating harmonious relationships between the UK Parliament and the devolved legislatures. But the policing of its scope and the manner of its operation does not lie within the constitutional remit of the judiciary, which is to protect the rule of law.³⁶

The Government has stated that 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".³⁷ A legislative consent motion (sometimes referred to as a 'Sewel motion') is the means through which the devolved legislatures would signal their consent to the UK Parliament legislating on a devolved matter.³⁸ The memorandum of understanding between the UK Government and the devolved administrations provides for the devolved administration to seek consent from the legislature "on an approach from the UK Government".³⁹ It has been suggested that "in the absence of an approach" from the UK Government, "even the political basis for a Sewel motion may be questionable".⁴⁰

David Davis welcomed the "clarity" of the Supreme Court ruling "clearly in the Government's favour on the roles of the devolved legislatures in invoking Article 50", but he added that it "in no way diminishes our commitment to work closely with the people and administrations of Wales, Scotland and Northern Ireland as we move forward with our withdrawal from the European Union".⁴¹

Scotland's First Minister, Nicola Sturgeon, said it was now "crystal clear that the promises made to Scotland by the UK Government about the Sewel Convention and the importance of embedding it in statute were not worth the paper they were written on".⁴² She argued that there remained a "clear political obligation" for the UK Government to consult the devolved administrations, and said that the Scottish Government would bring forward a legislative consent motion to ensure that the Scottish Parliament had the opportunity to vote on whether or not to consent to the triggering of Article 50.

A Welsh Government spokesperson welcomed the Supreme Court judgment, which "preserves and recognises the importance of the Sewel Convention".⁴³ The spokesperson said the Welsh Government would continue to work closely with the UK Government and the other devolved administrations to "influence the overall UK position". Plaid Cymru announced that they would seek to table a legislative consent motion in the National Assembly for Wales.⁴⁴ Steffan Lewis, the party's Shadow Cabinet Secretary for External Affairs, argued it was "a simple matter of democracy that the devolved legislatures should have a role in commencing the process of leaving the EU".⁴⁵

Following the collapse of the power-sharing Northern Ireland Executive, the Northern Ireland Assembly was dissolved on 26 January 2017, with an election scheduled to take place 2 March 2017.⁴⁶ David Davis said he had asked the Northern Ireland Executive to continue to send ministers to meetings of the Joint Ministerial Committee in the interim period before the election, and that he would “find some other bilateral way to proceed” if that did not work.⁴⁷

Timetabling of the Bill

The Government expects the Bill to pass through both Houses and gain royal assent before 31 March 2017.⁴⁸ In December 2016, the House of Commons approved by 448 votes to 75 a motion calling on the Government to invoke Article 50 by the end of March 2017.⁴⁹ The Government has set out its case in support of fast-tracking the Bill to achieve this timetable:

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 cause considerable delay to commencing the formal exit process, making it impossible to do so before the end of March 2017. This would further generate uncertainty as to the timetable for our exit from the European Union.⁵⁰

The Bill is scheduled to have its second reading debate in the House of Commons on 31 January and 1 February 2017.⁵¹ It is then due to be considered in committee of the whole House on 6, 7 and 8 February, with the remaining stages also scheduled to take place in the House of Commons on 8 February. Announcing these arrangements, David Lidington, Leader of the House of Commons, said he thought that this was “plenty of time” for debate on a two-clause Bill.⁵² He said the Government hoped to publish the white paper “as soon as possible”, but did not directly answer questions about whether it would be available in time for the Commons committee stage.⁵³ David Davis said on 24 January that it would be “difficult” to produce a full white paper before the middle of February.⁵⁴ In response to Mr Lidington’s business statement, a number of Labour MPs expressed dissatisfaction about the length of time allocated to the Bill. For example, Ben Bradshaw (Labour MP for Exeter) described the proposed timetable as a “contempt of Parliament”, and Chuka Umunna (Labour MP for Streatham) accused the Government of “trying to muzzle the voices of people in Parliament”.⁵⁵ However, it has been reported that Jeremy Corbyn has decided not to oppose the programme motion.⁵⁶

¹ [Explanatory Notes](#), p 4.

² BBC News, [‘Brexit: Theresa May to Trigger Article 50 by End of March’](#), 2 October 2016. For further details about the Great Repeal Bill, see House of Commons Library, [Legislating for Brexit: The Great Repeal Bill](#), 21 November 2016.

³ BBC News, [‘Brexit: Theresa May to Trigger Article 50 by End of March’](#), 2 October 2016.

⁴ [HC Hansard, 24 January 2017, col 161](#); and House of Commons, [‘Written Question: Parliament’](#), 28 July 2016, 43453.

⁵ Supreme Court, [Press Summary—R \(On the Application of Miller and Another\)\(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#), 24 January 2017.

⁶ [R \(Miller\) v Secretary of State for Exiting the European Union \[2016\] EWHC 2768 \(Admin\)](#), para 111.

⁷ *ibid*, paras 95–6.

⁸ Supreme Court, [Press Summary—R \(On the Application of Miller and Another\)\(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#), 24 January 2017. Lord Reed, Lord Carnwath and Lord Hughes dissented from the majority.

⁹ [HC Hansard, 24 January 2017, col 162](#).

¹⁰ *ibid*.

¹¹ Labour Party, [‘The Government Has Today Been Forced by the Supreme Court to Accept the Sovereignty of Parliament—Jeremy Corbyn’](#), 24 January 2017.

¹² Sky News, [‘Jeremy Corbyn Tells His Labour MPs They Must Trigger Brexit’](#), 26 January 2017.

¹³ Labour Party, [‘The Government Has Today Been Forced by the Supreme Court to Accept the Sovereignty of Parliament—Jeremy Corbyn’](#), 24 January 2017.

¹⁴ [HC Hansard, 24 January 2017, col 163](#).

¹⁵ [ibid, cols 169, 171, 172, 173, 179, 180 and 182](#).

¹⁶ [HC Hansard, 25 January 2017, col 286](#).

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- ¹⁷ Labour Party, '[Labour Tables Targeted Amendments to Article 50 Bill](#)', 26 January 2017.
- ¹⁸ Tim Farron, [Personal Twitter Account](#), 24 January 2017.
- ¹⁹ [HC Hansard, 24 January 2017, col 176](#).
- ²⁰ Scottish National Party, '[The Brexit Court Case: What it Means](#)', accessed 27 January 2017.
- ²¹ *ibid*.
- ²² House of Commons, [Notices of Amendments Given up to and Including Thursday 26 January 2017](#), 26 January 2017.
- ²³ *Belfast Telegraph*, '[Brexit: Government Loses Supreme Court Battle—Parliament Must Give Article 50 Go-Ahead](#)', 24 January 2017.
- ²⁴ Social Democratic and Labour Party, '[SDLP Leader Responds to Supreme Court Ruling](#)', 24 January 2017.
- ²⁵ *Belfast Telegraph*, '[Brexit: Government Loses Supreme Court Battle—Parliament Must Give Article 50 Go-Ahead](#)', 24 January 2017.
- ²⁶ Plaid Cymru, '[Plaid Cymru Responds to the Supreme Court Ruling on Article 50](#)', 24 January 2017.
- ²⁷ Green Party, '[Green Party Responds to Supreme Court Judgment](#)', 24 January 2017.
- ²⁸ Jessica Elgot, '[Article 50: Labour MPs Consider Rebellion Over Corbyn's Three-Line Whip](#)', *Guardian*, 26 January 2017.
- ²⁹ Ned Simons, '[Douglas Carswell Suggests Flooding Lords with 800 New Peers if it Attempts to Block Brexit](#)', *Huffington Post*, 24 January 2017.
- ³⁰ [R \(on the Application of Miller and Another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\) \[2017\] UKSC 5](#), para 9.
- ³¹ *ibid*, para 6.
- ³² *ibid*, para 136.
- ³³ Cabinet Office, '[Devolution: Memorandum of Understanding and Supplementary Agreement](#)', accessed 27 January 2017.
- ³⁴ [R \(on the Application of Miller and Another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\) \[2017\] UKSC 5](#), para 147.
- ³⁵ Supreme Court, [Press Summary—R \(On the Application of Miller and Another\)\(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#), 24 January 2017.
- ³⁶ [R \(on the Application of Miller and Another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\) \[2017\] UKSC 5](#), para 151.
- ³⁷ [Explanatory Notes](#), p 2.
- ³⁸ Parliament website, '[Legislative Consent](#)', accessed 27 January 2017.
- ³⁹ Cabinet Office, [Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee](#), October 2013, para 14.
- ⁴⁰ Jim Duffy, '[Defying Convention: Supreme Court Puts Sewel on the Sidelines](#)', UK Human Rights Blog, 26 January 2017.
- ⁴¹ [HC Hansard, 24 January 2017, col 161](#).
- ⁴² Scottish National Party, '[Nicola Sturgeon Responds to UK Supreme Court Ruling](#)', 24 January 2017.
- ⁴³ Welsh Government, '[Statement by the Welsh Government—Article 50 Supreme Court Judgment](#)', 24 January 2017.
- ⁴⁴ Plaid Cymru, '[Plaid Seeks to Table Motion to Give Assembly a Say on Triggering of Article 50](#)', 24 January 2017.
- ⁴⁵ *ibid*.
- ⁴⁶ Northern Ireland Assembly, '[The Northern Ireland Assembly is Now Dissolved](#)', 27 January 2017.
- ⁴⁷ [HC Hansard, 24 January 2017, col 175](#).
- ⁴⁸ Department for Exiting the European Union, '[Article 50 Bill Process Begins](#)', 26 January 2017.
- ⁴⁹ [HC Hansard, 7 December 2016, cols 333–6](#).
- ⁵⁰ [Explanatory Notes](#), p 3. This is in line with a recommendation made by the House of Lords Constitution Committee that the Minister responsible for a Bill should be required to make an oral statement to the House of Lords outlining the case for fast-tracking, and include the same information in the Bill's explanatory notes (House of Lords Constitution Committee, [Fast-Track Legislation: Constitutional Implications and Safeguards](#), 7 July 2009, HL Paper 116-I of session 2008–09, paras 185–7. For further information about fast-track legislation, see House of Commons Library, [Fast-Track Legislation](#), 12 November 2012.
- ⁵¹ [HC Hansard, 26 January 2017, col 455](#).
- ⁵² *ibid*, col 460.
- ⁵³ *ibid*, col 459.
- ⁵⁴ [HC Hansard, 24 January 2017, col 185](#).
- ⁵⁵ [HC Hansard, 26 January 2017, cols 461 and 464](#).
- ⁵⁶ Rob Merrick, '[Jeremy Corbyn Will Let Theresa May Fast-Track Her Article 50 Bill](#)', *Independent*, 26 January 2017.

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