

R (Miller) v Secretary of State for Exiting the European Union
Summary of the judgment of the Divisional Court

References in square brackets are to paragraphs in the judgment.

The question

1. The issue before the court is whether, as a matter of UK constitutional law, the Government is entitled to give notice of a decision to leave the European Union under Article 50 by exercise of the Crown's prerogative powers and without reference to Parliament. This is a pure question of law. The court is not concerned with and does not express any view about the merits of leaving the European Union: that is a political issue.
2. It is accepted by all sides that this legal question is properly before the court and justiciable: under the UK constitution, it is one for the court to decide [5]. It turns on the extent of the Crown's powers under its prerogative [explained at 24-29]. The Government accepts that neither the European Union Referendum Act 2015 nor any other Act of Parliament confers on it statutory authority (as distinct from the Crown's prerogative power) to give notice under Article 50 [67-72, 76 and 105-108].

Background

3. On 1 January 1973 the United Kingdom joined what were then the European Communities, including the European Economic Community. Parliament passed the European Communities Act 1972 (1972 Act) to allow that to happen since it was a condition of membership that Community law should be given effect in the domestic law of the United Kingdom and primary legislation was required to achieve this [1 and 36-54]. The European Communities have now become the European Union.
4. Pursuant to the European Union Referendum Act 2015 a referendum was held on 23 June 2016 on the question whether the United Kingdom should leave or remain in the European Union. The answer given was that the UK should leave [2].
5. The process for withdrawal is governed by Article 50 of the Treaty on European Union, which states that once a Member State gives notice to withdraw there is a two-year period in which to negotiate a withdrawal agreement. If no agreement is reached in this time then, subject only to agreement on an extension of time with the European Council acting unanimously, the EU Treaties shall cease to apply to that State. The Government accepts that a notice under Article 50 cannot be withdrawn once it has been given. It also accepts that Article 50 does not allow a conditional notice to be given: a notice cannot be qualified by stating that Parliament is required to approve any withdrawal agreement made in the course of Article 50 negotiations [9-17].

6. Therefore, once notice is given under Article 50, some rights under EU law as incorporated into domestic law by the 1972 Act would inevitably be lost once the Article 50 withdrawal process is completed [57-66].

The constitutional principles

7. The most fundamental rule of the UK's constitution is that Parliament is sovereign and can make and unmake any law it chooses. As an aspect of the sovereignty of Parliament it has been established for hundreds of years that the Crown – i.e. the Government of the day – cannot by exercise of prerogative powers override legislation enacted by Parliament. This principle is of critical importance and sets the context for the general rule on which the Government seeks to rely – that normally the conduct of international relations and the making and unmaking of treaties are taken to be matters falling within the scope of the Crown's prerogative powers. That general rule exists precisely because the exercise of such prerogative powers has no effect on domestic law, including as laid down by Parliament in legislation [18-36].
8. In the present case, however, the Government accepts, and indeed positively contends, that if notice is given under Article 50 it will inevitably have the effect of changing domestic law. Those elements of EU law which Parliament has made part of domestic law by enactment of the 1972 Act will in due course cease to have effect [76-80].
9. The central contention of the Government in the present case is that Parliament must be taken to have intended when it enacted the 1972 Act that the Crown would retain its prerogative power to effect a withdrawal from the Community Treaties (now the EU Treaties), and thereby intended that the Crown should have the power to choose whether EU law should continue to have effect in the domestic law of the UK or not [76-81].

Conclusion

10. The Court does not accept the argument put forward by the Government. There is nothing in the text of the 1972 Act to support it. In the judgment of the Court the argument is contrary both to the language used by Parliament in the 1972 Act and to the fundamental constitutional principles of the sovereignty of Parliament and the absence of any entitlement on the part of the Crown to change domestic law by the exercise of its prerogative powers [82-94, 97-104]. The Court expressly accepts the principal argument of the claimants [95-96].
11. For the reasons set out in the judgment, we decide that the Government does not have power under the Crown's prerogative to give notice pursuant to Article 50 for the UK to withdraw from the European Union.

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.