



OLIVER BOEHMER/BUDESIGN

## Legal defeat for government on Brexit

**Emma Kilheaney** explains why the High Court ruled against the government on Article 50, and what this means

**O**n 3 November 2016 the government suffered a shock defeat in the High Court when its judges ruled that the government could not trigger Article 50 and begin the withdrawal process from the EU without the permission of Parliament.

### Why this decision?

The High Court judges ruled that, because EU membership guarantees some legal rights of British

citizens through an Act of Parliament, those rights can be taken away only by legislation passed by Parliament. The government will now need Parliament to authorise the notification of the UK's intention to withdraw from the EU. Theresa May had already conceded that MPs would have a vote on the terms of the withdrawal, but argued that as prime minister she had the right to invoke Article 50. This is because of the royal prerogative powers awarded to her to negotiate treaties.

The government has since appealed the High Court's decision and will take the case to the Supreme Court. All 11 of the Supreme Court's justices will hear the government's appeal against the ruling that the

prime minister cannot use royal prerogative powers to begin Britain's exit from the EU. The court will hear the case between 5 and 8 December but will not reveal its decision until January.

## What will the government do next?

The government is planning for every eventuality. As many of the Supreme Court justices have links to Europe, they are unlikely to be keen to overturn the High Court's ruling, or be sympathetic to the government's position.

Ministers are considering plans to fast-track parliamentary approval for Brexit if the Supreme Court upholds the High Court's decision that MPs must vote to trigger formal exit talks. Theresa May could put forward a resolution rather than a full parliamentary bill to allow the decision to be quickly rubber-stamped by MPs and Lords in a single day. This would prevent further delay to Brexit but would be unpopular with members of the Commons and the Lords who want to closely scrutinise the government's negotiations and propose amendments. It is likely that the government will submit a short enabling Bill to Parliament, which if passed, will allow Article 50 to be triggered. It is expected that MPs will support this, given the results of the referendum, to reflect the will of the electorate.

Conservative MP Stephen Phillips resigned his seat on 4 November in protest at Theresa May's efforts to stop MPs having a vote on when Article 50 is triggered. The MP, who supported Brexit, had led calls for the prime minister to accept that parliamentary approval was needed before formal exit talks could begin. A by-election for his Lincolnshire seat will be held in due course.

## Has judicial independence been threatened?

Judicial independence was brought into question after Sajid Javid, the communities secretary, and Iain Duncan Smith, the former work and pensions secretary, both criticised the High Court judges for their ruling.

This was exacerbated by the slow response of the Lord Chancellor Liz Truss, who has constitutional responsibility for upholding the independence of the judiciary, to defend the High Court judges. Truss later stated:

The independence of the judiciary is the foundation upon which our rule of law is built and our judiciary is rightly respected the world over for its independence and impartiality. In relation to the case heard in the High Court, the government has made it clear it will appeal to the Supreme Court. Legal process must be followed.

The Lord Chancellor's role is to safeguard judges and take an independent line. Many critics believe that Liz Truss has failed in her constitutional obligations by not speaking out sooner and more passionately in defence of the judges. According to the principal of judicial independence, politicians should not publicly criticise judges or their decisions.

## Questions

- 1 How effectively can the judiciary control executive and legislative power in the UK?
- 2 To what extent is there conflict between the judiciary and the executive in the UK?
- 3 To what extent has judicial independence been questioned?

## Weblinks to follow up

Find out more about judicial independence:

[www.tinyurl.com/jzfy2fy](http://www.tinyurl.com/jzfy2fy)

Find out more about the Supreme Court justices:

[www.tinyurl.com/hl5eypw](http://www.tinyurl.com/hl5eypw)

Find out more about our full range of magazines and online archives of back issues at [www.hoddereducation.co.uk/magazines](http://www.hoddereducation.co.uk/magazines)

Did you like this article?  
Tell us what you think