

UK Supreme Court hears opposed arguments on whether Parliament must vote to trigger Brexit

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Yesterday was day two of the Supreme Court hearing on whether Conservative Prime Minister Theresa May can trigger Article 50 of the Lisbon Treaty, beginning the UK departure from the European Union (EU), without a vote in Parliament. The government is challenging last month's High Court decision ruling that Parliament alone has the right to trigger Britain's EU exit.

In the morning, the government's legal representatives continued to defend their intention to trigger Article 50 by utilising the Royal Prerogative--previously used by monarchs--with no prior debate and no Parliamentary vote. Attorney General and Tory MP Jeremy Wright QC claimed that Parliament was not being by-passed, arguing, "We say that use of the prerogative in these circumstances would not only be lawful but fully supported by our constitutional settlement, in line with Parliamentary sovereignty and in accordance with legitimate public expectations."

He submitted that the UK operated a dualist constitutional system and Parliament has "a clear understanding" of prerogative powers. Where Parliament limits these powers, it "does so carefully and specifically," said Wright.

At the conclusion of his submission for the government, James Eadie QC said that if the government was forced to allow Parliament to vote on an Article 50 bill, "the solution in legal terms is a one-line act." This would merely state that the government intended to trigger Article 50 and "certainly won't" set out possible arguments and how it intends to negotiate. He added, "It may be that would lead to all sorts of Parliamentary complications and possible additions and amendments and so on, but that's the solution."

In its ruling, the High Court supported a group of pro-EU claimants, led by Gina Miller, a London-based

investment fund manager, demanding Parliament vote on triggering Article 50. They agreed on the basis that when the UK passed the 1972 European Communities Act--paving the way for the UK to join the European Economic Community--rights were conferred on citizens via that Act of Parliament. It was therefore not within the realm of Royal Prerogative to take away those rights, as only a sovereign Parliament could do this.

In the Supreme Court, several of the judges, Lord Wilson and Lord Neuberger (the president of the Court), questioned the government's counsel. Wilson raised that Parliament and the government had collaborated together in 1972 and asked, "If entry was the result of a joint effort, should our departure [from the EU] also not be so?"

May became prime minister after previous Tory leader David Cameron resigned following the shock Leave vote in the June referendum. The Tories already had a slim majority in Parliament, which has been further reduced to 13 under May.

Up to three quarters of MPs, across all parties, are supporters of remaining in the EU. May was opposed to allowing Parliament the right to trigger Article 50 on the basis that they would demand the inclusion of amendments--including preserving access to the EU's Single Market--as this would alienate the Tories' substantial Eurosceptic base and threaten the fall of her government.

In his submission on behalf of Miller, Lord David Pannick QC said that the 1972 Act had a constitutional status that prerogative powers were insufficient to nullify. He argued that prerogative powers to make and unmake international treaties are deliberately limited to the extent that they cannot affect domestic law. Prerogative power ends where domestic rights begin, he said. Pannick

continued, “My submission is that it is inherently unlikely... that Parliament when it enacted the 1972 act... intended that such fundamental change could be set aside by a minister.”

Even as the Supreme Court met, the crisis engulfing the ruling elite over Brexit intensified. Michel Barnier, nominated as the EU’s chief negotiator in its talks with Britain, chose Tuesday to make his first formal statement on the EU’s position. Barnier outlined a further hardening of an already hard-line position that the EU is taking over Brexit.

As opposed to the oft-cited two-year negotiating period for Britain and the EU to work out the terms of exit, he declared, “Time will be very short.”

Barnier insisted that no talks would begin without notification via Article 50, before stating, “It’s clear that the actual negotiation period will be shorter than two years... All in all, there will be less than 18 months. If, as Theresa May has said, we receive notification by the end of March, it is safe to say the negotiations could start a few weeks later and Article 50 agreement would have to be reached by October 2018.”

His team would “preserve the unity and interests of the EU-27” in its talks with Britain. He insisted that the UK would have to accept an inferior trade deal to that of the members of the EU, warning, “Being a member of the EU comes with rights and benefits... Third countries can never have these rights and benefits.”

Scotching all talk that the UK could continue accessing the Single Market without agreeing to accept the “four fundamental freedoms” of the EU—free movement of goods, services, capital and people—Barnier declared these “were indivisible” and “There can be no cherry picking.”

Barnier’s hostile intervention confirms that the EU views the Brexit crisis as an existential threat to which it must respond firmly. He spoke just 48 hours after the defeat of an EU-backed referendum, which forced the imminent resignation of Italian Prime Minister Matteo Renzi. With an escalating economic and political crisis breaking out continent-wide, the EU is insistent that the UK is rapidly forced out on the harshest terms possible in order to stem further crisis.

A British government spokesman sought to play down Barnier’s remarks, while stating that this was the first indication that European officials planned to complete Brexit negotiations within 18 months.

Later yesterday, the government was also forced to accept a Labour motion to be presented in Parliament today by Sir Keir Starmer, the Shadow Brexit Secretary.

Labour’s motion calls on “the Prime Minister to commit to publishing the Government’s plan for leaving the EU before Article 50 is invoked,” while accepting there should be “no disclosure of material that could be reasonably judged to damage the UK in any negotiations to depart from the EU.”

Starmer said, “We will also push for a plan to be published no later than January 2017 so that the House of Commons, the devolved administrations, the [parliamentary] Brexit Select Committee and the British people have a chance to scrutinise it.”

May was forced to accept the motion, on the basis of the government amending it, as up to 40 pro-EU Tory rebels were pledged to back Labour. According to the *Guardian*, “May is challenging Labour and other opposition MPs to accept three conditions; that article 50 should be invoked by the end of March; that the result of the referendum should be accepted; and that the publication of the plan should not undermine the government’s stance in the Brexit negotiations.”

The Tory amendment is authored by May, Chancellor Philip Hammond, Home Secretary Amber Rudd, Foreign Secretary Boris Johnson, Brexit Secretary David Davis and Conservative chief whip Gavin Williamson.

May’s position as the leader of a crisis-ridden party and government is increasingly untenable. Leading Tory Eurosceptic MP Steve Baker endorsed the government amendment as one that would hasten Brexit, declaring, “Every MP should respect the result by voting with the Government for this excellent amendment to trigger Article 50 on the Prime Minister’s schedule.”

On Monday, John Longworth, co-chair of Leave Means Leave, which has the backing of senior Tories, called on May to “come clean”, adding, “It’s incumbent on government to give clarity.” Calling for a “hard Brexit,” Longworth stated, “It’s important that in the New Year the government makes it clear that we’re going to leave those two institutions, the single market and the customs union.”



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