



# The High Court's ruling v the Government's plan to trigger Article 50

Dr Hannah White

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The High Court has ruled that the Government cannot kick off the process of the UK leaving the EU without the consent of Parliament. Dr Hannah White looks at what we know about what happens now.

## What was the High Court deciding?

The court case was to decide if the Government could trigger [Article 50 of the Treaty on the European Union](#) using its 'prerogative power'. This means the power – originally held by the Crown but now exercised by ministers – to act without parliamentary consent. The High Court has ruled against the Government, saying it will need to secure Parliament's consent before triggering Article 50.

## Does this mean Brexit won't happen?

No. The court's decision does not override the result of the referendum – it only rules on the process which the Government must follow to give effect to the result. This judgment has placed a new obstacle on the road towards the UK leaving the EU. The Government has announced its intention to appeal, but no one has discussed overturning the referendum result.

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## So what does happen next?

The Government has indicated that it intends to appeal the High Court's decision. The appeal will leapfrog the Court of Appeal and move straight to the Supreme Court, which has set aside time from 7–8 December to hear the case. Given the political time pressure, it seems likely that the Supreme Court will attempt to issue its judgment before Christmas.

## What does this mean for plans to trigger Article 50 by the end of March 2017?

It depends on the outcome of the appeal. As things stand today, the Government cannot trigger Article 50 by March 2017 without Parliament's authorisation. It is worth adding that legal minds don't believe an appeal is likely to be successful. Jeff King, Professor of Law at UCL, says: 'An appeal looks hopeless, and so the Government had best get busy with drafting a bill.'

## How will Parliament authorise the Government to trigger Article 50?

The ruling doesn't say this explicitly, but Parliament will need to pass a new bill that gives Government the authority to trigger Article 50. Professor King argues that this is 'the only legally tenable interpretation' of today's judgment. If the Prime Minister wants to stick to her self-imposed March 2017 deadline, this new bill will have to be introduced as soon as possible.

Given the Government has only a slim majority in the House of Commons and no majority in the House of Lords, the time it will take for the bill to pass is uncertain. While it is possible for legislation to be passed quickly in an emergency, this would require the consent of both Houses. But Parliament will want to ensure that there is time for the bill to receive proper scrutiny.

## What would the process look like ...?

**In the Commons:** The Government will agree how much time the Commons will have to scrutinise the bill – this is known as 'passing a programme motion'. It will involve a careful judgment call. MPs may feel more comfortable voting against or amending a programme motion which restricts the time available for debate, than they would be voting against the legislation altogether.

**In the Lords:** The passage of legislation is not timetabled, so there is much more uncertainty for the Government about how long the bill will take to pass. In light of this, it is possible that the Government will introduce legislation immediately – as a precaution, in case it loses its appeal.

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## Will MPs and Lords vote to pass the bill?

This will of course come down to politics. Both the Commons and Lords have a majority of members who argued for the UK to remain a member of the EU. But politically, they may not wish to vote against the decision of UK voters taken through the referendum, particularly as most constituencies outside the Scotland, Northern Ireland and the major cities voted against remaining in the EU.

Nonetheless, they will wish to ensure that the decision to trigger Article 50 receives an appropriate degree of parliamentary scrutiny. Depending on how the bill is drafted – and it is likely to be very short – there may be moves to amend it to place conditions on the Government before it can trigger Article 50. These could take the form of timing or process requirements – for example, a requirement on the Government to provide Parliament with information about its negotiating position before triggering Article 50.

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## About the author

Dr Hannah White joined the Institute in May 2014, originally on secondment from the House of Commons. She is now Director of Research, as well as leading the Institute's work on Parliament and Brexit.

Hannah has more than 10 years' experience in Parliament and the Civil Service, most recently running the Committee on Standards on Public Life in the Cabinet Office, and the Political and Constitutional Reform Committee in the House of Commons. Previously she was Private Secretary to the Clerk and Chief Executive of the House of Commons and worked in the Public Bill Office, running legislative committees and advising on parliamentary procedure.

She began her career in academia, teaching historical and social geography at the University of Cambridge, where she completed her undergraduate degree and PhD.

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