



# Brexit Brief: Supreme Court ruling on Article 50 appeal

---

## What's happened?

The Supreme Court today ruled that an Act of Parliament is required to trigger Article 50 to leave the European Union. The Government tried to argue that it could decide to trigger Article 50 without having to go through Parliament, under the Royal Prerogative. However, the Supreme Court rejected the Government's appeal and upheld the decision of the High Court by eight votes to three. It also, however, upheld the view of the lower court that the UK Government did not have to consult the legislatures of Scotland, Wales and Northern Ireland. As we have previously argued, the next step is for the Government to publish a bill to give Parliament a vote on triggering Article 50.

## Does this mean the Prime Minister cannot meet her end-March deadline?

The earliest that the Article 50 bill could get through both Houses is probably the end of February.

The Prime Minister conceded back in November that losing the Article 50 case would mean bringing forward legislation to allow the Government to trigger Article 50. If, as reported, the bill is already drafted, the Government could introduce the bill tomorrow, and – allowing for the conventions of business scheduling in the Commons – schedule the second reading and subsequent stages of the bill's Commons consideration for the week beginning 6 February. If the Commons stages are completed within a week, the bill could be sent to the Lords before the February recess.

As legislation is not 'programmed' in the Lords, the progress of an Article 50 bill there is less certain but the earliest it could get through both Houses is probably the end of

---

February. Unless the bill was amended to add onerous burdens onto the Government before it triggers Article 50, Royal Assent before the 30 March would give the Prime Minister enough time to trigger Article 50 by her deadline.

## **What could an Article 50 bill look like?**

The bill is likely to be as brief as possible, perhaps just one or two substantive clauses. At a minimum, it will need to give the Government authority to notify the European Council of the UK's intention to leave the EU under Article 50 of the Treaty on European Union.

## **Could the Commons block Brexit?**

There is likely to be some opposition in the Commons to the bill – the SNP have suggested that their 54 MPs will vote against the bill, as have the Liberal Democrats. But the Government has a majority – albeit a narrow one, of just 14, in the Commons. Jeremy Corbyn has said that Labour will back the bill, so it is likely to get through the Commons. The Prime Minister has promised that Parliament will have another chance to make its views heard on Brexit, when it votes on the final deal, though, as we have argued, it may be presented with a choice between the deal the Government has negotiated and no deal.

## **Could the Lords block Brexit?**

The position of the Lords is less clear, not least because some will argue that the Conservative manifesto contained a commitment to remain in the Single Market (and the Prime Minister has now made clear that she wants instead to leave). This means it is not covered by the Salisbury Convention, whereby the Lords refrains from voting down manifesto commitments. In practice, the House of Lords is likely to raise a lot of issues – but ultimately will be reluctant to stand in the way of the Government's implementation of the referendum outcome.

## **Could Parliament amend the bill?**

There's no such thing as an unamendable bill of this type. There are limits to the ways in which bills can be amended: amendments must be 'relevant to the subject matter of the bill'. The Government will probably keep the bill narrow in scope, to limit possible amendments.

Until the bill is published it's not clear whether amendments relating to market access and workers' rights, such as those suggested by the Labour Party, would be admissible.

## **Who decides whether to allow an amendment?**

It depends on how the bill is scrutinised. In the Commons, decisions about whether amendments are 'in order' and the grouping of amendments for debate are made by whoever is chairing proceedings. Because of its constitutional significance, an Article 50 bill is likely to be considered in 'committee of the whole House' rather than by a smaller group of MPs. This means that one of the deputy speakers (the Chairman of Ways and

---

Means, currently Rt Hon Lindsay Hoyle MP) will be in the Chair and responsible for decisions.

At report stage, if there is one – and there won't be if the bill is sent to a committee of the whole House and emerges without amendments – the Speaker will be responsible. In both cases, they will be advised by parliamentary officials.

In the Lords, there are far fewer procedural rules about amendments, although they still have to be relevant to the legislation. Each amendment is called and decided in turn (according to where it falls in the bill). The only exception is if an amendment has been pre-empted by another previously agreed by the House of Lords.

## **What about Scotland, Wales and Northern Ireland?**

The Supreme Court unanimously ruled that the UK Government does not need the consent of the devolved legislatures to trigger Article 50. This means that the Scottish Parliament and Northern Ireland and Welsh Assemblies will have no veto over triggering Article 50, though [the Prime Minister's speech](#) last week promised the devolved governments would have “full engagement” in the process of Brexit.

**The Institute for Government is the leading think tank working to make government more effective.**

We provide rigorous research and analysis, topical commentary and public events to explore the key challenges facing government.

We offer a space for discussion and fresh thinking to help senior politicians and civil servants think differently and bring about change.

Copies of this briefing note are available alongside our other research work at:  
[www.instituteforgovernment.org.uk](http://www.instituteforgovernment.org.uk)

Email: [enquiries@instituteforgovernment.org.uk](mailto:enquiries@instituteforgovernment.org.uk)  
Twitter: [@instituteforgov](https://twitter.com/instituteforgov)

**Institute for Government**  
**2 Carlton Gardens, London, SW1Y 5AA**  
**United Kingdom**

Tel: **+44 (0) 20 7747 0400**  
Fax: **+44 (0) 20 7766 0700**

January 2017

© Institute for Government 2017

The Institute for Government is a registered charity in England and Wales (No. 1123926) with cross-party governance. Our main funder is the Gatsby Charitable Foundation, one of the Sainsbury Family Charitable Trusts.