

## High Court ruling on Article 50: statement

R (Miller) -v- Secretary of State for Exiting the European Union – Accessible  
3 November 2016

Neutral Citation Number: [2016] EWHC 2768 (Admin)

Case No: CO/3809/2016 and CO/3281/2016

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
DIVISIONAL COURT

Royal Courts of Justice  
Strand, London, WC2A 2LL  
3 November 2016

Before :

LORD CHIEF JUSTICE OF ENGLAND AND WALES  
THE MASTER OF THE ROLLS  
LORD JUSTICE SALES

Between :

The Queen on the application of (1) Gina Miller &  
(2) Deir Tozetti Dos Santos Claimants  
– and –

The Secretary of State for Exiting the European Union Defendant

(1) Grahame Pigney & Others

(2) AB, KK, PR and Children Interested Parties

Mr George Birnie & Others Interveners

Lord Pannick QC, Rhodri Thompson QC, Anneli Howard and Tom Hickman for  
the 1st Claimant

Dominic Chambers QC, Jessica Simor QC and Benjamin John for the 2nd  
Claimant

H.M. Attorney-General, James Eadie QC, Jason Coppel QC, Tom Cross and  
Christopher Knight for the Defendant Secretary of State

Helen Mountfield QC, Gerry Facenna QC, Tim Johnston, Jack Williams and John  
Halford for the 1st Interested Parties

Manjit Gill QC, Ramby De Mello and Tony Muman for the 2nd Interested Parties

Patrick Green QC, Henry Warwick, Paul Skinner and Matthieu Gregoire for the  
Interveners

Hearing dates: 13th, 17th and 18th October 2016

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Approved Judgment

**Lord Thomas of Cwmgiedd CJ, Sir Terence Etherton MR and Sales LJ :****Introduction***(a) The question for the court*

1. On 1 January 1973 the United Kingdom joined the European Communities. This occurred as a result of a process of Treaty negotiation by the government, the enactment of the European Communities Act 1972 (“the ECA 1972”) to give effect to Community law in the national legal systems of the United Kingdom and then ratification by the United Kingdom and other Member States of the amended Community Treaties. Thus, as a result of the ECA 1972, Parliament by primary legislation gave effect in each jurisdiction of the United Kingdom to binding obligations and rights arising under those Treaties. In due course the European Communities became the European Union.
2. On 23 June 2016 a referendum took place under the European Union Referendum Act 2015 (“the 2015 Referendum Act”). The question asked in the referendum was “Should the United Kingdom remain a member of the European Union or leave the European Union?” The answer given in the referendum was that the United Kingdom should leave the European Union.
3. Withdrawal from the European Union under the Treaty provisions of European Union is governed by Article 50 of the Treaty on European Union (“TEU”). That Article came into force in 2009 after amendment of the TEU by the Lisbon Treaty of 2007.
4. The sole question in this case is whether, as a matter of the constitutional law of the United Kingdom, the Crown – acting through the executive government of the day – is entitled to use its prerogative powers to give notice under Article 50 for the United Kingdom to cease to be a member of the European Union. It is common ground that withdrawal from the European Union will have profound consequences in terms of changing domestic law in each of the jurisdictions of the United Kingdom.

*(b) The common ground that the question is justiciable*

5. It is agreed on all sides that this is a justiciable question which it is for the courts to decide. It deserves emphasis at the outset that the court in these proceedings is only dealing with a pure question of law. Nothing we say has any bearing on the question of the merits or demerits of a withdrawal by the United Kingdom from the European Union; nor does it have any bearing on government policy, because government policy is not law. The policy to be applied by the executive government and the merits or demerits of withdrawal are matters of political judgement to be resolved through the political process. The legal question is whether the executive government can use the Crown’s prerogative powers to give notice of withdrawal. We are not in any way concerned with the use that may be made of the Crown’s prerogative power,

if such a power can as a matter of law be used in respect of Article 50, or what will follow if the Crown's prerogative powers cannot be so used.

(c) *The parties to the proceedings to resolve the legal question*

6. The Secretary of State is the appropriate representative of the Crown acting through the government. If the claimants' case is correct, it will of course cover action by any other government minister. Aspects of the submissions for the government were presented in turn by the Attorney General, Mr Eadie QC and Mr Coppel QC.
7. It is not difficult to identify people with standing to bring the challenge since virtually everyone in the United Kingdom or with British citizenship will, as we explain at paragraphs 58 and following, have their legal rights affected if notice is given under Article 50. The claimants and interested parties comprise a range of people whose interests are potentially affected in different ways. The main part of the argument for the claimants was presented by Lord Pannick QC, appearing for the first claimant. His submissions were adopted by those appearing for the other claimant and the interested parties. Certain aspects of the argument for the claimants and the interested parties were presented by other counsel. Mr Chambers QC, appearing for the second claimant, dealt with the topic of parliamentary sovereignty. Miss Mountfield QC, appearing for one group of interested parties, dealt with the topics of EU citizenship rights, the position of Scotland under the Act of Union 1707 and the impact of the devolution legislation. Mr Green QC, appearing for interveners who are British citizens (or those associated with them) exercising their free movement rights under EU law by living in other EU Member States and having access to public services there, focused on the impact which notification under Article 50 would have upon them and also dealt in particular with the effect of the European Union Act 2011. Mr Gill QC focused on the position of another group of interested parties for whom he appeared, who are children and their carers whose immigration status in the United Kingdom may be affected as a result of notification under Article 50. Counsel for the Lord Advocate of Scotland and for the Counsel General of Wales were present in court but played no part in the proceedings.

(d) *The scheme of the judgment*

8. We will answer the question for our decision under the following headings:
  1. Article 50 of the TEU (paragraphs 9-17)
  2. The principles of constitutional law: the sovereignty of Parliament and the prerogative powers of the Crown (paragraphs 18-36)
  3. The domestic effect of EU law under the ECA 1972 (paragraphs 37-56)
  4. Categories of rights arising under the ECA 1972 and EU law (paragraphs 57-66)
  5. UK legislation in relation to the EU subsequent to the ECA 1972 (paragraphs 67-72)

6. The parties' principal submissions (paragraphs 73-76)
7. Our decision on the question (paragraphs 77-104)
8. The Referendum Act 2015 (see paragraphs 105-108)
9. Conclusion and form of declaratory relief (paragraphs 109-111)

...

**(9) Conclusion and form of declaratory relief**

109. As we have set out at paragraph 5, it is agreed on all sides that the legal question we have examined and answered, as to whether the Crown can use its prerogative powers to give notice under Article 50, is justiciable. Since it is a justiciable issue, the court must plainly be entitled to grant appropriate declaratory relief. The Secretary of State accepts this as well. It is appropriate for the precise form of the declaratory relief to be granted to be addressed once the parties have seen this judgment.
110. This case came on before us as a “rolled up” hearing, for the questions of permission to seek judicial review and, if granted, the substantive merits of the claim to be considered at one hearing. We formally grant permission.
111. For the reasons we have set out, we hold that the Secretary of State does not have power under the Crown’s prerogative to give notice pursuant to Article 50 of the TEU for the United Kingdom to withdraw from the European Union.