

ARTICLE 50 LEGAL CHALLENGE: ONE PAGE SUMMARY OF SKELETON

- The judicial review application raises an issue of constitutional importance concerning the limits of the powers of the executive branch of Government.
- The European Referendum Act 2015 was, as a matter of law, advisory. Nowhere in the 2015 Act does it specify the consequences that should follow from the referendum result.
- The Defendant states however that Parliament enacted the 2015 Act on "the clear understanding" that "the Government's policy" was to respect the outcome of the referendum. Government policy is not law, not least because Government policy may change.
- An "understanding" as to how the Government would respond to the referendum result is not enough to give rise to prerogative powers.
- The Defendant argues that the Royal Prerogative can be applied in this case allowing the notification of Article 50 without consultation with Parliament.
- However prerogative powers may not validly be exercised where this would frustrate or substantially undermine rights and duties established by Acts of Parliament. They may also not be used to pre-empt the decision of Parliament on whether or not to continue with a statutory scheme. This principle was first established as long ago as 1610 by Sir Edward Coke.
- The notification of Article 50 given by Royal Prerogative would frustrate or substantially undermine rights and duties established by the European Communities Act 1972. Parliament decided in the 1972 Act to make EU law a part of United Kingdom law and therefore only Parliament has the sovereign power to repeal the 1972 Act, should it wish to do so.
- The Article 50 notification by Royal Prerogative would remove a large number of rights from our law, including those under the EU Charter of Fundamental Rights, without Parliamentary approval.
- The Great Repeal Act announced by Prime Minister May on 2 October would not preserve EU law rights in their entirety. Amongst those rights are ones which can only be conferred under EU not national law, not least EU Citizenship and the EU Charter of Fundamental Rights.
- In fact, the Great Repeal Act is no more than the statement of the existing and longstanding position which is that only Parliament can change an Act of Parliament.
- By committing to the Government doing just that before the end of March 2017, the Prime Minister is effectively on a collision course with the Courts by pre-empting the outcome of the case which is due to be concluded before the end of this year.