Brexit Judgment: R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5

Introduction from the editors

Last week, the UK Supreme Court handed down its judgment in R (Miller) v Secretary of State for Exiting the European Union. It was a case in which the court had to determine, at the request of the Secretary of State for Exiting the European Union, the meaning and effect of Article 50(2) of the European Union Treaty. The leading judgment was given by Lord Neuberger, in which he agreed with Lord Sumption and Lord Toulson. Lord Carnwath also wrote a dissenting judgment, which was joined by Lord Reed and Lord Perrins.

The judgment of the Supreme Court handed down on 26 January 2017 by a majority of 11 to 4, is consistent with the conclusion at the Westminster Parliament is entitled to authorise his decision to withdraw from the EU, but it is not for the court to make that decision. The court is instead required to determine the meaning and effect of Article 50(2) and to determine whether Parliament has the power to give Notice under Article 50(2). The court held that Parliament has the power to give Notice under Article 50(2) and that the judgment should be remitted to the Secretary of State for Exiting the European Union for it to give Notice.
Ireland, and are not devolved in the case of Wales – see section 30(1) of, and paragraph 7(1) of Schedule 5 to, the Scotland Act 1998; section 108(4) of, and Part 1 of Schedule 7 to, the Government of Wales Act 2006; and section 4(1) of, and paragraph 3 of Schedule 2 to, the NI Act. Accordingly, the devolved legislatures do not have a parallel legislative competence in relation to withdrawal from the European Union.

[2] The essence of the convention is that Westminster would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.