

Trigger of Article 50 – What does this mean for family law?

Article 50 was triggered on 29 March 2017. But what does this actually mean? Fundamentally nothing will change any time soon; the triggering of this article has merely started the formal two year time limit for the UK to leave the European Union. This means the UK has to now negotiate new trade agreements and put together new UK legislation. But what affect does this have on family law?

Firstly, until we formally leave the EU in March 2019, the status quo will continue. So, for the time being there will be no imminent upheaval in family law, but there will be an element of uncertainty as to what will happen in the future.

Divorce

Under current EU regulations, if there are divorce proceedings in one Member State then there cannot be competing divorce proceedings in a fellow Member State. This prevents parties from competing for more 'favourable' jurisdiction. For example, if a divorce petition is issued in England and the English courts accept jurisdiction then the other party cannot simply start divorce proceedings in Spain because they believe they will get a more advantageous outcome.

Though there have been no proposals as to what will happen post the UK leaving the EU, it has been made clear that if no new structure is put in place to either mirror the current arrangements or create new ones, then this could potentially create huge uncertainty for clients and has the potential to increase costs due to the added complexity with cross border jurisdictions.

Another factor to bear in mind is that under current EU regulations clients currently have the certainty that a judgement and/or divorce is automatically recognised in other EU countries. Therefore, there is the potential risk that if similar regulations are not implemented post Brexit then clients could be faced with unenforceable and non-binding orders outside of the UK.

Children

The position on children matters within family law is even less clear than divorce.

In terms of child abduction cases, the UK and Europe will still be bound by the 1980 Hague Convention and this includes the co-operation between Member States' judiciary and government organisations. This will provide some certainty for clients.

Ultimately, in terms of children matters it is a waiting game to see what treaties or regulations are enforced over the coming two years.

Maintenance

In terms of maintenance, one could argue that the UK leaving the EU could have a more appealing consequence. As it currently stands, a maintenance order made in another Member State (i.e. not the UK) has to be automatically recognised in the UK and can be enforced via The Reciprocal Enforcement of Maintenance Order (REMO) Unit based in London.

Therefore it could be argued that this is more favorable because the automatic recognition may be revoked. This could mean that parties could be faced with an unenforceable maintenance order – depending on who your client is this could have more attractive position post Brexit.

The Future

It is clear that there is a large element of uncertainty surrounding the UK's future post Brexit and not just in relation to family law. In an ideal world, we would want a treaty enforced that brings out the best of EU family law and UK family law to ensure the best outcome for clients and practitioners.