

BREXIT - JUDICIAL REVIEW LITIGATION ARTICLE 50 TEU

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Legal Briefings - By **Gavin Williams, Partner**, **Dorothy Livingston, Consultant**, **Nusrat Zar, Partner** and **Kristien Geurickx, Professional support lawyer**

Judicial review proceedings have started before the High Court, challenging the Government's ability to trigger Article 50 of the Treaty on European Union (TEU) without an Act of Parliament. Article 50 TEU sets out the procedure for the withdrawal of a Member State from the EU, and requires that withdrawal to be in accordance with the Member State's own constitutional requirements.

The Government made it clear that it intends to trigger Article 50 TEU without involving Parliament, through use of the Royal Prerogative. This approach has been challenged by a number of claimants in judicial review proceedings before the High Court.

The principal argument relied on by the Lead Claimant is that notification without prior authorisation of an Act of Parliament would not be in accordance with the constitutional requirements of the UK, because *"it would frustrate the rights and duties enacted by Parliament in the European Communities Act 1972, and would be inconsistent with the object and purpose of that Act, namely to give effect to the rights and duties consequent on membership of the EU"*.

Skeleton arguments for The People's Challenge Interested Parties (a number of ordinary UK and EU citizens living in England, Gibraltar, Northern Ireland, Scotland and Wales, and British expats in France) and for the Government have been published. The People's Challenge Interested Parties argue that Article 50 TEU cannot be triggered without an Act of Parliament, on the basis that:

- the Royal Prerogative is a residual power, which has been implicitly abrogated by domestic constitutional statutes, therefore the executive does not have prerogative

power to decide that the UK should withdraw from the EU

- if any prerogative power subsists in this field, such power does not extend to modifying, abrogating or removing fundamental citizenship rights
- it would be an abuse of such prerogative power (should it still exist) to use it to trigger the UK's withdrawal from the EU

The Government argues that it is giving effect to the will of the people provided for in the 2015 Referendum Act and that the use of prerogative powers to enact the referendum result is constitutionally proper and consistent with domestic law. According to the Government the decision to withdraw from the EU is not justiciable but, like the decision to join the EU, it is a matter of the highest policy reserved to the Crown. However, to the extent that the claim is held to be justiciable, the use of its prerogative power in the circumstances of this case is consistent with domestic constitutional law.

Hearings in the case take place in the Divisional Court, before the Lord Chief Justice, the Master of the Rolls and Lord Justice Sales, on Thursday 13 October and on Monday 17 October. The Court has also made arrangements for a leapfrog appeal to be heard by the Supreme Court in early December, in order to ensure a final position on the issue before the Government's March 2017 timetable for triggering Article 50 TEU.

Our July 2016 briefing which contains more information on the various arguments for the correct constitutional process for triggering Article 50 is available [here](#) and we will publish an update briefing as soon as the High Court judgment becomes available.

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KEY CONTACTS

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