



BRIEFING PAPER

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Impact of Brexit on UK consumer regime

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1. Introduction

The UK's existing consumer protection regime is a complex combination of national and EU law. Following a recent overhaul, it is now dominated by the [Consumer Rights Act 2015](#) (the CRA 2015) and other UK-initiated laws, but a huge amount of our consumer law is derived from the EU. A vast range of EU Directives and Regulations implemented in the UK deal with consumer protection rights from: unsafe products, unfair practices, misleading marketing practices to distance selling.

The [EU Charter of Fundamental Rights](#)¹ and the [European Treaties](#) since the [Single European Act](#) guarantee a high level of consumer protection in the EU. Promoting consumers' rights is also a core value of the EU, enshrined in Article 12 of the Treaty on the Functioning of the European Union ([TFEU](#)).²

Following the recent Referendum, the triggering of Article 50 of the [Treaty of Lisbon](#) on 29 March 2017 has started the formal process for the UK to leave the EU. This has cast doubt over the continued application of this significant body of EU-derived consumer protection law. For consumers, there is concern that Brexit may lead to a 'watering down' of their existing rights and protections. For businesses, who have just got to grips with the new requirements of the [CRA 2015](#) and a new consumer landscape, there is concern that Brexit will bring more uncertainty and change.

The [European Union \(Withdrawal\) Bill](#), currently progressing through Parliament, would repeal the [European Communities Act 1972](#), which took Britain into the EU. Most existing EU legislation would be copied across into domestic UK law to ensure a smooth transition on the day after Brexit. The UK Parliament could then "amend, repeal and improve" the laws as necessary.

From a consumer perspective, the fact that the Government wants to avoid a "black hole in our statute book" by converting directly applicable EU laws into UK laws, will minimise disruption to individual consumers and businesses as the UK leaves the EU. However, in the longer term, it is difficult to predict the impacts for consumers of withdrawal without knowing what the UK's future relationship with the EU will look like and, crucially, whether the UK retains any sort of access to the European Single Market. Indeed, the EU Justice Sub-Committee, under the chairmanship of Baroness Kennedy of The Shaws, has recently launched an inquiry into [Brexit: consumer protection rights](#).

Commentators have argued variously that whatever form Brexit takes, the laws governing relations between consumers and businesses are of vital importance to the future success of the UK. Consumers will be much more likely to purchase goods and services, **whether domestically**

¹ [Charter of Fundamental Rights of the European Union](#), OJ C 83/02, 30 March 2010

² [OJ C326/46](#)

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or across borders, if they can be confident of their rights and their ability to enforce those rights.

2. Current UK consumer law

The UK's existing consumer regime is complex. It is a combination of domestic and EU law. In recent years, this regime has been reviewed, dismantled and completely rebuilt. Legislative reforms have been made against a backdrop of structural changes to consumer law enforcement. There were two drivers for change: one an EU initiative; the other a domestic initiative:

- First, the adoption in October 2011 of the [Directive on Consumer Rights](#) (2011/83/EC). Most of the requirements of the Directive have now been implemented in the UK through the [Consumer Contracts \(Information, Cancellation and Additional Payments\) Regulations 2013](#) (CCRs).
- The second driver was the findings of a series of consultations on consumer laws held in the UK between March and November 2012. This led to the [CRA 2015](#), which came into force on 1 October 2015. The Act consolidated and updated UK consumer law.

Following this recent overhaul, the UK consumer regime is dominated by the CRA 2015 and other UK-initiated laws.

For the moment, the UK has to comply with EU consumer policy and law. It is estimated that around 90 pieces of legislation currently make up the body of EU law designed to protect consumers.³ The strategy for consumer policy at European level is regularly reviewed by the European Commission, not least because the EU's 500 million consumers play a central role in driving innovation and enterprise.⁴ Consumer spending accounts for approximately 56% of the EU's GDP.⁵ The current [EU consumer programme 2014-2020](#)⁶ is an integral part of internal market policy. It aims to ensure that the internal market is open, fair and transparent so that consumers can exercise real choice and receive fair treatment.

EU consumer policy

The European Commission adopted in May 2012 a [European Consumer Agenda](#), its strategic vision for EU consumer policy.⁷ This Agenda replaced the [EU Consumer Policy Strategy 2007-2013](#).⁸ It aims to maximise consumer participation and trust in the market, and in turn achieve the objectives of the EU's economic growth strategy, [Europe](#)

³ "[Brexit: consumer protection rights - EU Justice Sub-Committee Enquiry](#)"¹⁴ September 2017 [online] (accessed 5 October 2017)

⁴ [A European Consumer Agenda – Boosting Confidence and Growth](#), COM(2012) 255 FINAL, 22 May 2012, [online] (accessed 5 October 2017)

⁵ Ibid

⁶ [Regulation \(EU\) No 254/2014](#) of the European Parliament and of the Council, 26 February 2014, on a multiannual consumer programme for the years 2014-20 and repealing Decision No 1926/2006/EC

⁷ Ibid

⁸ [EU Consumer Policy Strategy 2007-2013](#), COM(2007) 99 FINAL, 13 March 2007 [online] (accessed 5 October 2017)

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[2020](#).⁹ The Consumer Agenda has four pillars, or overriding objectives, which are:

- Promoting consumer safety
- Enhancing knowledge of consumer rights
- Strengthening the enforcement of consumer rules
- Integrating consumer interests into the key sectoral policies

The Consumer Agenda also addresses imminent challenges, such as those linked to the digitalisation of daily life, the desire to move towards more sustainable patterns of consumption, and the specific needs of vulnerable consumers. According to the Commission's [second Report](#) on Consumer Policy, most of the 62 measures presented in the Consumer Agenda have now been completed.¹⁰

The [EU consumer programme 2014-2020](#)¹¹ has a budget of €188.8 million to support EU consumer policy.¹² Direct beneficiaries are national authorities in charge of consumer policy, safety and enforcement, the network of [European Consumer Centres](#), EU-level consumer organisations, and national consumer organisations. The programme funds actions across all 28 EU Member States and countries of non-EU EEA Members. Its aim is to help consumers enjoy their consumer rights and actively participate in the single market, thereby supporting growth, innovation and meeting the objectives of Europe 2020.

The main challenges to be addressed by the EU consumer programme 2014-2020 have been grouped under four headings:

- **Safety:** to reinforce the co-ordination of national enforcement authorities, and to address the risks linked to the globalisation of the production chain.
- **Consumer information and education:** to address the issue of poor knowledge of key consumer rights by consumers and retailers alike (particularly in respect of cross-border purchases and sales); to gather robust data on how the market is serving consumers; and to improve the capacity of consumer organisations etc.
- **Consumer rights and effective redress:** to further strengthen consumer rights and to address problems faced by consumers when trying to secure redress, notably cross-border, so that consumers are confident that their rights are well protected in any other Member State as well as at home.
- **Strengthening enforcement cross-border:** to increase awareness among consumers about the network of European

⁹ In brief, the [Europe 2020 strategy](#) is the EU's agenda for growth and jobs for the current decade. It emphasises smart, sustainable and inclusive growth as a way to overcome the structural weaknesses in Europe's economy, improve its competitiveness and productivity and underpin a sustainable social market economy.

¹⁰ European Commission, [Report on Consumer Policy 2012-2013](#), [online] (accessed 5 October 2017)

¹¹ [Regulation \(EU\) No 254/2014](#) of the European Parliament and of the Council, 26 February 2014, on a multiannual consumer programme for the years 2014-20 and repealing Decision No 1926/2006/EC

¹² The [EU Consumer Policy Strategy 2007-2013](#) had a budget of €156.8 million

Consumer Centres and to further strengthen the efficiency of the network of national enforcement authorities.

In respect of the current implementation of EU law in the UK, the following distinction should be noted:

- **EU Regulations** are currently directly applicable under the [Treaty on the Functioning of the EU](#) which means they apply in Member States without the need for implementing legislation. However, EU Regulations will cease to have effect (unless the EU exit agreement or any trade agreements dictate otherwise). In other words, the UK will need legislation to enact EU Regulations we want to keep into UK law (this is currently provided for in the [European Union \(Withdrawal\) Bill](#), see below).
- Conversely, **Directives** require Member States to draft legislation to transpose them into their own law. (For example, the [Consumer Contract Regulations 2013](#)¹³ which implement in the UK the [Consumer Rights Directive](#)¹⁴). This means that the implementing legislation for EU Directives will not fall away automatically post-Brexit, but would need to be repealed or replaced if changes are thought necessary.

EU consumer law

However, the matter is not quite as clear-cut as this. Some EU Regulations have been written into UK law. For example, the [EU Online Dispute Resolution Regulation](#)¹⁵ has been implemented into UK law by the [ADR \(Amendment\) Regulations 2015](#)¹⁶ and basically copies Article 14 of the EU Regulation. It is also important to note that even where EU Regulations are not written into UK law, there may be secondary legislation which deals with issues relating to requirements under EU Regulations.

What should be evident is not only how entwined UK and EU law is, but also how complex the process of untangling UK and EU law (where desired) will be. According to the [Bar Council](#),¹⁷ the influence of EU law and CJEU¹⁸ jurisprudence on UK consumer law is so all-pervading that even maintaining the status quo will require considerable work.

“There will be difficulty in achieving the Government’s twin aims set out in the White Paper of preserving EU law, and of bringing an end to the jurisdiction of the CJEU in the UK; at least if the latter is intended to truly separate the development of UK consumer law from the jurisprudence of that court. EU law is a moving target, both because legislative changes to consumer law are still work in progress in some areas and because of developing CJEU jurisprudence. Divergence between EU and national law is

¹³ [The Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) [online] (accessed 5 October 2017)

¹⁴ [Directive on Consumer Rights](#) (2011/83/EC) [online] (accessed 5 October 2017)

¹⁵ The [EU Online Dispute Resolution Regulation](#) requires online retailers to reference and include a link to the central EU online dispute resolution portal

¹⁶ The ADR (Amendment) Regulations 2015, copied from the EU Regulation, deals with the consumer information requirements around an EU online dispute resolution tool

¹⁷ The [Bar Council](#) represents barristers in England and Wales

¹⁸ Court of Justice of the European Union (CJEU)

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likely to occur unless some mechanism is devised to prevent this.”¹⁹

¹⁹ [“Brexit Paper Ten – Consumer Law”](#), Bar Council Brexit Working Group, March 2017, (page 2) [online] (accessed 5 October 2017)

3. Effect of Brexit on the UK consumer regime

The UK consumer regime is a complex combination of domestic and EU derived law and covers a very wide range of goods, services and digital content. In theory, existing consumer legislation could be untangled and changed, but in practice this might be difficult to achieve.

For the moment, even though [Article 50](#) of the TEU²⁰ has been triggered, the UK still has to comply with EU law. Until the UK formally leaves the EU there will be no immediate change to the consumer rights of a UK citizen when they buy or sell goods and services or travel abroad.

In any event, it is thought extremely unlikely that the Government would make major changes to the consumer regime given the recent overhaul and introduction of the new [Consumer Right Act 2015](#).

In the short term

The first point to make is that since many of our consumer rights are based on EU Directives now enshrined in UK law, they will continue to apply unless the UK Government decides to change the law.

Secondly, the [European Union \(Withdrawal\) Bill](#), currently progressing through Parliament, would repeal the [European Communities Act 1972](#), which took Britain into the EU. Most existing EU legislation would be copied across into domestic UK law to ensure a smooth transition on the day after Brexit. The UK Parliament could then "amend, repeal and improve" the laws as necessary.

From a consumer perspective, the fact that the Government wants to avoid a "black hole in our statute book"²¹ by converting directly applicable EU laws into UK laws, will (in the short term at least) minimise disruption to individual consumers and businesses as the UK leaves the EU. Ensuring the continuity of EU rules and regulations is also meant to aid trade negotiations with the EU because the UK will already meet all of its product standards.

However, there are two important points to note. First, under the Bill, Ministers would be given extensive powers to change this 'retained EU law', with no specific protection for consumer rights. Secondly, some elements of EU law are expressly not to be retained, for example, the rights under the [Charter of Fundamental Rights](#) (clauses 2, 3, 4 and 5).²² Retained EU law may subsequently be amended, replaced or repealed by the UK Parliament. Further detailed information is provided in a

²⁰ Under Article 50(2) TEU, the EU shall negotiate and conclude an agreement with the UK, setting out the arrangement for its withdrawal, taking account of the framework for its future relationship with the EU.

²¹ "[EU Withdrawal Bill: A guide to the Brexit repeal legislation](#)", BBC News, 7 September 2017, [online] (accessed 5 October 2017)

²² [OJ C326/391, 26.10.2012](#)

Library briefing paper, "[The European Union \(Withdrawal\) Bill](#)" (CBP 8079), 1 September 2017.

In the long term

In the longer term, it is difficult to predict the impacts for consumers of withdrawal without knowing what our transitional or future relationship with the EU will look like. Much will depend on the deal the UK reaches with the EU and, crucially, whether the UK retains any sort of access to the European Single Market, and if so, how much and in return for what? Indeed, the EU Justice Sub-Committee, under the chairmanship of Baroness Kennedy of The Shaws, has launched an inquiry into [Brexit: consumer protection rights](#).

From a commercial perspective, trading with the EU currently accounts for 44% of the UK's trade.²³ Clearly, businesses will want to be able to continue to sell to consumers in the EU, and in all probability this will require complying with a considerable amount of EU law. This is something which non-EU countries have already had to accept.

²³ "[Statistics on UK-EU Trade](#)", House of Commons Library (CBP 7851), 17 August 2017, [online] (accessed 5 October 2017)

4. Prospective trading models with the EU

This section of the Paper examines the possible impact of Brexit on the UK's consumer regime under three different scenarios:

- a future EEA membership of the UK (the Iceland, Liechtenstein and Norway Model);
- a relationship with the EU governed only by WTO rules (the WTO Model); and
- a relationship governed by a "tailor-made agreement" (the bespoke model)

All these models are based on existing relationships other countries have with the EU.

4.1 EEA Model (or Iceland, Liechtenstein and Norway Model)

Overview

Norway, Iceland and Liechtenstein are linked with the EU by the [European Economic Area \(EEA\) Agreement](#).²⁴ It was signed on 2 May 1992 and came into force on 1 January 1994. It expands the four fundamental freedoms (free movement of persons, services, goods and capital) to the citizens of these countries. The EEA Agreement also obliges the three EFTA member states²⁵ to a strict adaption of many EU secondary laws with only an advisory role in the legislation process.²⁶ However, according to Article 112, the non-EU member states can, as contracting parties, take safeguarding measures if: "serious economic, social or environmental difficulties of a sectorial or regional nature liable to persist are arising."²⁷

The contractual mechanism for the adoption of new EU secondary legislation ensures a wide coverage of EU consumer protection law by EFTA States. The most relevant acts which are not covered by the EEA-model are those in the field of Judicial Cooperation in Civil Matters (see page 13 below). This includes:

- [Brussels I bis Regulation No \(EU\) 1215/2012](#),
- [Uncontested Claims Regulation No \(EC\) 805/2004](#),
- [Order for Payment Procedure Regulation No \(EC\) 1896/2006/EU](#),
- [Small Claims Regulation No \(EC\) 861/2007](#),
- [Legal Aid for Cross-Border Disputes Directive \(2003/8/EC\)](#),

²⁴ [Agreement on the European Economic Areas](#), O J No. L1, 3 January 1994 (updated 1 August 2016)

²⁵ European Free Trade Association (EFTA)

²⁶ Subject to Annexes V to IX, EEA Agreement

²⁷ The conditions and procedures of such safeguarding measures are laid down in further detail in Article 113 EEA Agreement

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- [Regulation No \(EC\) 593/2008](#) ("ROME I") as well as [Regulation No \(EC\) 864/2007](#) ("ROME II").

With regard to the Regulations governing the applicable law in a contractual dispute, in particular with regard to the [ROME I](#), this gap is only of minor relevance as the consumer protection level in contract law is comparable due to the far reaching harmonisation in this field.

Moreover, instead of the [Brussels I bis Regulation](#), the [Lugano Convention](#) (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) applies and closes partly the gap that the [Brussels I bis Regulation](#) leaves.

For the UK, EEA membership would allow complete access to the Single Market. However, the UK would (like other EEA states) have to pay into the EU budget and have to accept free movement of citizens.

Impact for UK consumers

In return for access to the Single Market, the UK would be required to adopt all EU consumer protection provisions without being part of the EU's decision-making institutions.

From consumers, this model would involve the least change from the current position. The EEA States have participated in EU consumer programmes since the EEA Agreement came into force in 1994. In addition, the [Norwegian Consumer Council](#) works closely with EU bodies such as [BEUC](#) (an alliance of European consumer organisations). The [Icelandic Consumer Agency](#) and the Norwegian Consumer Council also belong to the [European Consumer Centres Network](#) (ECC-Net), which provides information and support to EU consumers.

Further, according to a document published by the Directorate-General for Internal Policies of the European Parliament, the process enabling the UK's participation in the Single Market by means of the EEA Agreement, is expected to be rather uncomplicated:

"From the perspective of consumers in the EU28, an EEA membership of the UK is the most favourable [Brexit] scenario. It would ensure the application of the high European consumer protection standards for consumers in the EU27 and in the UK to a very large extent."²⁸

This study goes on to state that:

"[...] adequate transitory provisions taking into consideration the "two-step" negotiating schedule are necessary to resolve legal uncertainties occurring irrespective of the scenario."²⁹

4.2 WTO Model

Overview

Under Article 50(3), EU membership of the UK automatically ends two years after the notification of withdrawal (unless the European Council,

²⁸ "[Consequences of Brexit in the Area of Consumer protection](#)", Directorate-General for Internal Policies, April 2017, (IP/A/IMCO/2016-24 April 2017) [online] (accessed 5 October 2017)

²⁹ Ibid

in agreement with the Member State concerned, unanimously decides to extend this period). From this time on the UK is neither bound nor entitled by EU law.

If it has not been possible to reach an agreement, relations between the EU and the UK will be comparable to the relations of the EU with other third countries. As the EU and the UK are WTO members, their relations with respect to trade issues would be governed by the respective [rules](#) of the [WTO](#) (the World Trade Organisation). It is difficult to predict how this would impact on the level of consumer protection in the UK. However, points to note are as follows:

- The EU primary law (the EU Treaties) will cease to apply. The single European market concept (including the fundamental freedoms) will no longer be applicable to the UK. As a further consequence, unlike the EU (and its Member States), the UK will not be bound by the consumer protection provisions of the Treaties, notably by Articles 12 and 168 [TFEU](#). Such provisions do not provide for specific consumer protection measures, but contribute to a high level of consumer protection in EU legislation.
- EU Directives implemented into the UK by primary legislation will remain unaffected by the withdrawal. Such legislation will remain applicable unless and until it is amended or revoked.

The [European Union \(Withdrawal\) Bill](#), is planning “to convert directly applicable EU laws into UK laws”. However, it is important to note that the UK legislator is not completely free to transfer EU Regulations into domestic legislation. In particular, the applicability of certain provisions of EU law depend on the cooperation of Member States. For example, [Regulation No \(EC\) 2006/2004](#), which seeks to enhance cooperation between Member States in respect of consumer protection. According to the Directorate-General for Internal Policies of the European Parliament, the post-Brexit applicability of such Regulations would require a specific consent in the withdrawal agreement.

According to the Directorate-General, in the long term, it is inevitable that over time EU and UK consumer laws will diverge. This view is summarised as follows:

However, from the time of withdrawal the consumer protection legislation of the EU and the UK are likely to drift apart. Even if the UK autonomously adopts all EU legislation in the field of consumer protection, interpretation of such legislation will differ, as the UK courts will not be subordinated to the European Court of Justice.

As it is unclear, how the consumer protection level in the UK will develop, the protection of EU27 consumers by means of EU consumer law will depend on the applicability of EU consumer protection law and its enforceability.³⁰

³⁰ [“Consequences of Brexit in the Area of Consumer protection”](#), Directorate-General for Internal Policies, April 2017, (IP/A/IMCO/2016-24 April 2017) [online] (accessed 5 October 2017)

The applicable consumer contract law

In the event of a dispute, UK consumers have the right to take action against UK traders in their local county court. This will obviously continue after Brexit.

Currently, under civil judicial cooperation, UK consumers can also take action against an EU trader. Civil judicial cooperation is the legal framework that governs the interaction between different legal systems in cross-border situations. It gives UK consumers buying goods and services from the EU (and vice versa) legal clarity. The difficulty is that once the UK leaves the EU, the applicable regime for questions of jurisdiction, conflict of laws and enforceability is uncertain.

On 13 July 2017, the EU published a position paper, [Judicial Cooperation in Civil and Commercial matters](#), in which it sets out the main principles that the European Commission considers should apply on the withdrawal date to the winding down of the existing relationship between the EU and the UK. Significantly, the paper deals only with how withdrawal will affect existing proceedings (choice of courts and law etc.).

The Government published its own policy paper, "[Providing a cross-border civil judicial cooperation framework - a future partnership paper](#)", on 22 August 2017. The UK's position is that it is in the interests of both the UK and the EU for cooperation in this field to continue. The Government acknowledged the need to negotiate and agree a new civil judicial cooperation framework for future cases in order to maintain confidence and certainty in cross-border interactions. The UK is seeking a new agreement mirrored on existing provisions, although it does not set out in detail how this might be structured.

With specific reference to consumers, the Government said:

13. Consumers in the EU and the UK will continue to buy from each other's retailers and manufactures and need a clear process for resolving any disputes that arise. Consumers should be confident that if they have a dispute they can bring a claim in their own country's courts regardless of where the supplier is based, and that the resulting judgment will be enforceable.³¹

The Government has also said that it intends to incorporate into domestic law the [ROME I](#) and [Rome II](#) instruments on choice of law and applicable law in contractual and non-contractual matters. These regulations do not require reciprocity.

Further detailed information is provided in a separate Library briefing paper, "[Brexit: civil judicial cooperation](#)", (CBP 8092) (dated 22 September 2017).

Sector-specific regulation

A great deal of sector-specific regulation is concerned with consumer protection. Often this will apply irrespective of whether or not the obliged person is residing within the EU or in a third country.

³¹ House of Lords European Union Committee, [Brexit: justice for families, individuals and businesses?](#), 20 March 2017, HL134 2016-17, paragraphs 13

Nevertheless, after Brexit, there may be questions about cross-border cooperation between supervisory authorities and about cross-border enforcement.

4.3 A bespoke tailor-made trade agreement

With this model, it is envisaged that the UK leaves membership of the EU with either:

- trade agreements in place or
- that the exit agreement strikes a new compromise between free trade and freedom of movement and the UK retain some sort of access to the Single Market

It is difficult to predict what this will mean for the UK's consumer protection regime; much would depend on the scope and content of such agreements. According to the aforementioned document published by the Directorate- General for Internal Policies of the European Parliament, "mutual recognition rules" should only be concluded, if equivalent standards of consumer protection are ensured".³²

³² "[Consequences of Brexit in the Area of Consumer protection](#)", Directorate-General for Internal Policies, April 2017, (IP/A/IMCO/2016-24 April 2017) [online] (accessed 5 October 2017)

5. Interpretation of consumer laws post-Brexit

In considering the impact of Brexit, the [Bar Council](#) has identified a number of areas where there may be questions about the [interpretation](#) of consumer law.³³

For example, the [CRA 2015](#) deals with consumer contracts for the sale of goods, services and digital content. In addition to purely domestic provisions, the CRA 2015 also implements some EU provisions, such as [Council Directive 93/13/EEC on unfair terms in consumer contracts](#). In respect of unfair commercial practices, the “unfairness test” in relation to terms in consumer contracts has recently been interpreted by the Supreme Court following a decision of the CJEU.³⁴ According to the Bar Council, the CJEU has had a crucial role in the development of the law in this area, and is likely to continue to do so.³⁵ (The [European Union \(Withdrawal\) Bill](#), sets out current proposals on the effect of future CJEU decisions in the UK.)

Another example is provided by the [Consumer Protection from Unfair Trading Regulations 2008](#) (known as the ‘Unfair Trading Regulations 2008’). The Regulations, which came into force on 26 May 2008, implement in the UK the [Unfair Commercial Practices Directive](#) (2005/29/EC). In a nutshell, the Regulations impose a general prohibition on traders in all sectors from engaging in unfair commercial practices with consumers. They protect consumers from unfair or misleading trading practices, and ban misleading omissions and aggressive sales tactics. In each case offending behaviour attracts criminal liability and/or civil liability under the enforcement provisions of the [Enterprise Act 2002](#).

The Bar Council highlights the fact that the decisions of the CJEU have been of fundamental importance in developing understanding of the key concepts underlying the Directive and therefore the Regulations. One such concept is that of “transactional decision”: did the trader’s actions influence the consumer to enter into the contract? The High Court’s interpretation³⁶ of this concept was markedly different to the interpretation taken subsequently by the CJEU.³⁷ The point being, that there is clear potential for significant divergence in the future.

Two further points should be noted. First, the [Consumer Protection Cooperation Regulation](#) (Regulation 2006/2004) currently provides a mechanism whereby enforcement bodies in each Member State can

³³ [“Brexit Paper Ten – Consumer Law”](#), Bar Council Brexit Working Group, March 2017, [online] (accessed 5 October 2017)

³⁴ [Beavis v Parkingeye Ltd \[2015\] UKSC 67](#); [Case C-415/11 Aziz v Caixa d’Estalvis de Catalunya, Tarragona i Manresa](#)

³⁵ [“Brexit Paper Ten – Consumer Law”](#), Bar Council Brexit Working Group, March 2017, [online] (accessed 5 October 2017)

³⁶ [Office of Fair Trading v Purely Creative \[2011\] EWHC 106 \(Ch\)](#); and [Case C-281/12 Trento Sviluppo](#)

³⁷ [Cases C-402 and 432/07 Sturgeon v Condor Flugdiensy](#); and [Cases C-581 and 629/10 Nelson v Deutsche Lufthansa](#)

take action against breaches of consumer law by a trader in another Member State. Whether the UK will continue to participate in this enforcement scheme after Brexit, or will negotiate a similar scheme of cooperation is unclear.

Secondly, European consumer protection law is continually evolving. For example, there is a current review of consumer law as part of the [European Commission's Regulatory Fitness and Performance Programme](#) (REFIT). It is likely that over time European provisions will, in some areas, diverge from the position adopted by the UK. It is impossible to predict how this might impact on UK consumers. .

Appendix

In the context of the impact of Brexit on the UK consumer regime, the following Commons Library briefing papers may be of particular interest:

- [“Brexit: the July negotiations”](#) Library briefing paper (CBP 8068), 2 August 2017.
- [“The European Union \(Withdrawal\) Bill”](#) Library briefing paper (CBP 8079), 1 September 2017.
- [“Brexit: trade aspects”](#) Library briefing paper (CBP 7694) 4 July 2017.
- [“Statistics on UK-EU Trade”](#) Library briefing paper (CBP 7851), 17 August 2017.
- [“Brexit: civil judicial cooperation”](#) Library briefing paper (CBP 8092), 22 September 2017.

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