



CTSI Brexit Think Tank

Trading Standards Opportunities and Threats
from the UK Withdrawal from the EU

Foreword



Leon Livermore

Chief Executive, Chartered Trading Standards Institute

Perhaps more than any other UK regulatory or consumer protection service, the decision to leave the EU has a seismic effect on our system of trading standards. As the EU's ambitions for a harmonised single market were pursued it led to a swathe of EU legal instruments regulating businesses and protecting consumers. It is trading standards officers that are at the cutting edge of this legal revolution - interpreting, advising and enforcing complex EU laws, ensuring regulations work, consumers are protected and that market surveillance is robust.

One of trading standards' greatest strengths - and challenges - is the sheer breadth of the work our officers undertake in their day to day roles. Everything from fair trading and e-Commerce enforcement through to legal metrology, product safety and intellectual property regulation. That is not forgetting our food chain and rural enforcement roles in areas such as feed and food, animal health and welfare and agriculture. This invaluable work can sometimes go unseen and as a result can be undervalued by decision makers. However, as the debates during the EU negotiations have clearly shown, regulations that protect UK market standards are vital for our economy and any new potential trade deals.

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Fundamentally we need to make sure we do not expose UK consumers and businesses to lower standards and greater risks as we negotiate our EU departure and make new trade deals.

As we are destined to leave the EU single market it will be frontline trading standards officers that will have to unpick the uncertainties and make sure our new regulations and legal frameworks operate effectively.

For those reasons CTSI brought together a think tank of relevant experts across the range of the activities most influenced by our relationship with the EU. Their task is to examine the risks and opportunities to trading standards from our EU divorce - to influence, engage and advise - to make sure we fight for the most important protections, networks and laws. Fundamentally we need to make sure we do not expose UK consumers and businesses to lower standards and greater risks as we negotiate our EU departure and make new trade deals.

This report represents the detail and broad findings from their considerations at this stage. I am proud of their work on behalf of CTSI and grateful for their commitment and diligence in its production. I thank them one and all. We will continue to work hard with consumer and business policy partners and government to ensure that Brexit does not lead to poor outcomes for UK businesses and consumers after 'Brexit day' in March 2019 and beyond.

Foreword



Jacqueline Minor

Former Director of Consumer Policy at the EU Commission
Former Head of EU Commission Representation in the UK

The UK's membership of the EU has seen a period of immense change for consumers and businesses. Since we joined in the early 1970s the manner by which we buy goods and services has changed dramatically - as regional, national and global chains largely replaced local high street sellers. Just as our consumer products became more sophisticated so too did our markets and contracts. Modern consumers now have much greater choice with complex digital purchase options and financial products at their disposal.

As a former Director of Consumer Policy for the European Commission I was at the heart of EU efforts to adapt, raise and harmonise standards of consumer protection. By removing tariffs and non-tariff barriers the EU worked to realise the vision of a single market for its 500 million consumers and businesses. This meant a large number of EU legal instruments such as directives and, increasingly, regulations became part of the UK's legal infrastructure.

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Regardless of one's political views, the UK's vote to leave created a huge legal challenge

Regardless of one's political views, the UK's vote to leave created a huge legal challenge as the government now has to unpick decades of interconnected laws, frameworks and relationships. Vast though the challenges are, it is vitally important for the UK economy that they are met.

I was honoured to be asked to be part of CTSI's Brexit Think Tank and contribute my knowledge and experience of the potential risks to trading standards. It has been a revelation to see the enormous range of work that trading standards officers undertake, the expertise which Think Tank members have brought to the discussions and the extent to which the EU has impacted on their roles.

The deliberations are technical and detailed – but it is important that we examine every aspect of changes to our EU relationship. We need to fight to ensure that levels of consumer protection and regulatory standards are not diminished outside the EU. Our biggest challenges remain in the uncertain future trading relationship with the EU and our need to retain close reciprocal ties that benefit UK consumers and businesses.

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Executive Summary and Main Findings

Since the UK voted to leave in June 2016 and before ‘exit day’ on 29th March 2019, there has been a great deal of uncertainty on the future trading relationship with the EU. Despite fierce political debate and rhetoric on all sides, many questions remain over future trade deals and how it will impact on UK consumers, businesses and regulators.

For trading standards services, both as regulators and consumer protection specialists, leaving has the potential to have an all-pervading effect on their work as it has become so heavily influenced by the EU’s ambitions for a single market with harmonised rules.

As the UK’s negotiating position has shaped and developed many of the issues have become clearer. However, much will depend on whether the UK can secure a deal along the lines proposed in the so called ‘chequers agreement’ that became the white paper, “The future relationship between the United Kingdom and the European Union”. In particular the ambitions for a ‘common rule book’ for goods including agri-foods and reciprocal high levels of consumer protection are reassuring of no sudden divergence. So too is the commitment to robust market surveillance as a key aspect of a free trade area agreement.

In order to consider the potential outcomes, risks and opportunities for trading standards, CTSI’s Brexit Think Tank has considered the issues under nine broad areas most influenced by EU membership. Throughout the deliberations there has been issues emerge which have been broad cross-cutting concerns.

Key Cross-cutting Findings

1. CTSI supports the government’s ambitions for ‘high regulatory standards’ and ‘robust domestic market surveillance’ after we leave the EU. However, as the main market surveillance authority and regulatory service in the UK, these ambitions are hugely undermined by cuts to frontline trading standards of more than 50% in just over 7 years. Much has been made of maintaining the UK’s post-Brexit standards of regulation, but rules without resources for application, advice and enforcement are rendered ineffective and detrimental to the UK economy.
2. EU membership has brought many key consumer rights and we welcome the government’s commitment to ‘reciprocal high standards of consumer protection’. We remain very concerned that this will not be secured as certain key regulations and networks (on issues such as data sharing, policy formation and enforcement) cannot be unilaterally recreated by the UK as they require reciprocal agreement and action from the remaining EU 27.
3. The ongoing uncertainty for consumers, businesses and regulators brings costs. While the implementation period will alleviate immediate risks of major regulatory changes, we urge the government to continue to work closely with CTSI and trading standards to take a ‘once in a generation’ opportunity to shape the new regulatory environment into one that meets the needs of modern businesses and consumers, with a properly resourced and organised enforcement and market surveillance capacity.



CTSI’s Brexit Think Tank has considered the issues under nine broad areas most influenced by EU membership

Background

Fair Trading Law

Most of the EU provisions of consumer fair trading law are already transposed from directives into UK law and there is no immediate threat to them changing. The government's commitments to maintaining high standards of consumer protection are encouraging, however, challenges remain in ensuring reciprocal protections can be retained after Brexit. For example we need to ensure that our partners will continue to enforce rogue trading practices and scams that originate from within the EU. Opportunities now exist to clarify and simplify certain consumer protections such as those that deal with distance contracts and cancellation rights.

e-Commerce

The rise in online consumer spending across a range of platforms makes e-Commerce a vital area for consumer rights and appropriate regulation. The government has clarified that the UK will not be part of the EU's digital single market strategy. That creates a need to ensure that e-Commerce is not stifled after Brexit through divergent laws; that proportionate rules are made that protect consumers from online scams; and that regulators have the correct powers and tools to tackle online fraud and unfair trading.

Consumer Product Safety

Consumers need robust protections from unsafe products and the entire system of product safety in the UK is at risk from Brexit. The majority of the laws that dictate the safety of our consumer products are EU in origin and cover issues such as minimum standards, rules for placing on the market and enforcement. The creation of the Office for Product Safety and Standards is welcome but fails to address the increasingly degraded local capacity for product safety market surveillance. We welcome the government's commitment to EU systems for product safety data sharing and surveillance, but remain concerned that a full agreement on this has not yet been reached with our EU partners.

Legal Metrology

Our economy is built upon principles and confidence in accurate measurement with over £600 billion worth of goods sold by reference to their mass, quantity or volume every year in the UK. Leaving the EU creates a one-off unique opportunity to delay, modernise and simplify our regime for verifying and testing weighing and measuring equipment - and to create a more proportionate and flexible enforcement regime for legal metrology. The government should also resist any calls to deviate from the SI/metric system outside the EU.

Animal Health and Agriculture

Our world class standards of animal health, welfare and agriculture must not be compromised as we leave the EU and seek new trade deals with countries such as the USA and China. There is a need to ensure the rural economy is not economically damaged from the removal of the Common Agricultural Policy and that the system of local enforcement is protected. Threats exist to rural standards and regulation from the potential loss of EU veterinary skills and depleting resources in trading standards for animal health enforcement.

Food Standards

It is critical that the standards for the food we produce (and import) for consumers are not lowered in the interests of securing new trade deals after Brexit. In order to do so we must also maintain an ongoing commitment to EU networks that promote high food standards and quickly share risks across borders. Leaving the EU presents an opportunity to simplify food policy, standards and legislation as well as those for health and nutrition claims. The system of food standards enforcement also requires to be properly arranged to better take account of local expertise and resources.

Intellectual Property

The protection and enforcement of intellectual property is crucial to UK businesses and to safeguard consumers from the dangers of inferior counterfeit products. Leaving the EU poses risks through a current lack of offences for the importation or exportation of trade mark infringing goods. Another issue which may need addressing post-Brexit, is the current position in relation to the exhaustion of rights. Under the current law, IP rights expire upon first marketing, which can be anywhere within the EEA. If the principle of exhaustion is retained in this current form post-Brexit, UK rights owners may be put at a disadvantage, unless the status quo is maintained or some form of reciprocal free trade agreements are put in place.

Travel Law

Perhaps more than most other sectors, consumers are likely to realise the Brexit impact on consumer law when they make travel arrangements for after March 2019. We remain concerned that important EU protections such as compensation for flight delays and freedom from mobile phone roaming charges are not guaranteed for UK consumers. New EU protections on package travel reflect the modern practice where consumers book service aspects of their trip such as flights and accommodation through different, but linked suppliers. However, the provisions are complicated and will perhaps need simplifying after the UK leaves the EU. Also, the requirement for mutual recognition of EU insolvency schemes creates a risk that UK consumers will have lower standards of protection when travel companies go bust.

Cross-border Access to Justice

Without the means to uphold them consumer rights become worthless. As buyers are increasingly taking advantage of opportunities presented by digital and international markets it is important that cross-border access to advice and justice is maintained after we leave the EU. We welcome the UK's ambition to participate in the Lugano Convention after Brexit and to reach a strong agreement for civil judicial cooperation. Cross-border advice, assistance and cooperation is a vital aspect of EU consumer markets and we urge the government to support the UK European Consumer Centre as part of the European Consumer Centre Network.

Fair Trading Law (Civil & Criminal)

The EU Withdrawal Impact on Fair Trading Law in the UK



Peter Stonely
CTSI Lead Officer for Civil Law

Background

Since the UK entered the EEC in 1972, and especially since the formation of the single market, the European Union's influence on fair trading and consumer law has been substantial. There are now an estimated 90 legislative instruments in the area of consumer protection, largely dominated by a main suite of directives collectively referred to as 'the consumer acquis'¹.

Embedded in the EU's Charter of Fundamental Rights is the principle that Union Policies shall ensure a "high level of consumer protection"²

Article 169 TFEU defines specific objectives of the policy:

"In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as promoting their right to information, education and to organise themselves in order to safeguard their interests."

EU/UK Consumer Protection

As the EU has sought to raise and harmonise the levels of consumer protection through directives and regulations across the single market, so too has the UK continued to legislate domestically, balancing principles of subsidiarity within EU maximum harmonisation restrictions.

This UK/EU duality in UK consumer policy has resulted in an intricate mix of domestic and EU legislation. While this has brought about significant protections for the legal rights of UK citizens it remains a complex legal system to decipher for consumers, businesses and regulators. It is also recognised that the UK has been a leading player in consumer policy having often gone beyond minimum requirements and having strongly influenced the development of EU consumer protection while a member. As a result, the rights and protections enjoyed by UK consumers have advanced largely in line with modern markets, digital commerce and consumer buying habits. A good recent example being new rights to protect consumer from faulty or misdescribed digital content under the Consumer Rights Act 2015 (CRA).

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1. [EU Consumer Strategy](#)
 2. Article 38 of the Charter of Fundamental Rights of the European Union
 3. http://www.europarl.europa.eu/charter/pdf/text_en.pdf

The Main EU Influence

An examination of some the main EU instruments that have impacted on UK fair trading and consumer rights can be summarised in the following table.

EU Ref	Implemented in UK	Effect/Provides
Directive 2005/29/EC The Unfair Commercial Practices Directive	The Consumer Protection from Unfair Trading Regulations 2008	The main instrument to protect consumers from unfair trading and rogue practices - replaced many different controls over misleading claims and omissions well as bringing in wider coverage of aggressive and unfair practices. Mainly criminal sanctions for breach but civil remedies are available for consumers who have suffered misleading or aggressive practices.
Directive 2009/22/EC. The Injunctions Directive	Part 8 Enterprise Act 2002, Consumer Rights Act 2015	Control of unfair EU and domestic consumer law infringements by way of a civil enforcement order (similar to an injunction or interdict in Scotland)
Directive 2011/83/EU. The Consumer Rights Directive	Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 The Consumer Rights (Payment Surcharges) Regulations 2012	Information to be given to consumers entering into on-premises, off-premises and distance contracts Consumer to be given rights of withdrawal from off-premises and distance contracts Prohibits traders from charging consumer fees for any given means of payment that exceed the trader's own cost for using that means of payment. In the case of electronic card payments, no fee can be charged at all.
Directive 2006/114/EC. The Misleading and Comparative Advertising Directive	The Business Protection from Misleading Marketing Regulations 2008	Protects traders against misleading advertising and the unfair consequences of misleading advertising by competitors Lays down the conditions under which comparative advertising by traders is permitted.
Directive 1999/44/EC. The Sale of Goods and Associated Guarantees Directive	Consumer Rights Act 2015 Part 1	Sets minimum standards of consumer rights when buying goods and rights of repair/replace followed by full or partial refund if goods do not conform. Makes freely given guarantees legally binding and sets out minimum standards for their availability to consumers and their content.
Directive 1993/13/EEC. The Unfair Terms in Consumer Contracts Directive	Consumer Rights Act 2015 Part 2	Sets standards preventing the use of unfair terms in Business to Consumer contracts
Directive 85/374/EEC. The Product Liability Directive	Consumer Protection Act 1987 Part 1	Makes producers strictly liable for damage caused by defects in their products. Injured consumers who had no remedy in contract now have a route to compensation through the CPA.

As the above table shows the EU Directives have already been implemented in a manner of different pieces of UK legislation. This means most EU derived consumer protection legislation, although complicated, should survive intact at the point the UK leaves the EU.

The European Union (Withdrawal Act) 2018 – Directly Applicable EU law

The EU (Withdrawal) Act 2018 ³ (and the government white paper that accompanied it) sets out the manner by which UK law will initially deal with the legal consequences of Brexit ⁴. Firstly by repealing the European Communities Act 1972 (ECA) it will end the supremacy of the European Court of Justice (ECJ) and cease to give effect to all directly applicable EU law. However, EU law is so interwoven in the UK's body of law it would leave a 'black hole' in the statute book on the day the UK departs. Therefore the Act sets out that it will also then transfer all directly applicable EU regulations into UK law at the point of exit.

The task faced by the Government is considerable because there are many thousands of directly applicable EU regulations that cease to have effect upon repeal of the ECA. As the Article 50 time period is also very narrow it places great pressure on the Government to carry out this task before the projected 'exit day' of 29th March 2019. Also, further examination has shown that transposing by merely re-writing EU text into UK law will not suffice as many EU regulations refer, and give power to, EU institutions - with many others requiring reciprocal actions across remaining member states. In order to allow the required speed of transposition the Act also contains what are known as "correcting powers". These enable relevant ministers to alter the regulations to ensure they function after Brexit. However, such delegated authorities, also known as Henry VIII powers, can be politically controversial as they extend the ability of ministers to alter law without traditional parliamentary scrutiny. ⁵

In summary, there appears little imminent threat to the main body of EU consumer protection and fair trading law until the UK leaves the EU. This was reiterated in the [Brexit Factsheet on Consumer Protection](#) and mentioned specifically in the white paper. (Excerpt).

Example 3: Consumer Protection

UK consumer law predates EU competence in this area, and goes beyond EU minimum requirements in a number of respects. For example, the right for UK consumers to reject a faulty good within a 30-day period is a UK-level protection, and traders are limited to a single attempt to repair or replace a faulty product before having to offer a refund. In addition, the UK has legislated to make sure that consumers have clear rights when buying digital content.

"Where consumer protections are set at the EU level and thus already part of UK law, the Great Repeal Bill will preserve the relevant EU law to ensure domestic law functions properly after exit. This stability will give businesses and consumers clarity and confidence in their rights and obligations, facilitating the day-to-day transactions that keep the UK economy strong. It will help ensure that UK consumers' rights continue to be robust after we have left the EU.

In addition, the Government intends to bring forward a Green Paper this spring which will closely examine markets which are not working fairly for consumers.

3. <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

4. [White paper on the EU Withdrawal Bill](#)

5. [House of Commons Briefing Paper – EU Withdrawal bill](#)

Fair Trading - Opportunities and Challenges from Brexit

Looking beyond the immediate changes brought about by the EU (Withdrawal) Act 2018, Brexit may offer an opportunity to improve areas of consumer law without any impact on cross-border trading. As EU law is based on purposive interpretation according to the broad aims and specific purposes, it is not by nature concerned with the precise and literal meaning of words especially when drafted in different EU languages having been shaped by many member states. Accordingly when implemented into UK law some provisions can be difficult to interpret and enforce for UK consumers, businesses and regulators.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Taking also for example, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the Consumer Contracts Regs) which implements many aspects of EU Directive 2011/83/EU - otherwise known as the Consumer Rights Directive. The main purpose of this Directive is to provide consumers the right to 'up front' information and a 14-day cancellation period in certain contracts. The Regulations cover most contracts between businesses and consumers. These Regulations are however extremely complicated with many exemptions. They define contracts according to whether they are 'off premises', 'on premises' or 'distance' with further distinctions such as 'sales', 'service' or 'digital' contracts. While the main aim of the protections are very welcome, there are many areas that require clarification and possible redrafting. For example – with regard to doorstep selling, issues arise such as:

- Whether a standard information form can be prescribed to help small to medium enterprises give the correct information to consumers
- Whether the 14-day cooling-off period (as it is currently written) is really practical. In most cases the right to cancel ends 14 days after a job has been completed – in effect a totally useless period for a consumer to use to return goods that have been installed in their home
- By adopting a standard 14-days from the day after the date of contract cancellation period, for off-premises contracts, and reconsidering current exemptions, particularly for 'bespoke' goods which cover areas of trade where consumers are at most risk from pressure selling
- The forthcoming five-year review of the CCR's will present us with an opportunity to discuss changes that we believe could be made pre and post-Brexit

Bespoke Goods

A further area of confusion relates to the lack of clarity in interpretation of crucial definitions within the Contract Regs such as the exemption for cancellation rights given by section 28 (1)(b), that is:

“the supply of goods that are made to the consumer’s specifications or are clearly personalised”

Sometimes referred to as the 'bespoke goods exemption', it has been the subject of much debate between regulators and businesses, with some (particularly those in the building sector) arguing that in many cases home improvement contracts are always 'made to consumer's specifications' as all buildings are unique in terms of size and shape. In line with guidance on the Directive the double glazing sector has taken the view that they fall within this exemption and do not have to give the full 14-day cancellation period. However the leading trade bodies in the sector do require their members to offer a 7-day, from date of contract cancellation period. Although this may not an issue across the EU, this is a sector that does use pressure selling methods and the lack of the full right to cancel can leave consumers vulnerable.

The exemption for 'bespoke goods' could be removed, for off-premises contracts, if a simple 14 day from the day after contract rule was introduced causing minimal inconvenience for business and little detriment to consumers.

By their very nature, off-premises contracts will always be entered into in the UK and therefore the changes that we propose would have no impact upon distance selling, domestic or cross-border, which would remain within the existing framework.

New Directives – Divergence from the EU Digital Single Market

While there is a pressing need to convert directly applicable law under the EU (Withdrawal) Act's correcting powers - there is also a need to monitor the development of new EU law and consumer policy. In fair trading this is particularly true of the EU's digital single market strategy and two Directives setting maximum standards for consumer rights when buying goods ⁶ and digital content ⁷ electronically.

On 2nd November 2017, the EU published an amended proposal for the Directive concerning contracts for the sale of goods which would impact upon the Consumer Rights Act 2015. The major differences are:

- The consumer's first stage remedies will be to request a repair or replacement and can only reject if these remedies have failed. There would be no short-term right to reject
- Any repair or replacement would have to be carried out within a reasonable time and without causing significant inconvenience, but there would be no automatic right to a final right to reject after one failed repair
- A trader could deduct a sum for a refund that reflects use that has been more than regular use - the CRA permits greater deductions
- The reversed burden of proof would be extended from 6 months to two years
- The period for bringing a claim would be two years, not 6 years (or 5 years in Scotland)

The proposals for rights on contracts for digital content largely mirror those found in the UK's Consumer Rights Act 2015. However what is proposed for online sale of goods could have meant the removal of the first tier right to reject goods that do not conform to the contract. This is a remedy that buyers have enjoyed for decades and was first enshrined in UK sale of goods legislation as far back as the original Sale of Goods Act in 1893. ⁶

In her speech in March 2018 ⁹ the prime minister asserted that the UK will not be part of the EU's digital single market. That will perhaps be the first real divergence between UK consumer protection law and post-Brexit EU law. While it is encouraging that The UK will retain strong protections, there will be an ongoing need to examine and advise where the legal remedies in markets differ - particularly in the burgeoning platforms for cross-border digital trading.

"On digital, the UK will not be part of the EU's Digital Single Market, which will continue to develop after our withdrawal from the EU. This is a fast evolving, innovative sector, in which the UK is a world leader. So it will be particularly important to have domestic flexibility, to ensure the regulatory environment can always respond nimbly and ambitiously to new developments".

Prime Minister Theresa May – March 2018

6. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A637%3AFIN>

7. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015PC0634>

8. <https://www.legislation.gov.uk/ukpga/1893/71/part/V/crossheading/remedies-of-the-buyer/enacted>

9. <https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union>

Product Liability

In civil law Brexit also poses issues in relation to the product liability directive¹⁰ (85/374/EEC). As one of the first EU consumer protection directives (implemented in the UK by Part 1 of the Consumer Protection Act 1987) it introduces a strict liability standard for producers of defective products that cause losses such as personal injury or damage to property. A key definition for the product liability regime is that the producer responsible for the safety of their goods (in civil law terms) is the person who first places the goods on the EU market. This will usually be the manufacturer, but that could also be the importer or 'own' brander where goods are placed on the EU market by manufacturers from non-member states. Agreement and clarity will be required for cross-border civil actions as to the possible extension of liability to UK importers of EU products - and by definition an extension of liability to EU importers of products manufactured in the UK.

Fair Trading Enforcement – Cuts to Local Trading Standards Services

Regardless of the residual framework for consumer protection after Brexit legal protections without meaningful enforcement are of little value. In that context there is a real risk that local authority enforcement capacity is being degraded beyond levels that make the system sustainable. A National Audit Office report¹¹ found that local trading standards services had little government direction across 250 statutory instruments, some reduced to levels where they only had one officer with few resources available to undertake enforcement cases. CTSI's own workforce survey found there has been a 50% reduction in trading standards since 2010, leaving 43% of services admitting that they cannot deal with the consumer detriment in their area.¹²

Conclusion – Threats and Opportunities to Fair Trading Law

In the short term (during the Article 50 Brexit process and any implementation period) there appears little prospect of substantive changes to the UK's fair trading regime. As a mixture of domestic contractual civil law and statutory protections with implemented EU Directives – the UK's consumer protection regime is very complicated but has many valuable provisions that should be maintained, clarified and where possible improved once the UK leaves the EU.

10. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31985L0374>

11. <https://www.nao.org.uk/report/protecting-consumers-from-scams-unfair-trading-and-unsafe-goods/>

12. <https://www.tradingstandards.uk/news-policy/vision-and-strategy-1/workforce-survey>

Fair Trading Law (Civil & Criminal)

Findings

- As Brexit approaches the ongoing reduction in local authority trading standards services impacts on their ability to tackle scams and rogue trading practices. Brexit's legal changes bring great uncertainty, however what is certain is that continuing loss of local capacity will mean that scams, frauds and breaches of consumer law will not be properly investigated and stopped. CTSI call for this to be addressed. Regardless of the adequacy and breadth of the consumer law framework post-Brexit, enforcement is a crucial aspect needed to retain consumer and business confidence in the system.
- CTSI welcomes the Government's commitment to ensuring a legal framework that enhances and supports digital commerce (balanced with appropriate consumer protections.) The EU's digital single market strategy will eventually mean divergence between EU and UK remedies for digital contract breaches and this will require ongoing monitoring to ensure consumer and businesses are aware of differences.
- An opportunity exists post-Brexit to simplify consumer law in areas where implemented EU directives have led to complication and uncertainty. There are many examples such the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 which are confusing in areas relating to cancellation rights, the return of goods, and exemptions for custom made products.

See [Appendix 1 \(p78\)](#) for a list of the main Directives and Regulations in this area

e-Commerce

The EU Withdrawal Impact on e-Commerce



David Mackenzie
CTSI Lead Officer for e-Commerce

The Rise of e-Commerce

The means by which consumers interact with businesses has changed beyond recognition since the UK entered the EEC in 1972. This has to a great extent been due to the development of the internet and many digital selling platforms it has fostered. Consumers are now just as likely to buy goods and services with the click of a mouse or the tap of a phone than enter a high street store or other retail premises. Sources estimate the value of e-Commerce to have grown to €157 Billion in 2015¹³ and this figure is likely to increase dramatically year on year¹⁴. These consumer sales are increasingly from businesses outside the UK and even outside the EU. Against this backdrop the means by which businesses are regulated is of vital importance to ensure consumer confidence and the ongoing development of the e-commerce market. As the UK leaves the EU there is a potential threat to the legislation and protections that UK consumers have enjoyed when buying goods and services online.

As a mode of selling rather than a trading sector, e-Commerce cuts across many trading standards areas, and considerations from many of these other portfolios have an e-Commerce angle. For example, dangerous products sold through untraceable social media accounts, or false and aggressive commercial practices by online rogue traders.

The various EU e-Commerce provisions are listed in the Annex and can be summarised as:

- Two key e-Commerce EU laws: the e-Commerce Directive¹⁵ and the distance selling elements of the Consumer Rights Directive;¹⁶
- A number of proposed EU laws which, if enacted, may have a significant impact on e-Commerce;
- Two laws which are not centrally trading standards e-Commerce, but are worthy of mention: the interaction of the Unfair Commercial Practices Directive¹⁷ with key e-Commerce rules, and the second payment services directive.¹⁸

13. <https://ecommercenews.eu/ecommerce-per-country/ecommerce-the-united-kingdom>

14. <https://www.emarketer.com/Report/UK-Retail-Ecommerce-Economic-Sales-Buyer-Trends-20162021/2002112>

15. <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32000L0031>

16. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0083>

17. https://ec.europa.eu/info/consumers/unfair-commercial-practices-law/unfair-commercial-practices-directive_en

18. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L2366>

e-Commerce Directive (ECD)

The e-Commerce Directive provides a solid legal foundation for e-Commerce in the UK to work effectively. Some of its consumer provisions are arguably replicated in other (consumer) legislation, but many are not. Further, the ECD does not just apply to consumer sales but also to other circumstances, including business-to-business (“B2B”) transactions. Obligations on “information society services” provide important buyer protections and help create a “level playing field” across e-Commerce. “Information Society Services” include the likes of online advertising, search engines, social networking, weblogs, video-sharing sites, in addition to the more obvious web shops and e-marketplaces. So, the ECD has a very widespread application and removal of its provisions from UK law could have significant consequences, both for businesses and consumers.

There are broadly three main types of provision in the ECD:

- Information provision to users and customers
- “Spam” and e-privacy
- Liability of intermediaries

It is probably the case that the spam and e-privacy provisions have been largely overtaken by the e-privacy Directive 2000/58/EC¹⁹, so the provisions in Regulation 7 & 8 of the UK ECD Regulations may not be a great loss. However, it is a different with information provision and intermediary liability as outlined below.

The information provision requirements can be further sub-divided into three broad categories:

1. Important commercial information about the seller and the products: this includes the identity of the business involved, its geographic address, email address, a mechanism for rapid contact (e.g. telephone number), prices for goods and services, VAT number if applicable. This provision is no simple bureaucratic technicality: such information is crucial to potential buyers and also to enforcement authorities such as trading standards tasked with regulating the internet. Most internet businesses comply with these requirements but trading standards officers have received complaints from consumers and SME buyers regarding the minority of sites that do not comply and who are therefore very difficult to pursue if anything goes wrong (or even to contact to discuss ongoing contractual developments). Removal of these provisions from law would undoubtedly increase such problems, and potentially very significantly so.
2. Electronic commercial communications must be readily identifiable as such and there are rules covering competitions, prize draws and special offers. These are important transparency requirements, ensuring that the recipient is aware of the commercial nature of the communications received.
3. Before any order is placed, a provider must supply a range of key information to allow fair and effective conclusion of the contract by electronic means: this includes the different technical steps to follow to conclude the contract; whether and how a copy will be accessible; technical means for identifying input errors. These provisions provide the foundation for online contract formation.

¹⁹. in the UK, [The Privacy and Electronic Communications \(EC Directive\) Regulations 2003](#)

Finally, arguably the most important part of the ECD may be the tackling of intermediary liability. The Directive creates three different regimes for three types of intermediary: “mere conduit”, caching and hosting.

1. Providers acting as “mere conduit” (i.e. simply providing access to transmission network, e.g. ISPs such as BT or Virgin) are not liable for damages or for any criminal sanction as a result of their transmission of data as long as certain provisions are met. This is known as the “safe harbour” defence. This is sensible and reasonable, recognising that such intermediaries usually have little or no influence over content of electronic information exchange.
2. The requirements are a bit more onerous for providers providing caching facilities, i.e. “...the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information’s onward transmission to other recipients of the service upon their request” (e.g. web caching offered by the likes of Akamai Technologies). Although such providers are also not generally liable, they must not “interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information”, and they must take prompt action if they receive actual knowledge that information they are storing is illegal.
3. For hosting services (e.g. GoDaddy and 123Reg), there is no safe harbour if “the recipient of the service was... acting under the authority or the control of the service provider”. Further as soon as the host is made aware of unlawful content, it must take action to “remove or disable” the information. So, for example when a hosting company is notified by trading standards that a customer’s website contains illegal content, it must act promptly to remedy the situation. This can be a fairly common occurrence and the most likely situation where an intermediary has clear obligations.

In general, the liability of intermediaries’ provisions are sound and important. The system in practice provides both sensible and fair protection to internet businesses that are not involved in illegality and cannot really affect it, while effectively creating equally fair and sensible obligations on intermediaries who acquire knowledge about illegality and can do something about it.

In addition to the value of the detail of the ECD provisions, it is important to stress the general point that harmonisation of standards and requirements is particularly important in the world of e-Commerce which knows no boundaries or borders. The UK has been at the forefront of the development of e-Commerce, especially in the European context. If our consumers and businesses are to continue to successfully utilise the internet we need provisions that are in harmony with the key markets of the EU and the US (where similar provisions apply).

The Directive is not perfect: it would benefit from updating to spell out its application to modern situations, and extra provisions could be added (e.g. a monitoring obligation for some intermediaries). However, it an important piece of law for all reputable users of e-Commerce in the UK, businesses, consumers and others.

Consumer Rights Directive (CRD)

In terms of distance sales (and therefore e-Commerce), this Directive largely re-enacts the provisions from the previous Directive which were implemented in the UK Distance Selling Regulations in 2000. Accordingly, these requirements have been in place for 17 years and are fundamentally part of the UK B2C²⁰ e-Commerce landscape. They do not apply to B2B e-Commerce.

The provisions can be seen as being of four types:

1. Information to consumers: both pre-contract and in a durable medium to confirm contract, and including trader details, main characteristics of the product, price, delivery information, cancellation provisions, etc.
2. Cancellation rights: consumers have a 14 day “cooling-off” period to cancel most distance contracts; detailed provisions for goods, services and digital content.
3. Contract performance: e.g. delivery of goods must be within 30 days unless otherwise agreed, timescales for return of cancelled goods and payment of refunds.
4. Ancillary matters, including passing of risk, express consent for extras, provisions covering delivery restrictions and means of payment.

These requirements enshrine in law some of the basic tenets of fair retail e-Commerce. For example, the 14 day cancellation period for goods enables the online buyer to be put in the same position as a shop buyer and examine the goods fully before deciding to keep them. The information provisions promote full transparency and aim to empower consumers to make informed choices. Such principles have worked well for consumers and reputable businesses alike. They have helped promote a boom in online retail sales which has boosted the UK economy.

Accordingly, it is thought crucial for the well-being of UK e-Commerce that these provisions are maintained after Brexit. Full product information and the right to cancel give consumers the confidence to shop online. This confidence would be severely dented in an intra-UK context if the rights were removed or reduced. Further, consumers – UK and EU citizens alike – would be likely to seek to buy much more often from EU sellers that still routinely offer these rights, with the obvious detrimental effect on UK businesses.

Proposed New EU Laws

The EU has an ongoing and substantial initiative known as the Digital Single Market Strategy²¹, which includes several proposals for new EU laws relevant to Trading Standards.

Repeated references in the White Paper to “a common rulebook for goods” is welcome in the context of e-Commerce, where we think regulatory alignment is vital for UK consumers and businesses. However, the White Paper states that this would cover “...only those rules necessary to provide for frictionless trade at the border” (Page 8).

20. i.e. “business to consumer”, in other words retail sales

21. <https://ec.europa.eu/digital-single-market/en/digital-single-market>

It is not clear which e-Commerce provisions are covered, if any. For example, we think that the 14-day cooling-off period for retail goods purchases is key, as it provides essential consumer protection, boosts consumer confidence thus increasing sales, and is likely to be central to EU thinking in terms of a successful aligned retail e-Commerce partnership post-Brexit. But we do not know whether this is the sort of provision covered by the proposed “common rulebook”.

Although the UK has ruled out being part of the Digital Single Market the proposals include:

1. Revision of online sales requirements (and other distance sales) on a maximum harmonisation²² basis. This is generally unproblematic for digital content but contains significant risks regarding goods. At present UK consumers have a “short term right to reject” faulty goods for 30 days after purchase. This goes beyond the provisions of the current Consumer Sales Directive, which is a minimum harmonisation Directive. If the UK followed the new proposals would prohibit the short term right to reject for distance sales, thus reducing consumer rights and creating a “two-tier” system of buyers’ rights, as the 30 day rejection period would remain for shop sales. Similarly the clarity in the UK from the “one repair/replace” rule would be in jeopardy.
2. A ban on “geo-blocking”:²³ the idea is to build on the general prohibition on discrimination due to place of residence (EU Services Directive 2006/123/EC, Article 20(2)²⁴) (UK Provision of Services Regs 2009, Reg 30²⁵) by providing clear instances that are covered. For example: access to websites, access to goods and services, and payment methods. If implemented this will have direct implications for UK consumers and businesses, and on trading standards authorities’ responsibilities. The changes could boost e-Commerce to the benefit of all UK players.
3. Provisions for cross-border parcel delivery services:²⁶ The EU is not happy at the slow growth of intra-EU cross-border consumer sales and sees parcel delivery problems as partly to blame. This proposed Regulation would impose a range of obligations on parcel carriers and the Royal Mail (as UK USO provider) aimed at tightening oversight of the industry, improving transparency and information provision, and reducing unnecessary price differences. It is not fully clear exactly how this would impact on UK retailers, consumers and trading standards. But the aim is stimulate more online sales which could be good news for UK consumers and businesses. Further, there may even be a positive impact on the perennial intra-UK problem of unfair delivery surcharges to remote and rural UK locations.
4. Revision of the CPC Regulation:²⁷ this is a detailed and wide-ranging proposal but it has clear e-Commerce aspects which contain potentially useful provisions such as explicit powers for enforcers like Trading Standards to undertake website takedowns and specific information-gathering powers regarding banks and various online intermediaries. These updated enforcement powers would clearly be in the best interests of consumers, reputable businesses and trading standards officers. It is strongly recommended that, whatever the terms of Brexit, the UK has close enforcement co-operation arrangements in place with EU countries.

22. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A635%3AFIN>

23. <https://ec.europa.eu/digital-single-market/en/news/proposal-regulation-geo-blocking>

24. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123>

25. <http://www.legislation.gov.uk/ukSI/2009/2999/regulation/30/made>

26. <http://ec.europa.eu/DocsRoom/documents/16805>

27. https://ec.europa.eu/info/live-work-travel-eu/consumers_en

The Brexit White Paper states that although “... the UK will not be a part of the EU’s Digital Single Market” after Brexit, the Government intends the UK “...to develop an ambitious policy on digital trade with the EU” (White Paper para 93, page 35). We welcome this ambition and would urge the Government to pursue this topic and give it significant priority both during the Brexit negotiations and beyond.

Other Provisions

The central importance of the Unfair Commercial Practices Directive (UCPD) will be dealt with in another chapter. However, in the e-Commerce context, it is worth emphasizing that trading standards officers have found the “misleading omissions” regime from UCPD particularly useful, especially when used in tandem with e-Commerce-specific legislation. While the ECD and the CRD create requirements for specified information to be present on a website, the UCPD misleading omissions regime requires it to not be “hidden”, nor presented in a manner which is “unclear, unintelligible, ambiguous or untimely”. This allows the transparency and consumer empowerment provisions of the ECD and CRSD to be effective in practice.

A number of other EU laws have some impact on Trading Standards work on e-Commerce. Perhaps the most prominent currently is the Directive on payment services in the internal market²⁸. This comes fully into force in early 2018 and updates and expands payments services rules to take account of technological and industry developments, such as increased mobile device use. The most eye-catching change is a ban on card payment surcharges. Others include extra obligations for e-marketplaces and similar platforms if they process online payments.

Finally, we welcome the White Paper’s commitment to the “...removal and prevention of barriers to the flow of data across borders” and the general commitment to close co-operation with the EU on digital trade. This must include information-sharing in relation sales of goods (and indeed services) and the sale of digital content in itself.

28. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015L2366>

In Conclusion

The development of e-Commerce is an increasingly vital aspect of the UK's economic growth and consumer spending. The framework under which it has developed has been heavily influenced by EU membership and the UK must not compromise on consumer protections or marketplace developments and protections in this area.

A key e-Commerce topic where continued harmony with EU requirements is essential is over digital content. There has been raised the issue of the potential problems re tangible goods in the current EU proposal for online sales. However, the provisions for digital content are not problematical and the UK needs to seek alignment on those.

As transactions are increasingly digital and cross-border we need to maintain effective cross-border enforcement arrangements. Ideally this would be as continued members of Consumer Protection Cooperation model²⁹ but if that is not possible, through a partnership that is as close as possible to CPC arrangements.

This is vitally important in 3 main areas:

1. the proposed specific powers to close down rogue websites;
2. more extensive information-gathering powers in relation to internet intermediaries; and
3. explicit powers to undertake covert test purchases.

The commitment in the White Paper to effective market surveillance arrangements and enforcement co-operation post-Brexit (para 43-45, page 24-5) is welcome. However this must be pursued in practice and given priority.

Many UK e-retailers source goods from across the EU to sell to consumers. At present this is no different from sourcing goods in the UK. However, post-Brexit these acquisitions may mean the trader becomes an importer with all the various obligations that entails. This is potentially a serious burden on businesses (especially SMEs and micro-businesses that would never think of themselves as real importers) based all over the UK and potentially a major burden on trading standards services that need to unpick and advise and enforce in this area.

⁰²⁹. http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/consumer_protection_cooperation_network/index_en.htm

e-Commerce

Findings

- For the digital commerce market for consumers and businesses, the government needs to provide clarity on the post- Brexit responsibilities and legal rules that will apply to importers of EU goods into the UK market- and vice versa. CTSI calls for the government to seek agreement with EU on the mutual recognition of goods and standards to ensure a digital market that is as frictionless as possible.
- CTSI believes there is a need for maximum ease of access to the EU market for UK e-sellers and e-buyers, to promote business growth and maintain consumer choice. The UK is Europe-leader on e-Commerce and barriers to the EU market will threaten jobs and prosperity and worsen the consumer experience.
- In order for consumer confidence in e-Commerce to continue it is necessary for the UK to maintain appropriate cross-border enforcement powers after Brexit. That could be based on the current Consumer Protection Cooperation model or its revised version, particularly in areas such as powers to remove infringing websites, greater cooperation from intermediaries and powers to test purchase.

See [Appendix 2 \(p79\)](#) for a list of the main Directives and Regulations in this area

Product Safety

The EU Withdrawal Impact on Product Safety



Christine Heemskerk
CTSI Lead Officer for Product Safety

Background

There is a high expectation in the UK that all consumer products should be safe and this is realised through responsibilities for producers enshrined in civil and criminal law.³⁰ The law seeks to balance the obligations on suppliers with the expectations of consumers, recognising that while every risk cannot be removed (and to do so would be economically unviable) the aim is to minimise the risk as far as possible. This aim is extended and balanced across product types that have greater risks - such as toys or electrical items - and to those consumers that are more exposed to risks - such as children or very elderly or vulnerable consumers.

The UK's domestic regime for consumer products safety has been transformed by EU membership in a single market of 28 countries and an estimated half a billion consumers. The pillars of the single market includes the principle of free movement of goods achieved by the removal of non-tariff barriers to trade - such as varying safety standards across member state borders. In order to place certain products on the EU market, UK manufacturers must follow conformity assessment procedures to ensure the products meet the essential requirements of EU safety (often enshrined in harmonised standards), with the retention of technical files for evidence. They may then CE mark³¹ the products as meeting the requirements of the relevant EU Directives.

The UK's departure from the EU raises a huge question mark over the future of the domestic product safety regime. It creates uncertainty and costs for businesses that wish to plan and meet the relevant legislation - and a real risk for consumers that the high levels of product safety enjoyed as an EU member are under threat.

The government's white paper³² setting out its proposals for the future relationship between the UK and the EU suggests the UK intends to maintain "its robust programme of risk-based market surveillance to ensure that dangerous products do not reach consumers".

In order to ensure ongoing cooperation in this area, they are seeking access to systems such as the Rapid Alert System for Serious Risk (RAPEX) and the Information and Communication System for Market Surveillance (ICSMS). These are vitally important networks for the UK's product safety regime and we welcome the ambition for their retention although note that it will be subject to trade deal negotiations.

30. <https://www.gov.uk/guidance/product-safety-for-manufacturers>

31. <https://www.gov.uk/guidance/ce-marking>

32. <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

Threats from Brexit

The product safety framework in the UK currently consists of the following pieces of primary legislation:

- Consumer Protection Act 1987 (CPA) ³³
- European Communities Act 1972 – New Approach (ECA) ³⁴
- Health and Safety at Work etc. Act 1974 (HSWA) ³⁵

The whole product safety framework is under threat after Brexit since there are very few pieces of purely domestic legislation made via the CPA. Only six products - oil heaters, nightwear, furniture and furnishings, motor vehicle tyres, plugs and sockets and pedal bicycles are subject to UK only legislation. All other products are controlled via EU legislation either transposed via the CPA, the HSWA or the ECA or a combination.

European legislation is either product specific or general. Product specific legislation is either enacted via Directive or directly applicable EU Regulation. Overarching all of this is the New Legislative Framework consisting of four strands:

- Regulation 765/2008/EC on accreditation and market surveillance (RAMS) ³⁶
- Decision 768/2008/EC establishing a common framework for the marketing of products ³⁷
- Mutual Recognition Regulation EC 764/2008 ³⁸
- General Product Safety Directive 2001/95/EC (GPSD) ³⁹

UK – Placing on the Market?

Regulation 765/2008/EC on accreditation and market surveillance (RAMS) is a directly applicable EU regulation which has great significance if not re-enacted after Brexit as it gives some very important definitions such as placing on the market and economic operators.

This is one example of a directly applicable EU Regulation that cannot be transposed without a new agreement with the remaining EU 27, and highlights the great uncertainty over the continuity of UK goods being placed on the EU market after March 29th 2019 - or at the end of any implementation period.

In fact the EU on the 22nd January 2018 stated in their own [position paper notice to stakeholders](#) that UK economic operators become 3rd country exporters into the EU 27 in the absence of a ratified withdrawal agreement before 'Brexit day'. Conversely those economic operators who currently distribute EU sourced product will become importers with many more onerous obligations. It sets out (again in the absence of EU/UK agreement to the contrary) the consequences for the identification of economic operators, conformity assessment procedures and notified bodies. This divergent and possibly 3rd country importer/exporter status for UK economic operators, and the removal of notified body status creates a great deal of uncertainty and costs for domestic suppliers of products that currently understand and meet EU product safety regime requirements.

^{33.} <https://www.legislation.gov.uk/ukpga/1987/43/contents>

^{34.} <https://www.legislation.gov.uk/ukpga/1972/68/contents>

^{35.} <https://www.legislation.gov.uk/ukpga/1974/37>

^{36.} <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0030:0047:en:PDF>

^{37.} <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0082:0128:en:PDF>

^{38.} <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0021:0029:en:PDF>

^{39.} <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001L0095>

Trading Standards Market Surveillance

RAMS also has effects on the definitions for market surveillance crucial to trading standards services. This definition underpins all product safety enforcement and clearly outlines what activities market surveillance authorities (trading standards) should be undertaking.

“...shall mean the activities carried out and measures taken by public authorities to ensure products comply with the requirements set out in the relevant Community harmonisation legislation and do not endanger health, safety or any other aspect of public interest protection”

The Regulation goes on to outline the main obligations of member states:

- Organise and carry out market surveillance including the co-ordination and co-operation mechanisms
- Perform appropriate checks on the characteristics of products on an adequate scale
- Establish, implement and periodically update a market surveillance programme Communicate and make available to the public such programmes
- Periodically review and assess the functioning of their surveillance activates
- Follow up complaints or reports on issues relating to risks arising with products
- Monitor accidents and harm to health suspected to have been caused by consumer products
- Follow up scientific and technical knowledge concerning safety issues
- Ensure that goods posing a serious risk are prohibited, withdrawn or recalled and the European Commission notified
- Lay down penalties for economic operators (including criminal sanctions) for infringements

Member States shall entrust market surveillance authorities with the powers, resources and knowledge necessary for the proper performance of their tasks. The regulation also provides for powers of suspension, recall and withdrawal (particularly important for non-consumer goods) both at the border and during market surveillance. Without this regulation, it will be difficult to challenge and enforce any failing in product safety activity.

The government’s ambitions for a free trade area for goods - as outlined in [white paper proposals for the future relationship between the EU and UK](#) – acknowledges the vital role market surveillance will play to ensure rules are upheld in both markets.⁴⁰ It is important that clarity is provided as soon as possible on the retention or creation of appropriate regulations that define how such activities will be undertaken by authorities in the UK. Also, the ongoing reduction in trading standards services severely limits the UK’s ability to meet the government’s aim for robust market surveillance in the post-Brexit market for goods.

⁴⁰. The future relationship between the United Kingdom and the European Union – page 24

Product Liability

The UK laws on civil redress for unsafe products that have caused personal injury or losses to consumers have developed over many decades. Common law decisions in tort and negligence (such as the extension of the duty of care to manufacturers) opened civil routes of liability beyond direct contractual obligations.⁴¹ EU membership too has extended civil redress with the concept of strict liability for defective products being introduced in the UK through Part 1 of the Consumer Protection Act 1987 – (implementing Directive 85/374/EEC⁴²). EU membership has further developed these protections by removing unfair contractual terms that limit or exclude liability for death or personal injury⁴³.

As the UK leaves the EU there are statutory definitions that will require clarifying or amendment under the product liability regime. The definition of ‘producer’ for example when the UK will no longer be part of the EU single market. It is important that the government does indeed offer no less protections after Brexit and that the system for civil access to damages for losses caused by unsafe products remains as strong as ever.

41. <http://www.scottishlawreports.org.uk/resources/dvs/donoghue-v-stevenson-report.html>

42. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISUM:32012>

43. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31993L0013>

Implementing EU Product Safety - Threats

Product specific legislation is found in certain Directives. These are the so called 'New Approach' CE marking directives which all require transposition via the EC Act to enable UK enforcement. A few have also been transposed via the CPA. Most transposition just involves copying the articles of the Directive into UK regulations and adding enforcement powers and duties, offences and statutory due diligence defences.

All the Directives have standard elements and there is a strong link to harmonised EC standards as a means of conformity. It is a very welcome development that the UK has applied to remain in CEN/CENELEC⁴⁴ in order to influence the content of the harmonised standards. Without membership the threat is that there may be national BSI standards offering different levels of protection. The CE mark is a protected community mark to ease freedom of movement of goods and once we leave the EU we will not be able to use it. This may be seen both as an opportunity or a threat depending on views as to the success of the CE mark as a product conformity mark.

Decision no 768/2008/EC⁴⁵ on a common framework for the marketing of products sets out the standard elements of a Directive. These offer certainty and clarity to all economic operators and not following them could lead to lack of uniformity and inconsistencies which in turn creates divergent requirements and costs for businesses.

Some product specific legislation is enacted via directly applicable regulation particularly in the area of chemicals⁴⁶ and cosmetics.⁴⁷ Much of the detail of regulation is based on scientific research undertaken at EU level and often involves a registration process. The framework established by the EU through these regulations would be very difficult to transpose directly into UK law.

Finally, threats lie with the GPSD⁴⁸, implemented in the UK through the General Products Safety Regulations 2005⁴⁹ (GPSR). These provide a safety net to ensure ALL consumer goods are safe. It incorporates the precautionary principle and introduces the concept of a safe product taking into account vulnerable consumers.

GPSD clearly outlines the obligations of economic operators and provides for effective enforcement tools in the form of notices such as suspension, notice to mark, notice to warn, withdrawal and recall. It also makes it mandatory for economic operators to inform authorities when products pose a risk and to undertake corrective action. As it has already been implemented in the UK via GPSR it is perhaps questionable whether some of the main aspects of the GPSD will be under threat post-Brexit.

44. <https://www.cencenelec.eu/Pages/default.aspx>

45. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0082:0128:en:PDF>

46. https://europa.eu/youreurope/business/product/chemicals-reach/index_en.htm

47. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:342:0059:0209:EN:PDF>

48. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:342:0059:0209:EN:PDF>

49. <http://www.legislation.gov.uk/ukxi/2005/1803/contents/made>

Product Safety Networks under Threat

RAPEX – Rapid Alert System for Dangerous Non-Food Products

GPSD also provides for the RAPEX⁵⁰ system that ensures authorities can warn consumers about unsafe products whilst also allowing the Commission to make emergency decisions to ensure unsafe product swiftly removed from the market. The government's ambition to retain post-Brexit access to RAPEX is welcomed, so too is the Office of Products Safety and Standards' move to build a product surveillance and safety database to complement UK and EU intelligence systems. Any risk to losing such a fundamental piece of consumer protection is a major threat to our ongoing participation in the EU system for ensuring adequate protections for UK consumers from dangerous products.

RAPEX is a system used by all local trading standards and is mandatory for products posing a serious risk where local authorities have taken any enforcement action (or voluntary withdrawal/recall). As well as the mechanism for informing the Commission of activities undertaken by the UK it is also a vital source of intelligence. If a product has been notified by another member state and the same product is identified in the UK much needed effort and resource can be saved. This allows trading standards as market surveillance authorities to remove the product from the market without further testing, etc.

[See EU Commission video on how RAPEX works here.](#)

ICSMS - The Information and Communication System on Market Surveillance

“(ICSMS) is an IT platform to facilitate communication between market surveillance bodies in the EU and in EFTA countries. It quickly and efficiently shares information on non-compliant products, avoids the duplication of work, and speeds up the removal of unsafe products from the market”.

The government has also committed to seeking access to the Information and Communication System for Market Surveillance (ICSMS).⁵¹ While this too is welcome it remains uncertain as the trade negotiations are not yet concluded. ICSMS is the second source of intelligence for trading standards and an under-utilised but vital tool for product safety. If populated by all member state market surveillance authorities, including the UK, it is an extremely useful tool to assist in prioritising market surveillance activity and avoiding duplication. As it records both compliant and non-compliant products scarce resources can be optimised by not undertaking testing/sampling on products previously found compliant by other surveillance authorities. It is also the tool to be used to facilitate the European 'Home Authority' system through the 'pass the baton' function. Although it is still not as widely used as it should be with more cross-border training this could prove in time to be a vital function in the pan EU safety system.

50. https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.listNotifications

51. https://ec.europa.eu/growth/single-market/goods/building-blocks/icsms_en

Other EU Product Safety Interconnections

There also exists threats to participation in the joint cooperation and enforcement actions in the area of non-food consumer product safety⁵². This initiative allows for joint surveillance actions this area and involves cooperation between national authorities or other designated bodies of Member states and EFTA/EEA countries. It is unclear whether many UK local authorities currently contribute in these activities however participants can benefit from economies of scale and provides much needed intelligence and can be considered a competency tool, i.e. exchange of ideas etc.

Further areas at risk include participation in EU databases on cosmetics (Cosmetic ingredients database CosIng⁵³ and CPNP Cosmetic Products Notification Portal⁵⁴) Incorporated in the Cosmetic Product Safety Regulation but administered via the Commission these systems control the regulation of cosmetic products at the EU level and have important information and systems for participants in this industry.

If the UK is seen as an importer (see above) then any economic operator who 'imports' cosmetics from the EU will now have to register their product which will amount to a new burden on UK businesses. The question remains as to whether the UK will have access. Currently if a product has no notification on the portal then UK trading standards can take enforcement action and remove product from the market without the need for costly sampling and testing. This has previously been used successfully by London trading standards.⁵⁵

Withdrawal from the EU legislation networks also presents risks of losing out in networking and events such as Product Safety Week and at Consumer Safety Network meetings. Any inability to participate will mean a loss of expertise and knowledge and could mean a lack of uniformity and consistency in applying the appropriate EU legislation.

52. http://ec.europa.eu/chafea/documents/consumers/call-text-ja-gpsd-2016_en.pdf

53. <http://ec.europa.eu/growth/tools-databases/cosing/index.cfm>

54. https://ec.europa.eu/growth/sectors/cosmetics/cpnp_en

55. <https://www.tradingstandards.uk/news-policy/news-room/2017/london-cosmetic-shops-fined-168-000-for-selling-illegal-cosmetics>

The European Chemicals Agency (ECHA)

The ECHA works for the safe use of chemicals across the EU and implements the EU's chemicals legislation with the aims of benefiting human health, the environment and innovation and competitiveness in Europe. It also researches and decides on what chemicals are to be restricted or prohibited under REACH for example. The ECHA has a broad impact, notably across the following:

Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) ⁵⁶

Reach came into force on 1 June 2007 and has the aim to provide a high level of protection of human health and the environment from the use of chemicals. It also strives make the people who place chemicals on the market (manufacturers and importers) responsible for understanding and managing the risks associated with their use. They are enforced in the UK by the REACH Enforcement Regulations 2008. ⁵⁷

Classification, Labelling & Packaging of Substances and Mixtures (CLP) ⁵⁸

The CLP regulation came into force on 20 January 2009 in all EU Member States, including the UK and is mainly known as the CLP Regulation' or just CLP. CLP adopts the United Nations' Globally Harmonised System on the classification and labelling of chemicals (GHS) across all European Union countries, including the UK. It is best recognised by its pictograms denoting the hazards and risks to consumers.

Membership of the ECHA is one area where the UK government has given a refreshing statement of clarity for businesses and regulators. In the prime minister's speech ⁵⁹ on the 2nd March 2018 setting out her vision for the future economic partnership between the EU and the UK she told a Mansion House audience that the UK wishes to remain part of the EU Agencies that "are critical for chemicals" such as the European Chemicals Agency. She did also acknowledge that, "this would mean abiding by the rules of those agencies and making an appropriate financial contribution". Such an intent gives a reassuring message EU partnership agencies will be considered and retained where appropriate. In justifying this approach the prime minister explained,

"businesses who export to the EU tell us that it is strongly in their interest to have a single set of regulatory standards that mean they can sell into the UK and EU markets",

and that,

"...associate membership of these agencies is the only way to meet our objective of ensuring that these products only need to undergo one series of approvals, in one country.

⁵⁶. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1907-20140410>

⁵⁷. <http://www.legislation.gov.uk/ukSI/2008/2852/regulation/10/made>

⁵⁸. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:353:0001:1355:en:PDF>

⁵⁹. <https://www.conservatives.com/sharethefacts/2018/02/our-future-partnership>

CE Marking

EU Membership has meant businesses and consumers have become increasingly familiar with the CE mark⁶⁰. Meaning Conformité Européenne or European Conformity it is often regarded as an indication that the required level of safety applies to the products that bear the logo. This is perhaps more true for toys than on many other products. In fact the CE mark on goods represents a declaration by the manufacturer that they have been assessed according to the relevant Directives to conform to the essential requirements in several areas (including safety). In that way the CE mark acts as a passport for the goods throughout the European Economic Area.



Leaving the EU raises questions for UK producers on CE Marking. What will not change is that products placed on the market in the 27 remaining EU member states will continue to be subject to CE Marking legislation after Brexit and into the future. However it is questionable whether this will change for products placed in the UK market after March 29 2019. Much will depend on the status of the UK in relation to the single market as a result of any future trade deal or transition/implementation period.

Through their white paper proposals on a future relationship with the EU the government has proposed a 'common rulebook for goods'. That would suggest the current rules and standards will be broadly aligned with the EU post-Brexit. What this will mean for CE marking remains unclear but the ambition is to retain mutual recognition of conformity assessment processes, the paper advocating that this could possibly be achieved through the introduction of a 'UK mark'.

Office for Product Safety and Standards (OPSS)

In recent months the UK framework for product safety has been in the spotlight. Its effectiveness is under question in areas such as product recalls, local resources and the apparent lack of effective national coordination or enforcement. These issues were brought into stark focus by high profile cases, notably Whirlpool's alleged failure to tackle fire risks with their tumble dryers⁶¹ and the horror of the Grenfell tragedy reportedly being started by a faulty fridge catching fire.⁶²

Following two reviews the recommendations have now led to the creation of the Office for Product Safety and Standards (OPSS). Based within the Department for Business, Energy and Industrial Strategy (BEIS) it will cover general (non-food) consumer product safety. OPSS does not change the roles and responsibilities of local authorities or other market surveillance authorities - but will provide a number of specialist services centrally to support consistent national enforcement, including aspects of product testing and technical expertise.

60. See CTSI video of how the CE mark works: https://www.youtube.com/watch?v=88ID_NTSvQA

61. <https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/news-parliament-2017/whirlpool-tumble-dryers-17-19>

62. <https://www.theguardian.com/uk-news/2017/jun/23/hotpoint-tells-customers-to-check-fridge-freezers-after-grenfell-tower-fire>

OPSS has already been active in announcing a new voluntary standard for products recalls. The Code of Practice includes details on how a business can monitor the safety of products and plan for a recall, and how market surveillance authorities such as trading standards can support businesses in their monitoring of incidents and their implementation of corrective action.⁶³

With this new body it is expected there will be more of a national focus on the threats Brexit poses to the UK legal framework and market surveillance capabilities. As explored previously, although the aim is that there will be no changes and a transposition where necessary of EU legislation there are a number of EU networks for product safety that require reciprocal arrangements and funding. OPSS, as part of the UK government are best placed to ensure the retention of these in some form - as is now notably government policy in areas such as chemicals and aviation.

Conclusion

The UK has a long history of ensuring that modern markets are safe and consumers have a route to redress in the few instances where unsafe products cause injury. The development of the single market has EU law dominating the UK rules on product safety with a high level of protection being required across many products such as toys, electrical items, cosmetic products, fireworks, chemicals and protective equipment. Where a product does not have a specific legal regulation then the General Product Safety Regulations 2005 provides a safety net for consumers with a high standard of protection and a wide range of flexible options for enforcers.

Leaving the EU raises a large number of questions about the laws, policies and networks that will be retained and whether there will be a divergent product safety regime in the UK. Years of aggregation at EU level has led to the creation of a number of key networks and regulations such as RAMS and RAPEX. The government's proposals for a 'common rule book' and membership of key networks is vital for continued protections from unsafe products and certainty for business.

However, trading Standards are the market surveillance resource in the UK that has been halved in less than a decade. Local services need to be far better resourced in order to enforce product safety legislation and protect consumers and legitimate businesses. The consequences for failing on product safety have been illustrated all too tragically in recent years.

63. <https://www.gov.uk/government/news/new-guide-to-improve-consumer-product-safety-recalls--2>

Product Safety

Findings

- The system at the local level requires urgent investment to have adequate market surveillance for product safety. While we welcome the creation of the Office of Product Safety and Standards, protecting UK consumers from unsafe products requires local resources to provide intelligence and monitor, sample, test and enforce product safety laws. The government's ambitions to maintain its robust programme of market surveillance is completely undermined by trading standards cuts of more than 50% in 7 years.
- Uncertainty over EU trade deals and the status of the UK's relationship erodes business confidence by impeding planning for the future standards for the safety of their products. EU membership has brought product safety regulations that have important powers, definitions and responsibilities for businesses and regulators. Clarity is required in order to restore business confidence in post-Brexit product standards and allow regulators to interpret changes to market definitions, rules and responsibilities.
- CTSI welcomes the government's ambition to remain in key EU product safety networks after Brexit. This is also true for commitments to arrangements in areas such as chemicals and aviation. Structures sharing important safety warnings and market information are crucial to protect UK consumers from dangerous products. They also allow surveillance authorities such as trading standards to act quickly to remove unsafe products from the market.

See [Appendix 3 \(p80\)](#) for a list of the main Directives and Regulations in this area

Legal Metrology

The EU Withdrawal Impact on Legal Metrology



David Templeton
CTSI Lead Officer for Legal Metrology

Background

Trading standards services' legal duty to investigate the criminal offences and civil breaches of commercial practices comes from their status as 'local weights and measures authorities by definition under section 69 of the Weights and Measures Act 1985.⁶⁴ This definition seems anomalous in the context of fair trading, product safety and intellectual property investigations, however it is 'weights and measures' or legal metrology that is the historical legal bedrock upon which all trading standards consumer protections have been built over many decades.

Our economy too is built upon principles and confidence in accurate measurement, with an estimated £622 billion worth of goods and services (2009 figures) * sold by reference to their mass, volume or quantity in the UK every year. Systemic failures, even of only 1%, can cause hidden detriment and losses of £6.2 billion ** to consumers and businesses.

Trading standards officers (as weights and measures inspectors) are the main market surveillance and regulatory defence seeking to prevent such losses. However, with more than 50% of officers cut in less than seven years and with legal metrology declining in local enforcement priorities, there has never been a higher threat to businesses, consumers and the economy from losses due to inaccurate measurement and short weight or measure.

The framework for legal metrology enforcement is further undermined by its complexity. The UK's participation in the development the European Union with the single market principle of 'free movement of goods' has led to overlapping EU and domestic legislation and created a seemingly impenetrable layer of systems for verification and testing measuring instruments. It is against this backdrop that leaving the EU creates a number of threats and opportunities for the UK system of legal metrology.

64. <https://www.legislation.gov.uk/ukpga/1985/72/section/69>

* Analysis of the economics of weights and measures legislation", Deloitte, 2009, quoted in UK Measurement Strategy, The value of measurement: Supporting information for the UK Measurement Strategy (March 2017), Department for Business, Energy and Industrial Strategy

** 1% of £622 billion

Metrology

Metrology presents a seemingly calm surface covering depths of knowledge that are familiar only to a few, but which humankind make use of in all aspects of daily life, confident that they are sharing a common perception of what is understood by units of measurement, product conformity and quantity control systems. Metrology, more than any other trading standards function, is predicated on national, European and international networks of co-operation, globally harmonised standards, systems and procedures, common units of measurement and measurement processes, as well as the mutual recognition, accreditation, certification and testing of measurement standards, products and laboratories in different countries.

Any absence or divergence from these networks of co-operation, harmonised standards, systems and procedures, common units of measurement and mutual recognition of measurement standards, products and laboratories will be hugely detrimental to the interests of the United Kingdom. Such absence or divergence will result in the creation of technical barriers to trade, conflicting regulatory systems and significant potential for reduced levels of consumer protection and increased costs for businesses.

Key issues

There are three key metrology issues that must be considered in relation to Brexit. These are –

1. units of measurement,
2. the regulation of weighing and measuring instruments and,
3. quantity control systems.

Units of Measurement

The European Union, via Directive 80/181/EEC⁶⁵ on the approximation of the laws of the Member States relating to units of measurement, has implemented the SI / metric system of units of measurement for all economic, public health, public safety and administrative purposes. The Directive underpins trade, public health, health and welfare, scientific research, higher education and all aspects of measurement in a modern capitalist economy. Knowledge, understanding, commerce and scientific research are based on the principles within the Directive.

To deviate from this system of units of measurement post-Brexit would introduce significant barriers to trade, adversely affect the free movement of goods and undermine the UK's position as a signatory to the Metre Convention⁶⁶ (BIPM) which effectively established the SI / metric system of units of measurement. Many advocates of Brexit view it as an opportunity to strike new trade deals and seek new business opportunities with key markets outside the EU after the UK leaves the EU.

However, the use of measurement units in key markets outside the EU, in particular in modern developed economies and in the increasingly important BRICS (Brazil, Russia, India, China and South Africa) countries, is almost exclusively based on the SI / metric system of units of measurement currently in force in the EU. With the exception of the United States, which accounts for less than 10% of the UK's overseas trade, all key markets, whether in the EU or outside the EU, use the metric system. It is therefore inconceivable that the UK would voluntarily return to its imperial past while the rest of the developed world and most significant developing economies remain metric.

(See Appendix 5 for an explanation of the current situation with regard to the use of units of measurement in the developed world and most significant developing economies).

65. <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31980L0181>

66. <https://www.bipm.org/en/worldwide-metrology/metre-convention>

The Regulation of Weighing and Measuring Instruments

As stated above, the regulation of weighing and measuring instruments is a complex issue. It has national, European and international dimensions, each with their own regulatory systems of control.

In terms of the UK national system, this principally consists of a highly prescriptive three-stage process. The process involves initial examination and approval of types of weighing and measuring instruments, initial verification of individual examples of types of weighing and measuring instruments, followed by in-service inspection and testing of weighing and measuring instruments to ensure continued regulatory compliance.

The proportion of weighing and measuring instruments manufactured in the UK subject to the UK national system of control is relatively small. Instruments manufactured in the UK subject to European and international systems of control are far more significant as the markets are far larger, presenting greater opportunities for UK manufacturers.

Brexit is therefore unlikely to have any significant impact on the UK national system of control, unless an isolationist policy of only permitting legal use of weighing and measuring instruments regulated by that system was pursued post-Brexit. Similarly, there is little or no likelihood of Brexit providing increased trade opportunities for UK manufacturers of weighing and measuring instruments subject to the national system of control, either in Europe or globally, as that system has no legal effect outside the UK.

In terms of the European system of control, this is broadly similar to the UK national system of control but the detail is significantly different and far less prescriptive. The European New Legislative Framework⁶⁷ system of control typically follows a modular two-stage conformity assessment process consisting of type examination and approval of types of weighing and measuring instruments (known as product certification), followed by initial qualification of individual examples of types of weighing and measuring instruments. Thereafter, market surveillance of weighing and measuring instruments ensures continued regulatory compliance.

Conformity assessment, whether product certification or initial qualification, can only be performed by Notified Bodies.⁶⁸ Notified Bodies are legal entities. Notified Bodies in the UK are legally authorised to issue product certification for types of weighing or measuring instruments subject to control under the European New Legislative Framework Directives on Non-automatic Weighing Instruments (2014/31/EU⁶⁹) and Measuring Instruments (2014/32/EU⁷⁰) and/or initially qualify individual examples of such types of weighing and measuring instruments.

Applicant Notified Bodies are either assessed by the United Kingdom Accreditation Service (UKAS) or the Secretary of State for Business, Energy and Industrial Strategy (BEIS). BEIS is responsible for notifying potential Notified Bodies to the European Commission for consideration. If member states do not raise an objection the applicant Notified Body is fully confirmed as a Notified Body, authorised to either assess and evaluate types of weighing and measuring instruments (product certification) and/or initially qualify examples of types of weighing and measuring instruments.

67. https://ec.europa.eu/growth/single-market/goods/new-legislative-framework_en

68. https://ec.europa.eu/growth/single-market/goods/building-blocks/notified-bodies_en

69. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.096.01.0107.01.ENG

70. <http://eur-lex.europa.eu/collection/eu-law.html>

Currently there is one UK Notified Body providing product certification services in relation to weighing and measuring instruments. This is NMO, a part of the Office for Product Safety and Standards, a section within BEIS. NMO also provides conformity assessment services in relation to the approval of quality management systems, enabling UK national, European and global manufacturers of weighing and measuring instruments to initially qualify their own production.

NMO has over 150 clients worldwide. These clients are based in the UK, Europe and internationally and are reliant on the provision of conformity assessment services from NMO, whether product certification or certification of quality management systems enabling manufacturer initial qualification of weighing and measuring instruments, to place their production on the EU market.

BREXIT would mean that this system will cease to operate. Whilst existing product and quality management system certification issued by NMO would continue to be valid until expiry, it would not be able to award new certificates post-Brexit. UK, European and international businesses reliant on product and quality management system certification are therefore likely to move their business to other European Notified Bodies, resulting in the loss of significant revenue to the UK exchequer, a reduction in employment and loss of jobs at NMO and a loss of knowledge, skills and experience in the legal metrology sector.

In addition to NMO, there are two other UK Notified Bodies providing quality management system certification in relation to Directives 2014/31/EU on Non-automatic Weighing Instruments and 2014/32/EU on Measuring Instruments. These are [BSI](#) and [SGS](#). Brexit would have the same impact on these organisations in exactly the same way as it would in relation to NMO.

It should also be noted that there are currently 28 individual or groups of individual local authority Notified Bodies in the UK providing conformity assessment services. These services relate to the initial qualification of weighing and measuring instruments on behalf of manufacturers that do not have quality management system certification under Directives 2014/31/EU on Non-automatic Weighing Instruments and 2014/32/EU on Measuring Instruments.

As above in relation to product certification and quality management system certification, Brexit would have a significant detrimental impact on local authority Notified Bodies. It is highly likely that all would cease to exist due to financial and resource considerations, resulting in a loss of knowledge, skills and expertise within the trading standards profession and the withdrawal of conformity assessment service provision to the business community, forcing the use of European based Notified Bodies.

The impact of Brexit on UK Notified Bodies, whether providing product certification, quality management system certification or initial qualification of weighing and measuring instruments cannot be understated. The following paragraphs analyse the potential outcomes on these bodies post-Brexit. It should be noted that there are four main options for current UK Notified Bodies, all of which have different impacts on UK industry and consumers / end users of weighing and measuring instruments.

Option 1 - WTO Rules

In this option, the UK falls back on WTO rules and UK Notified Bodies no longer have a role in regulated product conformity assessment across the EU. Products must be re-certified to enter the EU market from the UK, as with any other 'third' country. Such an option has been highlighted in an EU paper examining the consequences for conformity assessment procedures and notified bodies.⁷¹

The impacts of Option 1 for UK industry are as follows. UK industry would still bear the existing costs of compliance for export purposes to our major market in the EU, as well as the costs of creating and complying with the new UK infrastructure. Lack of recognition of certification between the EU Notified Bodies and UK organisations performing the same function would necessitate two product conformity certificates for each product.

Delays in the implementation of new technologies in a smaller UK market with a differing regulatory regime could negatively impact the competitiveness of UK industry globally. This would lead to job losses in the regulatory and conformity assessment bodies and possible limitations to inward investment.

The impacts of Option 1 for UK consumers/end users are as follows. Critically for UK consumers/end users, this option would likely mean that the UK would have slower access to new technologies, especially in critical sectors such as medical weighing. The costs of developing these technologies in a smaller market, as well as in the much larger neighbouring European market, would be prohibitive in the early stages.

The impacts of Option 1 for UK public policy are as follows. The UK government will lose influence over the regulatory policy concerning product conformity assessment in the EU and UK companies will still need to meet EU-set requirements for trading into the EU Single Market. The UK government will be able to set national regulatory policy in the much smaller UK marketplace, although there will be pressure to maintain requirements to that of the EU to prevent placing additional burdens on UK manufacturers.

Option 2 - Full Recognition

In this option UK Notified Bodies would still be recognised in the EU and the UK would play a partial role in determining regulatory policy. This would be a similar option to that of the non-EU members such as Norway or Iceland.

This 'business as usual' option would provide continued seamless integration into the Single Market. However, UK government policy currently rules this option out. Consequently, the impacts of this option cannot be considered in more detail.

Option 3 - Free Trade Agreement (FTA) with Mutual Recognition of Regulated Conformity Assessment

In this option, UK Notified Bodies would meet UK requirements, which in turn would be deemed sufficient to meet EU requirements. The impacts of Option 3 for UK industry are as follows. UK industry would bear the costs of creating and complying with the new UK infrastructure. Once that is achieved, the results of national regulated conformity assessment would be sufficient to also place products on the market in the EU.

71. <http://ec.europa.eu/docsroom/documents/27401>

The impacts of Option 3 for UK consumers/end users are as follows. As with Option 1, critically, this option would could result in negative outcomes for UK consumers principally arising from the cessation of data sharing in relation to knowledge, technology and infrastructure arrangements.

The impacts of Option 3 for UK public policy are as follows. The UK government will lose influence over the regulatory policy concerning product conformity assessment in the EU. The UK government will be able to set national regulatory policy, although there will be pressure to mirror the requirements of the EU in order to maintain reciprocity of access and to prevent placing additional burdens on UK manufacturers.

Option 4 - FTA with Recognition of Regulated Conformity Assessment.

This is a hybrid possibility of Options 2 and 3. In this option, in most areas mutual recognition of conformity assessment would apply, as in Option 3. For more complex products, where a Notified Body certificate is always required (most weighing and measuring instruments), UK Notified Bodies would be recognised as equivalent to EU Notified Bodies, as in Option 2. They would be able to apply the same European and international standards and to issue certificates stating that products meet EU laws. It would be similar to arrangements with Canada, Australia and Turkey. The areas to be chosen would reflect the importance of the sectors and would need to be negotiated individually.

The impacts of Option 4 for UK industry are as follows. For less complex products (a small minority of weighing and measuring instruments), with lower safety risks, as with Option 3, this would mean that UK industry would bear the costs of creating and complying with the new UK infrastructure, which would need to be in line with the EU infrastructure in order to give reciprocity of access.

UK Notified Bodies could continue to carry out regulated conformity assessment for more complex products. The UK government would have to recognise the importance of stricter controls and the need to ensure market access under the same conditions. This would be the closest option to continued seamless market access.

The impacts of Option 4 for UK consumers/end users are as follows. Unlike Options 1 and 3, in this case market access to the EU would enable knowledge transfer and information and data sharing, leading to the benefits in risk management noted above for UK consumers.

The impacts of Option 4 for UK public policy are as follows. The UK government should have a limited degree of influence over regulatory policy in those areas where UK Notified Bodies continue to perform their functions, although that degree of influence would need to be negotiated as part of the UK-EU settlement. For all other sectors, the situation would be the same as Option 3.

Summary of the Four Options

The UK Government appears to be leaning towards a free trade agreement with the EU. This would be a UK-specific deal of a type not previously negotiated which could be time-consuming. Continued membership of the EU Single Market through, for example, EEA membership appears unlikely. The WTO rules option seems a last resort.

For UK product conformity bodies, which are currently Notified Bodies, this effectively leaves two options. The first is a mutual recognition option, where the UK and EU systems run in parallel and each recognise the other's competence. This would bring market access, but significantly reduces the UK's ability to influence the product conformity requirements and process and to include the UK perspective, as well as bringing possible negative impacts from the lack of pooling of data, information and knowledge across Europe.

The second is a partial recognition option, where UK Notified Bodies could play a full role in enabling market access in the UK and the EU, in certain sectors where the role of the Notified Body is critical, such as weighing and measuring instruments. This would retain the attractiveness of the UK as the gateway to Europe in these sectors, preserving some elements of UK influence and maintaining benefits for UK consumers.

These two options encompass the best interests of UK industry, consumers/end users and local authorities. They would maintain the simplest possible access to markets in the UK as well as to post-Brexit EU. In terms of the international system of control, this is effectively administered by the [International Organisation of Legal Metrology \(OIML\)](#). The UK plays a leading role in OIML.

In terms of conformity assessment OIML operates a product certification system that would allow manufacturers to use NMO as a product certification issuing authority. However, OIML has no equivalent systems or procedures to legally authorise or approve quality management system certification or initial qualification of weighing or measuring instruments.

Brexit would therefore not significantly impact on the existing international system of control. This is because it is separate from and complementary to the European system of control over weighing and measuring instruments.

Quantity Control Systems

The European Union, via Directive 76/211/EEC⁷² on the approximation of the laws of the Member States relating to the making up by weight or by volume of certain prepackaged products, has implemented an average quantity control system for a wide range of prepackaged food and non-food products. The Directive ensures consumer protection and fair trading in relation to quantity control systems, the provision of information to consumers and the control of instruments used to make up and make checks on prepackages.

The Directive is based on facilitating the free movement of goods throughout the EU. Producers of foodstuffs and non-foodstuffs in the UK rely on the Directive to place their produce on the UK and the EU market. The e-mark⁷³, permitted under the Directive, further allows free movement of UK goods across the borders of EU Member States. It is unclear how this “metrological passport” will operate post-Brexit, with the possibility that UK produce may not be accepted in EU markets if recognition was withdrawn.

In the medium to long term UK manufacturers could transition to broadly equivalent OIML arrangements using OIML Recommendations on Quantity of Product in Prepackages (OIML R87⁷⁴) and Labelling Requirements for Prepackages (OIML R79⁷⁵). It should be noted that whilst these OIML Recommendations contain broadly equivalent provisions to those in Directive 76/211/EEC, they are not entirely consistent with same.

In the short term therefore, if e-marking of prepackaged products is no longer permissible post-BREXIT, UK producers face the very real prospect of additional costs in placing their goods on the EU market. These could include administrative delays, additional inspection and certification costs and/or tariff barriers.

72. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A132029>

73. <https://www.gov.uk/guidance/packaged-goods-weights-and-measures-regulations#using-the-e-mark>

74. http://www.fundmetrology.ru/depository/04_IntDoc_all/R087-e16.pdf

75. https://www.oiml.org/en/files/pdf_r/r079-e15.pdf

Conclusion

It is difficult to see how Brexit can have anything other than a detrimental effect on metrology. It presents more risks than opportunities and is likely to adversely affect UK businesses and consumers and weaken the influence of the UK government from a policy perspective, both in European and international terms.

Also, the impact of local authority cuts on weights and measures inspections cannot be underestimated. The capacity for inspection, investigation and prosecution, or indeed the ability for officers to interpret, advise and assist businesses with the complexities of legal metrology law and systems, has been severely degraded. Chronic underfunding and a lack of prioritisation and direction has seen the surveillance of an annual £622 billion * economic function reduced to a position of assumed compliance with negligible regulatory checks.

Divergence from the existing legal arrangements governing the use of units of measurement, the regulation of weighing and measuring instruments and quantity control systems would be isolationist. It would also create increased costs and uncertainty for businesses and consumers alike as new systems and procedures are developed and the continued acceptance and surveillance of EU products placed on the UK market is clarified.

It would also significantly undermine the likelihood of striking new trade deals with non-European countries. The vast majority of developed and emerging non-EU economies recognise and utilise the existing legal arrangements controlling the use of units of measurement, the regulation of weighing and measuring instruments and quantity control systems currently employed in Europe. Remaining as far as possible aligned to the EU market post-Brexit would be the best possible option for UK businesses and consumers from the metrology perspective. It would also be best for the profile, status and influence of the UK as a leading nation in metrology.

* Analysis of the economics of weights and measures legislation”, Deloitte, 2009 – see 2 above

Legal Metrology

Findings

- CTSI calls on the Government to act as Brexit presents a once in a generation opportunity to secure a fit for purpose trading standards system for legal metrology. One that is properly resourced and organised to carry out proportionate market surveillance for business compliance and consumer protection.
- As the UK ‘takes back control’ the Government should resist calls for any deviation from the SI/metric system in particular – and should continue alignment with the current frameworks for the regulation of weighing and measuring instruments and quantity control systems. Divergence creates uncertainty and costs for UK businesses and consumers.

See Appendix 4 (p84) for a list of the main Directives and Regulations in this area

Animal Health and Agriculture

The EU Withdrawal Impact on Animal Health & Welfare & Agriculture



Stephanie Young

CTSI Lead Officer for Animal Health and Welfare

Background

The UK has one of the strongest systems of protection for farm animal health, welfare and agriculture in the world. This is one which has developed over many decades with legislation protecting farmed animals that predates joining the EEC⁷⁶. Since its formation the EU is also recognised globally as an area that maintains and promotes animal health & welfare with directives that have raised and harmonised the levels across the single market⁷⁷. It has had the effect of improving standards in many EU member states that previously were less concerned with protections in this area.

Higher standards of protection represent a trade-off and bring competitive challenges in wider global markets where factory style intensive farming mean the principles of animal sentience, health and welfare become secondary to lowering costs of production.

The main body of animal health law in the UK derived from the EU is interpreted, communicated and enforced by authorised animal health officers from local authorities, in the main this is trading standards services. Every day they work directly with rural businesses at farms, and markets to advise on the legal and regulatory framework that maintain levels of protection to the food chain from farm to fork, as well as ensuring the disease status of the UK is protected. However, with budgets and numbers of local authority trading standards staff in considerable decline, there is a correlating threat to the potential for reduced standards of animal health & welfare as the levels of regulatory checks and enforcement diminish.⁷⁸

In recent years it has overwhelmingly been EU legislation that has dominated animal health & welfare and the UK's decision to leave has huge implications for the sector in the future. Although the policy in this area was not for maximum harmonisation there is a huge raft of EU laws that have to be considered with decisions and policies determining divergence or alignment post-Brexit.



We should be proud that in the UK we have some of the highest animal welfare standards in the world—indeed, one of the highest scores for animal protection in the world. Leaving the EU will not change that. I can assure her that we are committed to maintaining and, where possible, improving standards of welfare in the UK, while ensuring of course that our industry is not put at a competitive disadvantage.

Prime Minister Theresa May during PMQs on 8th February 2017

76. http://www.bbc.co.uk/ethics/animals/defending/legislation_1.shtml

77. https://ec.europa.eu/food/animals/health/regulation_en

78. <https://www.nao.org.uk/report/protecting-consumers-from-scams-unfair-trading-and-unsafe-goods>

The EU Withdrawal Bill has the intention of transposing all directly applicable regulations into UK law thereby ensuring no cliff edge and a functioning statute book on the day we leave the EU.⁷⁹ Therefore, at least during the Article 50 period the EU withdrawal bill process, fundamentally the way in which EU law is applied to animal health and agriculture within the UK will not change. Whilst it is expected that there will be an Agriculture Bill detailing government plans for farming post-eu exit is expected following consideration of responses to Defra's Health and Harmony consultation on the future for farming,⁸⁰ there are a number of very important factors for animal health and welfare and agriculture that require consideration as the UK leaves the EU.

Factors for Consideration

Financial Subsidy Support from the EU

Any financial support the UK farming industry receives directly from the EU via the Common Agriculture Policy (CAP) will cease on exiting the EU.⁸¹ The Government has not yet set out how this critical funding structure will be replaced but have given indications it will be based on funding for environmental rather than land ownership considerations.⁸² Nationally, the devolved administrations will need to consider this and what alternative financial support system is put in place for UK agriculture. Withdrawal of funding without adequate replacement will see a number of businesses seeing financial hardship with the outcome likely being witnessed in lower welfare standards on farm and reduced compliance with legislative standards for disease control.

For UK agriculture – the feed industry is a global trade with materials sourced from all over the world. With the fluctuation in the pound/dollar/euro - the futures markets which are used for the buying and selling of commodities have become unpredictable, this has been made worse by global climate change and its impact on production. With such uncertainty in the market, feed companies are already unwilling to extend credit to some farming businesses for livestock feed, and this is likely to worsen in the short term until financial agreements for subsidy support is made by the devolved administrations – this again is likely to exacerbate welfare standards on farm and compliance with legislative controls where there is an associated cost such as disposal of fallen stock. It may also lead to some industry members sourcing cheaper alternative products for feed or bedding that may expose livestock in the UK to unintended bio-security risks.

Animal Welfare v Animal Health

The focus of the majority of the regulations and directives from Europe are driven by animal health requirements and public health protection with the integrity of the food chain. Animal welfare is embedded into these requirements, however as it is not always explicit in the context of the law, for a number of local authorities, they already see welfare as a 'may' not a 'must'. It is only the Animal Welfare Act 2006 that is not a statutory requirement.

79. [UK Govt Paper on Preserving EU Law](#)

80. <https://www.fwi.co.uk/news/eu-referendum/agriculture-bill-expected-last-six-months-2018>

81. <https://www.instituteforgovernment.org.uk/explainers/common-agricultural-policy>

82. <http://www.bbc.co.uk/news/uk-politics-42559845>

EU Regulation 882/2004 on Official Controls for Feed and Food Law (and Animal Health and Animal Welfare)

Regulation 882/2004 requires Member States to enforce feed and food law, animal health and animal welfare rules and monitor and verify that the relevant requirements thereof are fulfilled by business operators at all stages of production, processing and distribution. As part of the UK's official controls, there must be evidence to demonstrate this, as such there may be more onus on some local authorities to demonstrate that welfare is included in with their animal health enforcement priorities post-exit from the EU.

EU Regulation 2016/429 on Animal Health Law and Transmissible Diseases

Regulation 2016/429⁸³ – Animal Health Law, has recently been introduced within the EU with the expectation that member states will have adopted the regulation by 2020. The legislation consolidates a number of animal health disease regulations into one piece of law and places competency requirements on both the industry and regulator.

Regulation 2016/429 defines a competent authority as -

“the central veterinary authority of a member state responsible for the organisation of official controls and any other official activities in accordance with this regulation (2016/429) or any other authority to which that responsibility has been delegated”.

Discussions have been held with Defra for consideration of where local authority enforcement sits into this, and they have stated that Article 13(1) is relevant to local government enforcement and that they see Local Authority enforcement officers as being part of the designated “competent authority” for enforcement purposes. In light of Brexit consideration must therefore be given as to how local authorities can demonstrate compliance with this for the future, notably – how far does qualified extend and should this be a competent officer for disease control purposes or a competent local authority? This may be an opportunity to look at how regional working may fit into the future delivery of some animal health work once it is repatriated to the UK.

Article 13 - Member States' Responsibilities

In order to ensure that the competent authority for animal health has the capability to take the necessary and appropriate measures, and to carry out the activities, required by this Regulation, each Member State shall, at the appropriate administrative level, ensure that competent authority has:

- (a) qualified personnel, facilities, equipment, financial resources and an effective organisation covering the whole territory of the Member State;*
- (b) access to laboratories with the qualified personnel, facilities, equipment and financial resources needed to ensure the rapid and accurate diagnosis and differential diagnosis of listed diseases and emerging diseases;*
- (c) sufficiently trained veterinarians involved in performing the activities referred to in Article 12.*

83. https://publications.europa.eu/en/publication-detail/-/publication/9de141be-f714-11e5-abb1-01*a75ed71*1/83.%20language-en

Networks at Risk in the Rural Portfolio

Consideration of government policy and the aims of the EU (Withdrawal) Bill set out that the intention is to provide certainty for businesses and ensure a functioning statute book at the point of the UK's departure from the EU. However, during discussions it has become apparent that there are important networks that require reciprocal actions from the remaining EU member states. This reciprocal requirement means their retention is neither straightforward nor guaranteed. For example, those overleaf.

The European Food Safety Authority (EFSA)

EFSA provides independent scientific reports to support policy /EU legislative decisions. The importance is to protect the food chain which includes animal health and welfare, food and feed requirements. There is a legislative base for the requirement of EFSA in EU Regulation 178/2002.⁸⁴ It looks at all threats within the food chain, including matters such as anti-microbial resistance.

Possible alternative options are greater use of the UK bodies presently in existence including the Farm Animal Welfare Council (FAWC), Advisory Committee for Animal Feedingstuffs (ACAF) and the Animal Health and Welfare Board for England (AHWBE), however these are non-mandatory bodies, there is no legislative framework requiring these bodies such as EFSA. Regardless of the UK's membership in the EU in future, it will still have to comply with the OIE International Standards for Animal Health for trade.

The Rapid Alert System for Food and Feed (RASFF)

RASFF provides a rapid alert system for food and feed and was put in place to provide a tool for the exchange of information with regards serious risks to the protection of the food chain by its members. There is a legislative basis for RASFF in EU Regulation 178/2002,⁸⁵ however other non EU countries such as Norway and Switzerland are included in the alert system, as such, this could be the same for the UK on its exit from the EU.

RASFF is a 24/7 365 days a year notification system that alerts all members of risks, this may include border rejection notifications, alert notifications and information notifications amongst others. Typically these notifications relate to matters where the presence of undesirable substances are identified in the food / feed – this may include aflatoxins, pesticide residues, bacterial contamination such as E.coli and salmonella, heavy metal contamination and dioxins, all of which have an impact on public health. There is no other alternative option to RASFF, and it is considered that this needs to be an area to which the UK maintains its relationship with the EU. Government have recognised the importance of cooperation⁸⁶ between the EU member states following the UK withdrawal from the EU and does seek to continue to access communication systems such as RASFF to ensure alerts are responded to effectively.

84. <https://www.food.gov.uk/sites/default/files/multimedia/pdfs/fsogfrni2004.pdf>

85. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF>

86. <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

Trade Control and Expert System (TRACES)

TRACES is the European Commission's multilingual online management tool for intra-EU trade and importation of animals, semen and embryo, food, feed and plants.

TRACES facilitates the exchange of information between all involved trading parties and control authorities and speeds up the administrative procedures. TRACES offers traceability for movements of animals, semen and embryo, food, feed and plants moved across the EU and contributes to the reduction of the impact of disease outbreaks and brings a quick response to any sanitary alert, for the better protection of consumers, livestock and plants.

The network promotes a better cooperation between the competent authorities but also between the traders themselves and their competent authorities. TRACES allows the quick detection of fake certificates and therefore contributes to the enhancement of trust vis-à-vis its partners.

Conclusion – Threats and Opportunities in Animal Health & Agriculture

EFSA provides independent scientific reports to support policy /EU legislative decisions. The importance is to protect the food chain which includes an

1. Farm Animal Health and Welfare and the Withdrawal of EU Subsidy

The subsidies from the Common Agricultural Policy (CAP) in Europe are widely claimed in the UK to help support the farming industry. The subsidies are paid through a system of cross-compliance payments or rural development payments which encourage compliance with statutory management requirements (SMRs). Where the SMRs are not met there is a reduction in the payment made, thus encouraging good legislative compliance by those seeking to claim them.

With the exit from the EU, the UK will need to establish what funding may be available via domestic agricultural policies in the devolved administrations to support this level of compliance into the future, particularly for some industry sectors that may be more vulnerable than others and in need of financial support for sustainability.

Where funding is withdrawn and no exit strategy agreed on replacement funding once leaving the EU, this does leave a risk of the industry lowering their compliance standards with the law to try and remain competitive in an open market without subsidy.

2. The Threat to Rural Businesses from Capacity in Veterinary and Enforcement Resource

Within the UK there is a heavy reliance on veterinary field staff within the public sector from other EU Countries. These veterinary officers have a pivotal role to play in the regulatory functions on farm and in the abattoirs.⁸⁷ The status of EU workers post-Brexit, and our ability to recruit and maintain vital veterinary skills is at risk.

Also a reduction in enforcement personnel from both Trading Standards and Environmental Health gives considerable cause for concern. While the UK might retain protections and have sufficient powers available to enforcers - there is a vastly declining and insufficient resource to effectively police the rural industry and the sanctions where noncompliance is identified by local authorities is at present, extremely limited.

On exit from the EU, the UK will be a third country, and as such, for matters relating to animal health and feed, there will be a need to demonstrate compliance with EU legislation above and beyond the standards already taken, particularly when there is a drive for industry assurance and earned recognition to be more readily integrated into business operations. If the UK wishes to trade on a Unique Selling Point of its high health status and its high welfare controls, there will be a need to demonstrate this is being effectively policed – a position that is already under challenge.

3. Pressures on Welfare from International Trade

With international trade and the negotiations that the UK will be able to make for worldwide trade after leaving the EU, the UK is exposed to a number of risks relating to compromised animal welfare, compromised disease control and a lack of any domestic agricultural policy to support the farming industry in those areas where sustainability of the business is reliant upon financial assistance.

International trade negotiations may lead to deals with countries around the world that have lesser standards of animal welfare than the rest of the EU and the UK.⁸⁹ These deals could leave a market for imports into the UK which may result in the market driving down UK standards on animal health and welfare in order for farming businesses to remain competitive. With the potential for imports from countries with lower standards of animal health and welfare, this also exposes the UK to the risk of importation of notifiable disease into the UK via products of animal origin.

Consumer demand does influence the market standards, and whilst some leading supermarkets may be responsible in their sourcing of products from countries that have high animal welfare standards, price will always be an important factor in consumer choice.

87. https://www.bva.co.uk/uploadedFiles/Content/News_campaigns_and_policies/Policies/Future_of_the_profession/brexit-and-veterinary-profession-v1.0.pdf

88. <https://www.theguardian.com/environment/2017/jul/18/rise-of-mega-farms-how-the-us-model-of-intensive-farming-is-invading-the-world>

Animal Health and Agriculture

Findings

- CTSI recommends clarity is given as soon as possible to the rural community on sources of funding that will replace the CAP and thereby help to meet the government's aim to at least maintain and improve if possible the standards of animal health and welfare currently enjoyed in the UK.
- CTSI urges the government not to compromise on the standards of animal health and welfare and agriculture in order to gain access to new global markets. Imports of food and feed from countries such as China and the USA will bring competitive pressures on UK businesses to lower standards. The government must hold strong on its aim to preserve and improve standards of animal health and welfare after we leave the EU.
- CTSI calls for consideration of the effects on the potential loss of EU veterinary skills and a plan to cease the haemorrhaging resource for animal health and welfare regulation and enforcement at the local level. Uncertainty in terms of standards and regulations, limited sanctions available for non-compliance, ongoing funding and a severely degraded capacity for enforcement bring real pressures to the future of animal health and welfare in the UK.

See [Appendix 6 \(p87\)](#) for a list of the main Directives and Regulations in this area

Food Standards

The EU Withdrawal Impact on Food Standards



David Pickering
CTSI Lead Officer for Food

Background

As modern markets and consumer tastes have developed the UK has become used to a high level of food safety and standards. Membership of the EU has not changed this fact and the trading relationship has become very important with the EU being the UK's major market for agri-products in terms of 60% of exports and 70% of imports.

Virtually all legislation relating to food standards emanates from the EU so for regulators, food businesses (FBOs) and consumers the incorporation of existing EU based law into UK legislation is vital in the immediate aftermath of the UK exit. This process (although being presented as straightforward) does present issues for the UK as will be explored later in this chapter.

The government's approach whilst becoming clearer is still lacking in detail about what trading position will exist post-March 2019:

Broadly, there are three possible scenarios:

'Cliff Edge'

the UK dropping out of trading arrangements with the European Union, and moving to international trade deals governed by World Trade Organisation (WTO) and other bi-lateral arrangements.

'Transition Deal'

the UK and EU agreeing to retain the current arrangements, governed wholly or mainly by current institutions and standards, until such time as a full agreement has been reached.

'Deep and Comprehensive Deal'

the UK and EU agreeing a full trade agreement, governed by current or equivalent institutions and standards, in perpetuity.

The Role Trading Standards Can Play in the Future Regulatory Structure

It is very concerning that the ‘cliff edge’ scenario could add significant costs to the food industry, the food regulation system (particularly at UK ports of entry) and ultimately to the UK consumer. In such a scenario, there is also a high level of uncertainty about the implications of moving to WTO rules.⁸⁹ Several senior politicians have given the impression that this is a simple transition with few implications for food standards. However, comments in the media attributed to the Director General of the WTO, have resulted in significant questions arising in this area.

It is possible that it could take several years for the UK to move to full recognition within the WTO system, meaning a period of limbo and yet more uncertainty for the food industry; there could also be extensive changes for the food industry, standards, science and research capability and for UK food inspection arrangements. There may also be a need for acceptance by the UK consumer of food that does not meet expectations developed over many years of EU membership in terms of quality, composition, hygiene and standards of production.

There are some differences between UK food standards (legislation and enforcement) and those of other countries. As a result of these different approaches, there can be significant public acceptance issues amongst UK consumers, even if concerns are not founded in evidence or are based on historic trade disputes and barriers between the EU and other nations. Therefore, we expect society to demand high quality interventions and control services post-Brexit that ensure the food we eat is what it says it is.

It is important to understand that any changes and additional responsibilities would also come at a time when the current UK regulatory bodies are already under severe pressure as a result of the paucity of resources for essential services such as testing, inspection and port health controls.

The government policy of austerity, practised over recent years, has led to significant cuts in resources available for food regulation and a resulting failure to meet the requirements imposed upon Local Authorities. This in turn is leading to moves towards a system of assurance that changes and possibly diminishes the role of an independent, publicly funded and publicly accountable inspection regime.

There are already barely enough trading standards officers, port health inspectors, and public analyst laboratory facilities to meet the needs of the UK food industry and ensure consumer confidence in the marketplace. Whilst very capable, these professionals have very limited capacity to adapt to the scale of change which we face without receiving substantial additional resources.

There are additional challenges facing exporters to EU countries depending upon the type of deal that is achieved. A deal where there is a system of harmonised controls will continue to see trade across a single border but not without continuing EU checks of the UK regulatory system. Audits by EU bodies (such as DG Sante⁹⁰) will still be necessary and acceptance of EU standards will still require systems to be in place to ensure these are complied with.

89. <https://www.foodmanufacture.co.uk/Article/2018/01/03/Firms-face-food-tariffs-if-Brexit-ends-up-on-WTO-terms>

90. https://ec.europa.eu/health/location_ga

A deal where we effectively become a “third country” could lead us having to comply with all current EU standards, still be subject to more stringent EU audits and missions and require us to have a health certification system in place. This is an area where lack of resources in available certifying staff may become an issue. The consequences of any food scares or incidents may lead the EU to pose emergency controls upon the UK with increased costs for compliance, potential rejected consignments and damage to reputations and delays in clearance.

For imports, where there is no such harmonised deal, the UK would be free to determine its own imports control system. However, it would be in the interests of the UK to have an effective and robust system in place, to minimise the risk from food scares and incidents. Challenges would include implementation of IT systems (e.g. to replace TRACES⁹¹), approval processes for food establishments in EU and other 3rd countries (for example inspection of premises, certification of consignments, auditing of other National Food Inspection bodies) and training programmes both for UK inspectors, businesses and representatives from exporting countries as to how to meet UK standards.

A bespoke system could offer the UK a more risk based system that could be more targeted than the current blanket type policy that is arguably the approach of the EU at the moment (for example for Products of Animal Origin). However, implementation of any new standards will require the necessary resources to support these.

CTSI takes the view that whatever trade deal is reached, trading standards services are well placed to deliver business support and, in a modernised approach to food standards and food fraud, effective interventions to ensure business and consumer confidence in the marketplace. Additional resources will boost this ability.

Future Food Policy and Regulation Development

In all trade scenarios, it is important that the UK stays as close as possible to EU food standards, systems and institutions as an advantage and opportunity – for consumers, for taxpayers and for the food industry. This would help deal with issues of costs, safety, quality, certainty, consumer confidence and smoother trade relationships. Equivalence of UK systems should be assured by means of any transitional or long-term EU trade arrangement.

A further opportunity will be for the UK to establish a new Food Act that clearly sets out the UK’s vision for better food, farming and fishing, helping to frame current and future decision-making. However, such a vision is hindered by two particular factors:

The first is that devolution of key powers from Westminster to Scotland, Wales and Northern Ireland presents particular challenges in respect of Brexit and concerns remain in regard to the lack of both public and governmental awareness of these. Food standards is a matter that is devolved to all the respective administrations.

The second is the spreading of central government responsibility in England for food standards and food fraud related issues across three organisations (Food Standards Agency, DEFRA and Department of Health) has exacerbated the lack of a joined up approach to the issues. We also currently have a situation where EU regulations are enforceable in Wales, Scotland and Northern Ireland but not England. Neither the Westminster Government nor the FSA can unilaterally make decisions in respect of food standards and safety systems and processes; it must secure the agreement of the devolved administrations and this builds-in additional levels of complexity.

91. <https://ec.europa.eu/food/animals/traces>

Future Provision of Regulatory Functions Delivered by EU Bodies

Working within the EU, the UK has developed its approaches to food standards, consumer protection, animal welfare, pesticide and farm antibiotics control, international policing of food fraud, and much more. As the UK leaves there is likely to be intense pressure from political forces and new trading partners to work to other standards, most notably including those agreed globally by the WTO reference body, the UN FAO/WHO *Codex Alimentarius*⁹² Commission (of which the UK and EU are both members).

Currently, many non-EU trading nations criticise the EU for setting standards that diverge from those which are globally agreed and claim that they are non-tariff trade barriers. As the EU is unlikely to rapidly align with globally agreed standards in a short space of time, the UK Government will be left with decisions to make on which standards to apply in order to trade most effectively. But, this is not a binary choice. The UK could have different standards in play for different markets following other international models e.g. the US 'non-hormone treated cattle program' that meets EU import requirements in a segregated supply chain. It is important that the government ensures that all standards applied post-EU Exit are based on the best scientific evidence and risk assessment in order to afford the UK population and trading partners assurance of high levels of protection.

The UK's regained sovereignty could also be used as a transformational opportunity for the UK to show global leadership by adopting policies that set us on a path towards an increasingly sustainable food future. The UK's food system could be governed in a way that meets ambitions and international obligations for ending hunger and tackling climate change, achieving UN Sustainable Development Goals, promoting health and well-being, as well as supporting diverse food producers at all stages of the supply chain, on whose skills and livelihoods we all depend. It is important that UK trade policy should support a positive vision.

It is vital that the Government also sets out a vision for what is to be achieved through new and existing trading arrangements, particularly in relation to food standards. It is unfortunate the tendency to focus only on food prices, and the calls in some quarters to accelerate a move towards de-regulation.

For food, good regulation is vital for standards, public health, quality and consumer confidence – helping to avoid the frequent scandals and disease outbreaks that too easily undermine the food industry and consumer confidence. The consumer price of food is of course important, but a race to agree trade deals only on the basis of reducing food prices will be counter-productive.

It is also very important that the UK sets how the roles played by EU bodies such as EFSA⁹³ and the Commission are fulfilled. As an example EFSA approve health and nutrition claims for use with foods and this process is under question for the UK post-Brexit. (EFSA have assessed thousands of claims since the regulation came into force). The government must also consider factors such as food fraud and animal health and welfare. It is imperative that the government ensures effective national and international incident management liaison measures are in place for consumer goods and food, as currently covered by CE marking of products and systems such as the EU Rapid Alert System for Food and Feed (RASFF⁹⁴)

92. https://ec.europa.eu/food/safety/international_affairs/standard_setting_bodies/codex_en

93. <http://www.efsa.europa.eu/>

94. https://ec.europa.eu/food/safety/rasff_en

Food Standards

Findings

- CTSI calls for the government to ensure that the Food Standards Agency Regulating our Future programme produces a regulatory framework that best utilises the food standards resources available and that additional targeted resources are given to Local Authorities to ensure that Trading Standards services can deliver support for food businesses and effective regulation to provide consumer confidence.
- The government must ensure that there are appropriate liaison arrangements with appropriate EU bodies such as EFSA and systems such as RASFF to ensure that the UK food standards controls can be maintained. Alternatively the Government will need to provide domestic resources to carry out these functions.
- There is a huge opportunity post-Brexit to clarify and simplify the various national bodies' responsibilities for food policy, enforcement, standards and legislation - as well as those for health and nutrition claims. The currently overlapping and confusing framework impedes a solid regulatory system just at the time when such a platform is required for new deals with the EU and other trading partners. This situation has UK wide implications for food policy and regulation due to a lack of certainty over the repatriation of devolved powers. We call on the government to provide clarity on UK food policy for the benefit of businesses, regulators and consumers.

See [Appendix 7 \(p92\)](#) for a list of the main Directives and Regulations in this area

Intellectual Property (IP)

The EU Withdrawal Impact on IP in the UK



Gavin Terry
CTSI Lead Officer for Intellectual Property

Background

Intellectual property⁹⁵ rights recognise that creations, unique names, designs, inventions, productions and written works have value. Collectively known as intellectual property (IP), the law protects the owner or creator of this property from unauthorised or illegal use. This is done primarily through the assertion of copyright, patent, design or trademark rights.

One pillar of the EU single market has been the aim of frictionless transfer of goods between borders and in order to do so EU law has sought to harmonise IP laws to ensure non-tariff barriers are removed. Membership of the EU has had a significant impact on the UK framework IP rights.

Intellectual Property will be an important part of the Brexit negotiations as IP is a vital element of world trade. Intellectual Property rights are territorial in nature, UK rights afford protection within the UK whilst European rights afford protection across the European community and enable the free movement of goods.

In addition, the UK are signatories to the [Madrid Agreements](#) (which create the International trade mark registration system) and the [Berne Convention](#) (the International copyright system), and the [Hague System](#) (the international design registration system) which create the international systems of protection.

In terms of other important IP organisations:

- [EUIPO, the European Intellectual Property Office](#), administers the European trade mark and design registration systems.
- [WIPO, the World Intellectual Property Organisation](#), administers the international trade mark and design registration systems.

Historically, IP rights were used as a barrier to international trade and as a form of protectionism, trade levies or import duties being applied to foreign imports in order to protect home markets. One way this was achieved was through import duties to foreign patented or trademarked goods.

95. <https://www.gov.uk/intellectual-property-an-overview>

In the twentieth and twenty first centuries there has been a shift towards a more global trading environment, facilitated by access to foreign markets as opposed to the older more protectionist stance. In this context the UK systems of IP protection exist in parallel with the European and international systems of IP protection and must retain compatibility with these systems to ensure that the UK can trade on a global basis. The pre Brexit claim, during the referendum campaign, that a ‘no’ vote would see an end those bureaucratic European trade marks, displayed a lack of understanding of contemporary global trade.

World Trade Organisation (WTO)

The WTO establishes minimum standards for the regulation by national governments of many forms of intellectual property in order to facilitate world trade. The WTO is made up of representatives of the member governments, it is the only global international organisation dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments to help producers of goods and services, exporters, and importers conduct their business. IP is an important element of the rules of world trade as is [TRIPS - The Agreement on Trade-Related Aspects of Intellectual Property Rights](#) as the WTO’s principle agreement on IP.

EU IP and Trading Standards Enforcement

In terms of the EU legal framework in IP the Trade Mark Directive⁹⁶ was the first major provision implemented in the UK through the Trade Marks Act 1994.⁹⁷ There was also the Trade Mark Regulation⁹⁸ giving the legal framework for the establishment of the [Office for Harmonisation in the Internal Market \(OHIM\)](#) which became EUIPO Community Trade Mark system (EUTMs or CTMs).

In order to better harmonise and streamline trade mark laws in member states, the EU has reviewed the current system and has adopted a new Trade Mark Directive⁹⁹ (to be implemented by 14th January 2019) and a new Trade Mark Regulation¹⁰⁰ (which came into force on the 23rd March 2016). The new Directive expands the definition of a “trade mark, highlights the requirements in accuracy for trade mark classification and covers issues such as invalidity and infringement.

In terms of trading standards enforcement, Local Authorities have a statutory duty to enforce the criminal sections of the Trade Marks Act 1994, the Copyright, Designs and Patents Act 1988 and also have enforcement powers in relation to the Registered Designs Act 1949.

Therefore trading standards has a key role in the UK’s IP system.

96. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0104:en:HTML>

97. <https://www.legislation.gov.uk/ukpga/1994/26/contents>

98. <http://euipo.europa.eu/en/mark/aspects/reg/reg4094.htm>

99. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2436>

100. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2424>

Trademarks

The UK are currently members of the European and international trade mark registration systems. The implications of Brexit for trade mark owners cut across the following areas:

- Status of existing European Union Trade Marks (EUTM)
- How to get RTM protection in Europe post-Brexit
- Exhaustion of rights
- Importation and export

Status

EUTMs will still have protection in the UK, until at least 29th March 2019, under the existing arrangements. The current government position, subject to agreement of the Withdrawal Agreement, will be to continue to protect all existing registered European Union Trade Marks (CTMs) as the leaves the EU by creating comparable UK rights, which will be granted automatically and free-of-charge. The government has been clear that the Withdrawal Act and any further secondary legislation made under the Act will not aim to make major changes to policy or legislation beyond those which are necessary to ensure the law continues to work properly on day one.¹⁰¹

European Protection Post-Brexit

Post Brexit, the UK will no longer be members of the European system, however, businesses will still be able to register EUTMs by means of application to the EUIPO, in order to gain protection in the remaining 27 member states.

Alternatively, a UK business could make an application to WIPO for an international trade mark, designating the EU as a protected territory, this would also provide protection in the remaining 27 member states.

Exhaustion of Rights

The principle of first marketing, or exhaustion of protection, currently applies within European Economic Area.¹⁰² Before joining the EU the UK followed the principle of international exhaustion of rights which mean the onward sale or supply of goods could not be stopped by the rights owner if the goods were originally placed on the market with their consent.

In their position paper on intellectual property, the Article 50 negotiating team had this to say on exhaustion of rights. [See EU Position Paper on Intellectual Property post-Brexit](#)

Exhaustion of rights. Rights conferred by intellectual property rights which were exhausted in the European Union territory before the withdrawal date should, after that date, remain exhausted in both the EU27 territory and in the UK territory. The conditions for exhaustion concerning each intellectual property right should be those defined by Union law. For instance, in relation to trade marks, the rights conferred by the trade mark to prohibit its use in relation to a good are exhausted when such good (to which the trade mark is related) was put on the market in the Union before the withdrawal date by the proprietor of the trade mark or with the proprietor's consent.

101. <https://www.gov.uk/government/news/ip-and-brexit-the-facts>

102. <https://www.legislation.gov.uk/ukpga/1994/26/section/12>

The current government position on exhaustion is that the UK looks forward to exploring arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders and the UK is ready to discuss issues the EU wishes to raise in the negotiations on our future relationship, including exhaustion of IP rights.¹⁰³

Importation and Exports

The Trade Marks Act 1994 has no offences for unauthorised importation and exportation of infringing goods but it is a civil Infringement to Import or Export infringing goods.¹⁰⁴ The lack of criminal offences for importation and exportation represents a weakness in the UK system of IP protection and could act as an incentive to criminals involved the trade in counterfeit goods. The UK's Intellectual Property Office (IPO) will be consulting users of the trade mark system and are keen to hear the views of stakeholders.

Designs

The UK are currently members of the European design registration system but not the international design registration system. The implications of Brexit for registered design owners are:

- Status of existing European registered design owners
- How to get RTM protection in Europe post-Brexit
- Exhaustion of rights
- Importation and export

Status

Registered Community Designs will still have protection in the UK until at least 29th March 2019. The current government position, subject to agreement of the Withdrawal Agreement, will be to continue to protect all existing Registered Community Designs, and Unregistered Community Designs as UK the leaves the EU by creating comparable UK rights, which will be granted automatically and free-of-charge. The government has been clear that the Withdrawal Act and any further secondary legislation made under the Act will not aim to make major changes to policy or legislation beyond those which are necessary to ensure the law continues to work properly on day one.¹⁰⁵

European Design Protection Post-Brexit

Post Brexit, the UK will no longer be members of the European system, however, businesses will still be able to register community designs by means of application to the EUIPO, in order to gain protection in the remaining 27 member states. Alternatively, a UK business could make an application to WIPO for registration under the international design system as the UK joined the Hague System on 13th June 2018.

Exhaustion of Rights

The principle of first marketing, or exhaustion of protection, in relation to registered community designs applies within European Economic Area.¹⁰⁶ See EU position paper on IP Exhaustion of Rights (above).

The current government position on exhaustion is that the UK looks forward to exploring arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders and the UK is ready to discuss issues the EU wishes to raise in the negotiations on our future relationship, including exhaustion of IP rights.¹⁰⁷

103. <https://www.gov.uk/government/news/ip-and-brexit-the-facts>

104. <https://www.legislation.gov.uk/ukpga/1994/26/section/10>

105. <https://www.gov.uk/government/news/ip-and-brexit-the-facts>

106. <https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/88>

107. <https://www.gov.uk/government/news/ip-and-brexit-the-facts>

Importation and Exports

In relation to Registered Designs it is both a civil infringement and a criminal offence to Import or export infringing goods¹⁰⁸ a position which is in stark contrast to that for registered trademarks.

Scope of Protection Unregistered Design Rights

Currently, the EU Unregistered design right protects both 2D and 3D designs for 3 years from creation or first marketing, however the UK Unregistered design right only protects 3D designs. Under the existing UK law, 2D designs would lose protection upon Brexit.

The current government position on designs is that In any scenario, including one which does not involve a deal between the UK and the EU, the government will seek to minimise disruption for business and to provide for a smooth transition. For existing RCDs this means that in all scenarios, the government will aim to ensure continuity of protection and avoid the loss of those rights. In doing so, our overall objective is to provide maximum clarity and legal certainty for right holders and third parties. The government is looking at various options and is discussing the best way forward with users of the system.¹⁰⁹

Unregistered designs, where the UK does not have existing domestic legislation to protect certain types of rights, it will establish new schemes, which will preserve the full scope of the unregistered Community design right in the UK.¹¹⁰

Copyright

The UK are signatories to the Berne Convention which is the international agreement which establishes the international system of copyright protection. Copyright is an unregistered right, also known as an automatic right and as such there is no UK or European registration system. However, there are still implications for rights owner. The implications of Brexit for copyright owners are:

- Exhaustion of rights
- Importation and export

Exhaustion

The principle of first marketing, or exhaustion of protection, currently applies within European Economic Area.¹¹¹ See EU position paper on IP Exhaustion of Rights (above). The current government position on exhaustion is that the UK looks forward to exploring arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders and the UK is ready to discuss issues the EU wishes to raise in the negotiations on our future relationship, including exhaustion of IP rights.¹¹²

108. <https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/88/crossheading/offences>

109. <https://www.gov.uk/government/news/ip-and-brexit-the-facts>

110. *ibid*

111. <https://www.legislation.gov.uk/ukpga/1988/48/section/18>

112. <https://www.gov.uk/government/news/ip-and-brexit-the-facts>

Importation and Exports

In relation to copyright it is both a civil infringement¹¹³ and a criminal offence to Import infringing goods, but not to export infringing goods.¹¹⁴ This position sits halfway between the protection afforded registered trademarks and designs.

The current government position on copyright is that when the UK leaves the EU, certain cross-border copyright mechanisms will no longer work in the way they are intended.

For our future relationship with the EU, the UK looks forward to exploring arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders. Such arrangements will all require negotiation with the EU.¹¹⁵

Patents

The [European Patent Convention \(EPC\)](#) establishes the [European Patent Office \(EPO\)](#) and is the body which grants European Patents. The EPO is NOT an EU or Council of Europe body but is established under the EPC. The UK is one of 37 countries who are signatories to the Convention. It is therefore questionable whether this will be affected in any way by the UK leaving the EU.

The UK's exit from the EU will not affect the current European patent system, which is governed by the (non-EU) European Patent Convention. The UK ratified the Unified Patent Court Agreement (UPCA) on 26 April 2018. Our ratification brings the international court one step closer to reality. The UK intends to stay in the Unified Patent Court and unitary patent system after we leave the EU.¹¹⁶

Border Controls

The European Customs Union¹¹⁷ currently establishes the customs law across Europe, established in EU Regulation 608/2013, incorporated into UK law by Customs and Excise Management Act 1979. Amongst other things the regulation concerns customs enforcement of intellectual property rights (IPR) and facilitates free movement of goods and enables UK plc to be competitive. As outlined above, the principle of exhaustion allows free movement of goods across Europe.

The key issue for Brexit in relation to customs is the question as to whether there is the introduction of a hard border between the UK and the rest of Europe or not. The current government has stated as a policy position that there will be no hard border between Northern Ireland and Ireland in order to maintain the terms of the Good Friday peace agreement. This issue is particularly relevant in relation to the solutions for customs checks at the border between the north and the south. Under current arrangements a rights holder cannot oppose the importation of their goods if in free circulation in Europe, a position which would be in conflict with the concept of a hard border.

113. <https://www.legislation.gov.uk/ukpga/1988/48/section/22>

114. <https://www.legislation.gov.uk/ukpga/1988/48/section/107>

115. <https://www.gov.uk/government/news/ip-and-brexit-the-facts>

116. *ibid*

117. <https://www.instituteforgovernment.org.uk/blog/leaving-eu-customs-union-what-involved>

Conclusion

IP rights are a central part of the modern global market place and the UK will need a 'fit for purpose' IP legal framework to be competitive. As the legal protections, networks and laws have been increasingly harmonised and aggregated at the EU level, exiting the European Union will have several implications for Intellectual Property rights owners. The important issues can be summarised as:

- Status of existing European rights
- How to get protection in Europe post-Brexit
- Exhaustion of rights – free movement of goods
- Importation and export – infringement and offences
- Scope of protection – EU unregistered design right

The government has stated that it will seek to leave the customs union and this raises questions about the importation and exportation of goods between the EU and the UK as a '3rd country'. The imposition of a hard border seems unlikely but requires clarity. There is a need to address the anomalies between rights in relation to infringements and criminal offences for importing or exporting infringing goods. Such confusion, from a trading standards perspective, undermines enforcement capabilities and benefits criminals that would seek to exploit weaknesses in the framework.

Intellectual Property (IP)

Findings

- CTSI calls for the government to resolve the anomalies in the current UK system of IP enforcement where there are no offences for the importation or exportation of trade mark infringing goods. Post-Brexit, the status of the UK as a 3rd country raises many questions about the extent to which imports of trade mark infringing goods can be enforced. The UK should not become a target for counterfeit goods from the EU or from any other new trading bloc.
- Brexit creates an urgent need for clarification on issues relating to exhaustion of IP rights. If the UK ceases to be part of the EEA upon Brexit, under current UK law, exhaustion of trade mark rights would continue within the EEA and this could put UK businesses and rights owners at a commercial disadvantage.
- Brexit provides a unique opportunity to examine and adapt UK IP laws and systems. We need an IP framework that minimises the costs of divergence from the EU; one that is fit to meet the challenges of the increasingly global and digital market – and one that can tackle the vast trade in counterfeit goods that harms consumers and causes so much damage to legitimate businesses and the economy.

See Appendix 8 (p95) for a list of the main Directives and Regulations in this area

Travel Law

The EU Withdrawal Impact on Travel



Bruce Treloar
CTSI Lead Officer for Travel

Background

As much as any other area of UK consumer spending, the travel or holiday sector has been heavily affected by membership of the European Union. A combination of relatively lower travel costs, a rise in budget airlines and increases in disposable incomes has led to UK consumers travelling abroad in their millions every year. In 2016 for example, UK consumers spent £43.8 billion on visits overseas - an increase of 12% on 2015.¹¹⁸

The vast majority of these holidays were to Spain, the Mediterranean and other EU destinations.¹¹⁹ A holiday is a high value and important consumer spend often targeted by emotive and idealistic marketing. Accordingly a holiday purchase is a valued personal experience and an important one for consumers. Such a market necessitates careful regulation and consumers require clear protections when things go wrong.

Acknowledging this, EU law has been very influential with key directives and regulations protecting consumers in areas such as package travel, timeshare, contractual rights and compensation for flight delays and cancellations. These rights have supplemented protections offered from international agreements and conventions. It is perhaps when going on holiday that consumers most become aware of the consumer protections offered by membership of the EU.

Package holidays, where flights, accommodation and other prearranged aspects of the excursion are combined in the contract remain the most popular types purchased.¹²⁰ The EU first produced its first Package Travel Directive in this area in 1992¹²¹, implemented in the UK by the Package Travel, Package Holidays and Package Tours Regulations (PTRs) 1992.¹²²

The PTRs created operator obligations in relation to the provision of accurate information in brochures, pre-contract and holiday information, and clarity as to the rights of withdrawal and cancellation between consumers and operators. Significantly, failures in the accuracy of brochures can invoke criminal liability for the operator. It has been the responsibility of local authority trading standards services to enforce the provisions of the PTRs.

118. <https://www.abta.com/industry-zone/reports-and-publications/abta-travel-trends-reports/travel-trends-2018>

119. *ibid*

120. https://abta.com/assets/uploads/general/ABTA_Travel_Trends_Report_2018.pdf

121. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0314:en:HTML>

122. <http://www.legislation.gov.uk/ukxi/1992/3288/contents/made>

Despite the enduring popularity of the package holiday, tastes in holidays have been evolving. The prevalence of low cost flights and experiential holiday tastes has seen a rise in consumers personalising their holiday, buying aspects of them in separate contracts. Mix and match options have been facilitated by technological changes and the rise in the collaborative economy has also opened up consumer choice to share properties through AirBnB and other platforms.

Against this backdrop in change the EU has developed a second Package Travel Directive¹²³ (PTD2) which was implemented on the 1st July 2018. Just as the UK is leaving, the legal framework applied by the EU to the package travel sector underwent significant changes.

Package Travel Directive ‘2’ (PTD2)

As the UK are still members of the EU before the end of the Directive’s implementation period the new rules must be in place by July 2018. This will cause considerable change to the old regime and Brexit may be a way of ensuring that certain elements can be clarified and perhaps even removed from the proposals. As the UK will have control to change implementing Regulations after Brexit it will offer opportunities to improve the position of consumers, traders and regulators - only if some elements are reviewed as proposed.

Cross-border trading will be affected in various ways, not all of them positive. In summary, there are several major issues;

Insolvency Protections

The first, and major problem for consumers and regulators is the EU insistence that all member states should “recognise” each other’s insolvency protection regime. This was one of the first EU goals making mutual recognition of other member states’ insolvency protection arrangements a key element of PTD2. Currently the PTRs have “place of sale” as the location where insolvency protection should be provided. However, the PTD2 will change regulation to “place of establishment”, accompanied by requirements stipulating that member states must have adequate insolvency protection systems in place if they target UK consumers. This is a potential problem as there is no standard insolvency protection system which applies across the EU. So, if businesses in one of the other 27 member states targets UK consumers they only have to ensure they comply with the insolvency protection regime in that particular country.

Inadequate EU Protection

This will be a significant source of confusion for consumers and unless contact points are available across the EU to check on member states’ systems. In essence the huge consumer losses after the collapse of a non-UK tour operator could reoccur – such as that when LowCostHolidays went bust in 2012¹²⁴. The company had moved to Spain and complied with Spanish insolvency protection but this system had only a parri passu, or pro-rata method of compensating creditors, contrary to the full refund of all costs required in the UK. LowCostHolidays still targeted UK consumers and complied fully with the Spanish insolvency protection measures. (In the UK consumers would be refunded in full if the operator collapsed and would be repatriated where necessary). The UK administrators of LowCostTravel stated that the company had collapsed with outstanding bookings of an estimated £50 million each receiving less than £10 in compensation. This was because the insolvency protection measures only required a small “bond” and consumers had a share of this if the company collapsed. LowCostHolidays had 140,000 customers when it ceased trading, 77,000 of which were British.

¹²³. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302>

¹²⁴. <http://www.independent.co.uk/travel/news-and-advice/lowcostholidays-low-cost-holidays-administration-bust-compensation-refund-money-back-advice-a7145831.html>

It is crucial therefore that details of EU insolvency protection schemes are available from a central contact point, especially after Brexit. CTSI has approached the association of Chief Trading Standards Officers (ACTSO) during the consultation period and the indication was that NTS (National Trading Standards) may be the preferred choice. This would mean teams can be used to undertake the trading standards functions that are better delivered regionally or nationally. Similarly, for Organisers and Traders not established in the UK or EU, individual trading standards services would not have the power to take enforcement action, although, again, use of NTS could be a positive way to approach this problem.

To make enforcement a positive, *proactive* responsibility after Brexit, CTSI proposes the introduction of a Register of all package holiday operators and a separate Register of all Linked Travel Arrangement operators, much in the same way that the [CAA](#) require of their licenced [ATOL](#) holders. This should be compulsory, not voluntary, and the operators should pay a nominal fee to an Independent Body, e.g. National Trading Standards, (NTS), to be included on these registers. CTSI has ensured that NTS would be able to provide this subject to suitable funding.

Linked Travel Arrangements

Linked Travel Arrangements ¹²⁵ (LTAs) are being introduced and will be a new concept to UK holiday and travel law. They are looser commercial connections than that of a package. It is CTSI's view that consumers must know what they are committing to buying and how they will be protected against the failure of a trader who is involved in providing their LTA. Also for LTAs not including a flight it should be made clear to consumers that it will only provide protection if the facilitator (the person who organised the LTA) fails. LTA holidays offer less protection to customers with consequently fewer obligations on the travel company offering them. For example “website click-throughs” will be caught in the new rules showing just how complicated the new situation might be.

Also, where a consumer purchases a flight and are then provided with a link to an accommodation website, different rules apply before they purchase. If, when a consumer reaches the other website for payment details and their email address and name is already on the booking form - this will be ‘a package’ with all the protections available. If, when reaching the linked website there are no details on the booking form, it becomes a ‘linked travel arrangement’ with only insolvency protection provided. Leaving the EU will perhaps provide an opportunity to reduce consumer confusion by streamlining or removing the LTA concepts from the implementing Regulations.

Timeshare

Timeshare mis-selling was once the scourge of foreign holidays for UK (and other) consumers. Expensive contracts were misrepresented on a large scale to holidaymakers who were perhaps more relaxed and susceptible to buying into the dream of holiday property ownership and sharing. When things went wrong or mis-selling was discovered, consumers then found themselves unable to extricate themselves from the obligations through inadequate protections and limited access to redress. The first protections were implemented in the UK through the Timeshare Act 1992 ¹²⁶ and the EU then passed Timeshare Directive in 1994. ¹²⁷ A new Directive was passed in 2010 ¹²⁸ and implemented through the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations (TCRs) 2010 ¹²⁹

125. <http://www.travelweekly.co.uk/articles/56210/analysis-your-guide-to-packages-and-linked-travel-arrangements>

126. https://www.legislation.gov.uk/ukpga/1992/35/pdfs/ukpga_19920035_en.pdf

127. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0047:EN:HTML>

128. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32008L0122>

129. <http://www.legislation.gov.uk/ukSI/2010/2960/contents/made>

Of significance in the TCRs is the extension of the definitions to any holiday accommodation contract (timeshare or long term holiday product) including resale and exchanges. This effectively put an end to a new type of mis-selling of what were known as 'holiday clubs'. Consumers are now protected by the right to key information, a cooling off period of 14 days and a ban on taking deposits up front with various civil and criminal sanctions against traders who breach the Regulations. Leaving the EU will not force an immediate repeal of the TCRs but there exists significant questions in relation to the EU wide civil justice system (post-Brexit) and to what extent UK consumers can enforce their rights abroad.

Compensation for Flight Cancellation and Delay

With the expansion in low cost travel with budget airlines across the EU there has been an increasing willingness for UK consumers to fly domestically and abroad. However, busy skies and airports can make scheduled flights more susceptible to delays and cancellations with significant consumer losses as a consequence. Delays and cancellations can also mean they lose out on subsequent aspects of their trip such as connecting travel plans or hotel bookings.

EU Regulation 261/2004¹³⁰ on rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights - has become an increasingly important protection for UK consumers travelling throughout the EU. The rules apply to flights leaving EU airports by any carrier¹³¹ or arriving into an EU airport with an EU carrier. The Regulation applies to issues with denied boarding, cancellation and delay. Where flights are cancelled consumers have a variety of compensations available depending on the timescales and circumstances.

Perhaps of more frequent occurrence and importance is the consumer's right to compensation for delays. There is a sliding scale of requirements for this depending on the length of the delay and the distance to be travelled with €250 for flights travelling up to 1,500km; €400 for EU flights over 1,500km or flights between 1,500km and 3,500km; up to a maximum of €600 (approx. £530) for flights over 3,500km.

Airlines have been known to challenge the application of the Regulation and there have been hard won cases in this regard. The compensation could not be awarded where the cancellations were due to 'extraordinary circumstances' and airlines have tried to argue before the ECJ, unsuccessfully, that technical difficulties with the aircraft count as such.

The importance of adequate protections for cancellation was never better illustrated than the recent issues with Ryanair having 'messed up' their rota for pilots' holidays.¹³² This led them having to cancel many thousands of flights, reportedly facing 700,000 consumer claims for compensation and losses in the region of €25million.¹³³

Regulation 261/2004 is an example of a directly applicable Regulation that is not easily transposed under the EU Withdrawal Bill as it requires reciprocal agreement with other EU member states. Brexit offers many risks to UK travelers not only in terms of Regulation 261/2004, but in relation to the common access of UK and EU carriers to their respective territories and UK inclusion in the wider Common Aviation Area agreements.¹³⁴

130. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0261>

131. Including EFTA and EEA countries such as Norway, Switzerland, Lichtenstein and Iceland

132. <http://www.bbc.co.uk/news/business-41298931>

133. <https://www.telegraph.co.uk/business/2018/01/31/ryanair-creates-compensation-team-pay-customers-faster-rivals/>

134. https://ec.europa.eu/transport/modes/air/international_aviation/external_aviation_policy/neighbourhood_en

Mobile Roaming Charges

Travelers to EU countries were often disappointed to find that the charges for using their mobile phones abroad had increased considerably. These so called ‘roaming charges’ were often very expensive and justified by EU telecoms companies as the extra costs in transferring customers between respective member state networks.

However, an EU initiative to change telecoms rules reached agreement and from June 2017 roaming charges were abolished,¹³⁵ meaning consumers paid exactly the same tariffs to use their mobile technologies in EU territories as they did with their domestic telecoms suppliers. Part of the Connected Continent¹³⁶ and as a move towards a single digital market,¹³⁷ such provisions have become very important for UK holidaymakers.

The government has set an ambitious target of ‘no less protection’ for consumers as the UK leaves the EU. Nevertheless, the ambition to leave the EU digital single market and questions over transposed regulations requiring reciprocal agreement with the remaining EU 27 seem to provide significant barriers in reaching that goal. Valued and important consumer protections such as compensation for flight delays and free mobile roaming charges have not yet been secured and it remains unclear whether they can be retained in their current form.

Conclusion

Just as one of the founding aims of the EU single market has been the free movement of people, so too have UK consumers been visiting other EU member states in their millions to enjoy holidays, city breaks and generally explore new countries and cultures.

The EU has dominated the consumer protections offered to UK consumers with the first package travel directive being introduced as far back as 1992. These protections have been extended and widened as the market for travel became increasingly liberal in areas such as flight compensation, timeshare rights and mobile roaming charges.

It remains questionable to what extent these important protections can be retained after Brexit. The current difficulties in adopting the second package travel directive aside, there are many aspects of a consumer’s holiday and travel experience that cannot be unilaterally protected by the UK government umbrella when it is no longer part of the EU.

¹³⁵. http://europa.eu/rapid/press-release_IP-15-5927_en.htm

¹³⁶. <https://ec.europa.eu/digital-single-market/en/connected-continent-single-telecom-market-growth-jobs>

¹³⁷. https://ec.europa.eu/commission/priorities/digital-single-market_en

Travel Law

Findings

- The framework for protecting UK citizens who go abroad needs to reflect modern tastes for travel that go beyond the traditional package holiday. While we welcome the extension of protections to linked travel arrangements under the new package travel directive - they need to be clearer and simpler in order for businesses, regulators and above all, consumers, to understand when they are protected and where the obligations lie.
- There is a growing and urgent need to clarify the status of EU agreements for UK travellers. More than any other consumer sector there will soon be millions of UK consumer contracts for holidays and trips to the EU planned that come into effect after March 2019. In order to make informed choices consumers need to know now whether their flights will take place and whether they will be protected and compensated for cancellations and delays.
- To make enforcement a positive, proactive responsibility after Brexit, CTSI proposes the introduction of a compulsory register of all package holiday operators and a separate one for all linked travel arrangement operators. Operators should pay a nominal fee to an Independent Body, e.g. National Trading Standards, (NTS), to be included on these registers.
- The new package travel directive requirements for mutual recognition of EU insolvency schemes presents a huge risk to UK travellers. With no EU minimum standard there remains a real risk that UK consumers could lose out significantly when a foreign provider goes bust. There could also be a race to the bottom with operators moving to member states with cheaper and lower insolvency protection. The Government has an obligation post-Brexit to protect UK consumers by ensuring domestic protections are always available and that UK consumers are fully aware of the risks posed by inadequate foreign insolvency schemes.

See [Appendix 9 \(p96\)](#) for a list of the main Directives and Regulations in this area

Cross-border Access to Justice

The EU Withdrawal Impact on on cross-border civil law for UK consumers



Elisabetta Sciallis

CTSI Lead Officer for Cross-border Justice/Advice

Background

Whilst trying to guess the precise shape of cross-border consumer legislation post-Brexit is a somewhat speculative exercise in legal forecasting, there are equally pressing issues concerning the procedures by which we will continue to uphold consumer law across any new border formed between the UK and EU. In the short term, EU consumer law is likely to be transposed into the UK law book providing a respite during the transition period. There remains considerable uncertainty over the future shape of formal relationships and mechanisms governing the day to day workings between UK consumer protection entities and their counterpart EU institutions. Some of these relationships will probably need to be negotiated afresh, and represent a significant risk going forward. This scoping paper seeks to consider these issues in more detail, via consideration of the three framing questions outlined below:

- What are the mechanisms which protect consumers in cross-border transaction within the EU?
- What is the likely effect of Brexit in the short term and in the long term on these mechanisms?
- What can be done to safeguard consumer rights during the transition period and beyond?

Cross-border Consumer Transactions - Short and Long Term

The UK's existing consumer protection regime is a complex combination of national and EU law. Consumer issues have been an important issue of debate within the EU since the mid-seventies. The fundamentals of EU legislation regarding consumer protection standards were laid in 1975 when the EU Council identified a set of five key objectives¹³⁸ for consumer protection: the right to protection of health and safety, the right to protection of economic interests, the right to claim for damages, the right to an education, and the right to legal representation (or the right otherwise to be heard).

Since this founding programme, consumer rights have been developed via a series of EU directives (particular legal instruments predominantly used by the EU in field of consumer protection which do not apply directly but need to be transposed into the national laws of each EU Member State). At present, around 90 EU directives cover consumer protection issues.¹³⁹ It follows that many of the UK's consumer rights are based on these EU Directives. There is a general consensus that at this point, to ensure a smooth transition on the day after Brexit, most of the relevant EU legislation would be copied across into domestic UK law in order to minimise disruption to consumers and businesses. EU consumer law will therefore continue to apply in UK post-Brexit, at least in the short-term.

¹³⁸. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31981Y0603%2801%29>

¹³⁹. J. Valant, *Consumer protection in the EU: Policy overview, EPRS in-depth analysis, September 2015.*

In the longer term, it is difficult to foresee the impacts of withdrawal on consumer rights without knowing what our transitional or future relationship with the EU will look like. Much will depend on the agreement the UK reaches with the EU and, crucially, the level of access the UK negotiates given that the latest White Paper¹⁴⁰ details the UK's proposal to leave the European Single Market. There are a number of commentaries examining possible Brexit outcomes both from UK and EU perspectives. Common scenarios consider the UK: adopting a European Economic Area (EEA) model, similar to Iceland, Lichtenstein and Norway; resorting to World Trade Organisation (WTO) rules or forging a 'tailor-made agreement' going forward. In these regards, there remains considerable uncertainty and speculation. Regardless of the model which is ultimately adopted, there is a critical importance to consider not only the potential impacts on primary consumer law, but to consider impacts on the mechanics of applying consumer law across the border. In other words, how to go about ensuring the preservation of a common set of rules, schemes and organisations to govern interactions between legal systems which are significant for the stability and harmonisation of substantive rights?

In particular there is the work of: the European Consumer Network (ECC-net); Online Dispute Resolution platform (ODR) contact point; the European Consumer Centre for Services (ECCS); the Judicial Cooperation in Civil Matters (JCCM); the consumer protection co-operation (CPC); the Solvit and Fin-net networks; whose undertakings combine to make a substantial contribution towards these goals. Two of the above: a consumer facing network (ECC-net) and a legal framework (JCCM) are both chosen as examples of key schemes and organisations critical for the continued protection of cross-border consumer rights.

The European Consumer Centre ECC-Net and Brexit Impacts on the UK ECC

The UK European Consumer Centre is part of the European Consumer Centre Network (ECC-Net). The network consists of 30 European Consumer Centres (in all 28 Member States, including Iceland and Norway), which work together towards a common goal to inform and assist consumers in the resolution of cross-border complaints and disputes.

The UK ECC provides free and confidential advice and support to UK consumers who have a dispute with a trader based in another European country. Particular duties performed include: analysis of consumer complaints and provision of legal advice; liaising with traders in order to restore communication and resolve cross-border complaints amicably; informing consumers of alternative ways to deal with their complaints (such as using Alternative Dispute Resolution¹⁴¹ schemes or the European Small Claims Procedure¹⁴²) and reminding business of their obligations under consumer protection legislation. The ECC-network deals with a variety of cross-border topics, including shopping online, buying goods and services around Europe, passengers' rights, timeshare and related products, car rental, package travel, internet auctions and scams).

In circumstances where UK ECC cannot directly help with issues that are beyond our remit, consumers are signposted to the most appropriate organisations to deal with the matter. Furthermore, UK ECC proactively seeks to partner with other UK consumer stakeholders, in order to share market intelligence and multi-agency resolutions to particular cases. The UK ECC has also contributed to a number of joint-projects with other ECC-net centres concerning burgeoning consumer issues, which are published on the Europa websites.

140. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf

141. <https://www.gov.uk/government/publications/alternative-dispute-resolution-for-consumers/alternative-dispute-resolution-for-consumers>

142. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007R0861>

Along with the UK ECC there is its sister organisation, European Consumer Centre for Services (ECCS), which deals with the provision of pre-shopping information about purchasing goods and services overseas. The UK ECC also recently launched a new service acting as the UK's Online Dispute Resolution (ODR) contact point in order to facilitate the operation of the EU funded ODR platform. The ODR platform is an interactive website created by the EU Commission where EU consumers and traders can resolve their disputes concerning online sales of goods and services.

The UK ECC has been active for 11 years and has been one of the busiest centres in the network in terms of case volumes. UK ECC has made a significant contribution in creating confidence for consumers and traders to enter into contracts for goods and services online as well as face to face across borders. UK citizens can now take certain rights for granted when travelling abroad or shopping online from other EU countries. There have been a number of key success factors as a cross-border dispute resolution centre, within the ECC network:

1. A clear mandate from the EU and our UK government, and a set of common goals held between the ECC-net centres to do their best to resolve consumer cross-border disputes for the good of the internal market
2. Harmonised legislation, operational rules, systems (such as the shared ODR platform and ECC-Net databases) and procedures for consumer rights, and cross-border enforcement.
3. Most importantly the UK ECC has built strong relationships with other European organisations beyond our counterpart ECC centres, including the civil judicial network.

As we transition through Brexit, it is not clear how many of these key factors will weather the storm and how the UK ECC can help maintain their clients' continued access to cross-border justice and advice. Whilst, on Brexit day, a snapshot of EU law will be transposed into UK law, over time, as divergence occurs, a number of uncertainties could begin to impact confidence in cross-border trade which will impact on how the UK ECC advises its customers:

1. How can EU customers, post-Brexit, be certain they will be afforded comparable levels of consumer protection when purchasing goods and services from the UK as they currently enjoy?
2. What are the rules to determine which country's courts will hear a civil or commercial case arising from cross-border issues (jurisdiction)?
3. Which country's law will apply (applicable law)?
4. How will we make sure a judgment obtained in one country will be recognised and enforced in another (recognition and enforcement)?

Regarding question 1), this issue presents a significant opportunity for the UK ECC to leverage its expertise and linkages to become a key intermediary and facilitator of consumer rights between the UK legislator and relevant bodies and their EU counterparts, both within the transition period and beyond. I foresee the importance of this role increasing as the effects of divergence become more apparent. This new UK ECC role would be an expansion of its current position by providing policy guidance and legislative interfaces alongside direct redress for consumers. There is also scope for the UK ECC to act more broadly, as the go-between not only for UK/EU cases but to deal with consumer issues between the EU and those further afield. For example, through CTSI, the UK ECC host institution, UK ECC has already started dealing with UK cross-border disputes where one of the parties is based in Japan, South Korea and New Zealand.

Concerning questions 2) to 4), the following explores the potential impacts of Brexit on Judicial Cooperation in Civil Matters.

Brexit Impacts on the Judicial Cooperation in Civil Matters (JCCM)

The JCCM is a legal framework that exists between EU Member States and is comprised of a number of acts that governs the interaction between different legal systems in cross-border situations. This framework provides rules to determine which country's courts will hear a civil and commercial law case concerning cross-border issues (jurisdiction); which country's law will apply (applicable law); and enables a judgment obtained in one country to be recognised and enforced in another (recognition and enforcement). Importantly, the aforementioned EEA model excludes the acts which fall under the JCCM. From the White paper we understand that the UK government considers the JCCM beneficial to both the UK and the EU. This means that when the UK withdraws from the EU, whilst technically we will leave the civil judicial cooperation system, the UK will most likely seek to negotiate and agree a civil judicial cooperation framework which maintains aspects of the JCCM.

Within the EU's system of civil judicial cooperation, the main instruments (related to consumer issues and of importance of the day to day work of the UK ECC) which have been agreed and in which the UK currently participates in are as follows:

- The **Brussels I Recast Regulation** ¹⁴³ – **Brussels I (bis)** – (1215/2012) covers jurisdiction and recognition and enforcement of judgments and applies between EU Member States.
- **Rome I Regulation** ¹⁴⁴ (593/2008) covers applicable law in contracts.
- **Rome II Regulation** ¹⁴⁵ (864/2007) covers applicable law in non-contractual obligations.
- **Insolvency Regulation** (1346/2000 and 2015/848 ¹⁴⁶) covers jurisdictional rules and applicable law and recognition of insolvency proceedings in cross-border insolvencies.
- The **small claims** (861/2007 revised by 2015/2421 ¹⁴⁷), **enforcement order** (805/2004 ¹⁴⁸) and **order for payment** (1896/2006) ¹⁴⁹ **Regulations** facilitate means for obtaining decisions on claims that can be enforced throughout the EU.
- **Mediation Directive** ¹⁵⁰ (2008/52) covers access to alternative dispute resolution and settlement of disputes through the use of mediation in cross-border disputes.
- **European Judicial Network in Civil and Commercial Matters** ¹⁵¹ (2001/470/EC) facilitates cross-border cooperation for judges and practitioners and access to justice for those involved in disputes.

An important question to consider is what options are available if the UK were to lose access to some of the above structures as a result of the Brexit Negotiations? It is understood that there are some remedies offered through the UK's continuing commitment to participation in [The Hague Conference on Private International Law](#) and the [United Nations Commission on International Trade Law \(UNCITRAL\)](#). Similarly, the UK will continue to participate in the 2007 Lugano Convention ¹⁵² which forms the basis for the UK's civil judicial cooperation with Norway, Iceland and Switzerland. The Lugano Convention deals with jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and is based on the Brussels I Regulation before it was recast, so does not reflect many of the improvements made in the recast regulation.

¹⁴³. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF>

¹⁴⁴. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008R0593>

¹⁴⁵. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0040:0049:EN:PDF>

¹⁴⁶. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32015R0848>

¹⁴⁷. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32015R2421>

¹⁴⁸. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:143:0015:0039:EN:PDF>

¹⁴⁹. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006R1896>

¹⁵⁰. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:En:PDF>

¹⁵¹. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001D0470>

¹⁵². <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?redirect=true&treatyId=7481>

There is also the 2005 Convention on Choice of Court Agreements¹⁵³ which aims to ensure the effectiveness of exclusive choice of court agreements between parties to international commercial transactions. It does this by providing rules on jurisdiction, including a requirement on non-chosen courts to cede jurisdiction to a chosen court, and enforcement of any resulting judgment. The 2005 Convention provides an important framework from a commercial perspective, but compared with the Brussels I Recast Regulation for example, its civil and commercial coverage is limited. Beyond these fall-back mechanisms touched upon above, there remains much to negotiate to safeguard Judicial Cooperation post-Brexit, but it is helpful that the White Paper values the Lugano Convention and would seek to build upon the principles established within it.

Conclusion

It is vital that consumers in the EU and the UK to continue to buy from each other's retailers and manufacturers, with the least possible uncertainty concerning routes to redress. For these reasons, the UK needs to retain clear processes for resolving any disputes that arise.

Existing international conventions can provide fall back positions for rules in some areas, but they would not generally provide the more sophisticated and effective interaction, based on mutual trust between legal systems, that currently benefits both EU and UK businesses and consumers. The best outcome for the Brexit talks will be an agreement reflecting our close existing relationship, where undertaking a cross-border case involving UK and EU parties under civil law, wherever it might take place, will be easier, cost effective and more efficient for all parties.

The House of Commons Justice Committee¹⁵⁴ suggests the UK has the intention to incorporate into domestic law the Rome I and II instruments on choice of law and applicable law in contractual and non-contractual matters. This will provide a coherent legal framework for UK and EU businesses to trade and invest with confidence across borders.

Ultimately the market is going to change after Brexit. Already, a business may be reluctant to sign a five-year cross-border contract subject to English law and the jurisdiction of the English courts, if they cannot be certain whether a judgement obtained in 4 years' time from an English court will be easily enforceable in the EU. In a similar vein EU consumers may start to 'price in' uncertainty regarding legal rights attached to cross-border purchases with the UK, favouring EU suppliers with a price premium over UK counterparts solely for peace of mind if things go wrong.

Reciprocal arrangements are critical to the effectiveness of cross-border consumer disputes. Building on the systems already in place or preserving them until newer infrastructures are in place should be at the forefront of any short or long-term considerations. The UK should seek to play a leading role in the development of international programmes and within international networks to help guarantee the overcoming of challenges in terms of cross-border jurisdiction and open the doors to consumers and businesses in further afield markets. As discussed above, the UK- ECC is in a prime position to play its part going forward with this type of strategy.

All in all it is vital for the UK and EU consumers (and businesses alike) that there are coherent common rules to govern interactions between legal systems. Current debates regarding cross-border consumer rights should seek to focus more clearly on the processes that must be set in place in order to achieve this. The UK ECC has some part to play in this.

153. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>

154. <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/651/65102.htm>

The following are important considerations in this area:

Safeguard current capacity and future development of organisations and processes for EU cross-border transactions: Consumers should continue to feel confident to enter contracts between the UK and EU by knowing that in case of problems they would find an established set of organisations which can deal with their disputes after Brexit. The UK ECC is geared up to deal with cross-border disputes despite differences in national laws. To provide a level of consistency for consumers post-Brexit it is important to preserve the UK ECC. Furthermore, when we see divergence in consumer rules occurring, the UK ECC will be in a strong position to keep in pace with these changes and interface with the EU.

Ensure Brexit negotiations contain adequate consideration of mechanisms to establish mutual recognition of decisions and procedural matters: it is important to safeguard consumer rights going forward between UK and EU by guaranteeing the current judicial cooperation framework or negotiating a similar legal framework. This will provide legal certainty, avoid confusion between consumers and businesses and support economy and cross-border activities after Brexit, in line with multi-agency reciprocal cooperation.

Preserve or strengthen the current level of protection for Cross-border consumer transactions: Consumers should be still put at the centre of the transnational market post-Brexit. It is therefore important to preserve a high level of consumer law to both enhance UK consumers' confidence as well as helping to ensure EU consumers continue to buy from UK traders, hence stimulating the market during and after Brexit.

Cross-border Access to Justice

Findings

- Consumer rights become worthless without access to advice and routes to uphold them. This is increasingly a threat where they occur across many national jurisdictions in e-Commerce and other cross-border contracts. In order to ensure 'no less protections' after Brexit the government must maintain cross-border routes to advice and redress mechanisms - especially the UK European Consumer Centre as part of the European Consumer Centre Network (ECC-Net), which provides a streamlined and efficient set of mechanisms to support consumers in resolving cross-border disputes.
- It is important to the economy that UK consumers and businesses have confidence that the legal rights they currently enjoy can be enforced and respected in other EU countries. To ensure this the UK must maintain ongoing legal cooperation on civil matters with the EU through the judicial cooperation framework or very similar partnership.
- The interests of UK consumers should be at the centre of the EU market relationship post-Brexit. It is vitally important to preserve a high level of consumer law and enhance the confidence of UK citizens. This will also help to ensure EU consumers continue to buy from UK traders, stimulating markets and our economy before and after Brexit.

Appendices.

Appendix 1 - EU Directives & Regulations – Fair Trading			
Provision	Implemented by -	Provides for -	Comments - threats/opportunities
Directive 2005/29/EC. The Unfair Commercial Practices Directive	The Consumer Protection from Unfair Trading Regulations 2008	Control of unfair trading practices affecting the economic interests of consumers	CPR's replaced many different controls over misleading claims as well as bringing in wider coverage of aggressive and unfair practices. ECJ Interpretation of 'transactional decisions' and 'average consumers' may be relevant after Brexit. Therefore, the wider issue of precedence might be most relevant here.
Directive 2009/22/EC. The Injunctions Directive	Part 8 Enterprise Act 2002 Consumer Rights Act 2015	Control of unfair EU and domestic consumer law infringements by way of a civil enforcement order (similar to an injunction or interdict in Scotland)	Not used as much as, perhaps, it should be. However, Government, through the addition of enhanced consumer measures in the Consumer Rights Act, appears to show a commitment to maintain Part 8.
Directive 2011/83/EU. The Consumer Rights Directive	Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 The Consumer Rights (Payment Surcharges) Regulations 2012	Information to be given to consumers entering into on-premises, off-premises and distance contracts Consumer to be given rights of withdrawal from off-premises and distance contracts Prohibits traders from charging consumer fees for any given means of payment that exceed the trader's own cost for using that means of payment	CTSI have often put forward our concerns about how impractical the CCR's are with regard to doorstep selling and the exemption from cancellation rights for, so called, 'bespoke goods'. Brexit must offer us an opportunity to push for changes to the CCR's with regard to doorstep selling. This need not affect distance contracts allowing cross-border selling to operate under the current harmonised rules. It would be easy to make the regulations business friendly whilst improving consumer protection and choice. The Government appear to have shown their commitment to the Payment Surcharges Regulations through amendments bought about by the Payment Services Regulations 2017, which come into effect on 13th January 2018. Fees will no longer be chargeable for certain types of payment - credit and debit cards, for example.
Directive 2006/114/EC. The Misleading and Comparative Advertising Directive	The Business Protection from Misleading Marketing Regulations	Protects traders against misleading advertising and the unfair consequences of misleading advertising by competitors Lays down the conditions under which comparative advertising by traders is permitted	Both the UK and EU take the approach that businesses are better able to protect themselves and this is reflected in the reality that the BPR's offer less protection to businesses than the CPR's do to consumers. Cannot see any reason why Brexit will affect this position
Directive 1999/44/EC. The Sale of Goods and Associated Guarantees Directive	Consumer Rights Act 2015 Part 1	Sets minimum standards of consumer rights when buying goods and rights of repair/replace followed by full or partial refund if goods do not conform Makes freely given guarantees legally binding and sets out minimum standards for their availability to consumers and their content.	The Consumer Rights Act was a 'once in a lifetime' opportunity to consolidate consumer rights when buying goods and services into a single piece of legislation. UK law offers better rights for consumers than the minimum standards set in the Directive (a 30-day right to reject, for example). In addition there are no EU standards for consumer rights when buying services. A potential new Directive setting maximum standards for consumers buying goods and digital content online could have threatened the Act but this is unlikely to happen before Brexit now. Government seems happy to stick with gold plated standards for B2C contracts.

Directive 1993/13/EEC. The Unfair Terms in Consumer Contracts Directive	Consumer Rights Act 2015 Part 2	Sets standards preventing the use of unfair terms in B2C contracts	<p>The Consumer Rights Act gave us a single set of rules for unfair terms in B2C contracts combining the requirements of the Directive with other elements brought over from the Unfair Contracts Terms Act 1977.</p> <p>Following an announcement in the Budget, we expect further development in this area of law. It is therefore hard to see any threats from Brexit as the Government work to improve the protection for consumers from unfair and lengthy contracts.</p>
Directive 85/374/EEC. The Product Liability Directive	Consumer Protection Act 1987 Part 1	Makes producers liable for damage caused by a defect in their product	<p>A long-established piece of legislation which, controversially, took advantage of defences such as the development risks defence.</p> <p>The definition of a 'producer' includes the manufacturer (in the EU) and the first importer into the EU, rather than the UK. This will need looking at in terms of decisions taken regarding cross-border civil disputes. I assume this consideration will also be relevant to safety colleagues and whether full responsibility should move to the UK importer.</p>

Appendix 2 - EU Directives & Regulations – e-Commerce			
Provision	Implemented by -	Provides for -	Comments - threats/opportunities
Directive 2000/31/EC, The Directive on electronic commerce	The Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013)	Provides foundations for both B2B and B2C e-Commerce, covering topics such as: information provision; transparency of commercial communications; mechanism for formation of online contracts; liability of internet intermediaries.	<p>Threats – removal of these provisions could threaten effective participation in e-Commerce by UK businesses and consumers, especially regarding the EU and US markets.</p> <p>Opportunities – retention (and possible updating/clarifying in some areas) of these provisions could play an important part in enabling successful e-Commerce and fair trading online post-Brexit.</p>
Directive 2011/83/EU, The Directive on Consumer Rights	The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134)	Detailed provisions for consumer contracts concluded at a distance covering: information provision; cancellation rights; performance of contracts. (note that these laws also contain other key consumer protections not relevant to e-Commerce, e.g. off-premises sales).	Fair online consumer protection under threat from any removal or watering-down of these provisions.
(Proposed) Directive on contracts for online and other distance sales of goods,	N/A	Equalise online consumer sales law across the EU through maximum harmonisation provisions.	<p>Reduce UK consumers' online buying rights by removing short term right to reject and threatening the "one repair or replace" rule in the Consumer Rights Act.</p> <p>Create confusion for businesses and consumers through a dual system with different rights for online and in-person buyers.</p> <p>Threaten e-Commerce growth through consumers recognising that they have fewer rights when buying online.</p>
(Proposed) EU Regulation on addressing geo-blocking	N/A	Tackle geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market.	Stimulate cross-border trade in Europe and thus widen online buying and selling opportunities for UK consumers and businesses.
(Proposed) EU Regulation on cross-border parcel delivery services	N/A	Has the aim of improving the affordability, availability and accessibility of cross-border parcel delivery services. Imposes obligations on industry regulators and parcel carriers.	The tightening of industry oversight aims at improved transparency and information provision, and reducing unnecessary price differences. Lower charges and better information is likely to lead to increased online consumer sales, thus stimulating e-Commerce growth across Europe, including the UK.

(Proposed) EU Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws	Relates to Regulation (EC) No. 2006/2004, on consumer protection co-operation, or “CPC”.	Build on and strengthen the existing CPC network arrangements involving enforcement bodies across Europe.	Could contain useful e-Commerce provisions such as explicit powers for Trading Standards to order website takedowns and specific information-gathering powers regarding banks and various online intermediaries. These would definitely be in the best interests of consumers, reputable businesses and enforcers.
Directive 2005/29/EC The Unfair Commercial Practices Directive	The Consumer Protection from Unfair Trading Regulations 2008	Control of unfair trading practices affecting the economic interests of consumers	Central to fair B2C e-Commerce as it is central to all consumer sales mechanisms. In particular, the close interaction of the misleading omissions regime with the Distance Selling provisions of the CR Directive to ensure transparency and information for consumers.
Directive (EU) 2015/2366 on payment services in the internal market	The Payment Services Regulations 2017 (SI 252)	To improve the existing rules on payment services and take new digital payment services into account.	Updated payment services provisions help online consumers and businesses, e.g. ban on card surcharges and extra obligations for e-marketplaces and similar platforms if they process online payments.

Appendix 3 - EU Directives & Regulations – Product Safety			
Provision	Implemented by -	Provides for -	Comments - threats/opportunities
Regulation 765/2008/EC on accreditation and market surveillance		This Regulation provides a framework for the market surveillance of products to ensure that those products fulfill requirements providing a high level of protection of public interests, such as health and safety in general, health and safety at the workplace, the protection of consumers, protection of the environment and security. It places obligations on member states to undertake market surveillance and Includes powers for border control	A directly applicable regulation with no need for transposition. The regulation provides a fundamental framework for product safety and provides for powers of suspension, recall and withdrawal (particularly important for non consumer goods) both at the border and during market surveillance. It ensures member states have to provide powers, resource and knowledge to enable market surveillance authorities to undertake market surveillance. The threat lies in that this regulation is crucial to ensure UK fulfils its obligations as above.
Mutual Recognition Regulation EC 764/2008		Make business more aware of their products right to mutual recognition Make national laws that restrict the free movement of goods more transparent Ensure enforcement authorities such as local authorities which apply such rules, justify their decisions carefully when they act to prevent a product lawfully marketed elsewhere in the EU from being marketed in their territory	A directly applicable regulation with no need for transposition. Ensures that member states do not erect barriers to trade by regulation. Could be seen as an opportunity after BREXIT to allow for more robust enforcement of domestic legislation against importers as no need to give opportunity for business to contest suspension if goods were compliant in the EU but not UK. Immediate corrective action can be undertaken.

Directive 90/396EEC relating to appliances burning gaseous fuels	Gas Appliances (Safety) Regulations 1995	CE marking regulations that requires gas appliances and fittings to conform with the essential requirements and to be safe when normally used	The oldest of the so called 'new Approach' or CE marking directives which all require transposition via the EC Act to enable UK enforcement. Most transposition just involves copying the articles of the Directive into UK regulations and adding enforcement powers and duties, offences and statutory due diligence defences. All the Directives have standard elements and there is a strong link to harmonised EC standards as a means of conformity. If the UK is not part of CEN/CENELEC we will not have influence as to the content of the harmonised standards. The threat is that there will be parallel BS standards offering different levels of protection. The CE mark is a protected community mark to ease freedom of movement of goods and once we leave the EU we will not be able to use it (an opportunity or a threat!!)
Directive 1995/5EC of on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000	CE marking regulation that applies to all radio or telecommunications terminal equipment and prescribes the essential requirements that must be satisfied by RTTE equipment.	'New Approach' directive which required transposition via the EC Act to enable UK enforcement. Joint enforcement responsibilities with OFCOM
Directive 1995/5EC of on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000	CE marking regulation that applies to all radio or telecommunications terminal equipment and prescribes the essential requirements that must be satisfied by RTTE equipment.	'New Approach' directive which required transposition via the EC Act to enable UK enforcement. Joint enforcement responsibilities with OFCOM
Directive 93/42/EEC relating to medical devices	Medical Devices Regulations 2002	Medical devices must generally meet the essential requirements and must be CE-marked according to the conformity assessment procedures set out	'New Approach' directive which required transposition via the EC Act to enable UK enforcement. Joint enforcement responsibilities with MHRA
Directive 89/686/EEC on personal protective equipment	Personal Protective Equipment Regulations 2002	PPE must satisfy the basic health and safety requirements which are applicable to that class or type of PPE, the appropriate conformity assessment procedures must have been carried out, CE marking must have been correctly affixed and the PPE must not compromise the safety of individuals, domestic animals or property when properly maintained and used.	'New Approach' directive which required transposition via the EC Act to enable UK enforcement.
Directive 2013/53/EU relating to recreational craft	Recreational Craft Regulations 2017	CE marking regulations - they apply to any recreational craft respectively relating to design and construction, exhaust emissions noise emissions	'New Approach' directive which required transposition via the EC Act to enable UK enforcement.

General Product Safety Directive 2001/95/EC	General Product Safety Regulations 2005	Purpose is to ensure all products intended for or likely to be used by consumers under normal or reasonably foreseeable conditions are safe	Directive transposed by the EC Act (not CE marking) The fourth strand of the New Legislative Framework. Provides a safety net to ensure ALL consumer goods are safe. Incorporates the precautionary principle. Introduces the concept of a safe product taking into account vulnerable consumers. Clearly outlines the obligations of economic operators and provides for enforcement notices such as suspension, notice to mark, notice to warn, withdrawal and recall. Mandatory for economic operators to inform authorities when products pose a risk and to undertake corrective action. Provides for the RAPEX system and ensures authorities warn consumers about unsafe products. Allows the Commission to make emergency decision to ensure unsafe product swiftly removed from the market. To lose this fundamental piece of consumer protection is a major threat.
Directive 2006/42/EC on machinery	Supply of Machinery (Safety) Regulations 2008	The Machinery Directive is a "New Approach" directive. harmonising national health and safety provisions. Machinery which complies is "CE" marked and can be placed on the market and put into service throughout the EEA.	'New Approach' directive which required transposition via the EC Act to enable UK enforcement. Joint enforcement responsibilities with HSE.
Directive 2009/48/EC on the safety of toys	Toys (Safety) Regulations 2011	CE marking Directive that sets harmonised safety requirements for toys and minimum requirements for market surveillance, in order to ensure a high level of safety of toys	'New Approach' directive which required transposition via the EC Act to enable UK enforcement.
Directive 2013/29/EU relating to the making available on the market of pyrotechnic articles	Pyrotechnic Articles (Safety) Regulations 2015	CE marking regulation that sets essential requirements and economic operator obligations for the marketing of pyrotechnic articles	'New Approach' directive which required transposition via the EC Act to enable UK enforcement. Joint enforcement responsibilities with HSE.
Directive 2014/35/EU relating to the making available on the market of electrical equipment designed for use within certain voltage limits	Electrical Equipment (Safety) Regulations 2016	CE marking regulation. There is a general requirement in the Directive that electrical equipment made available on the market must be safe and requirements on economic operators to ensure that the equipment is in conformity with the principal elements of the safety objectives.	'New Approach' directive which required transposition via the EC Act to enable UK enforcement. Joint enforcement responsibilities with HSE.
Directive 2014/29/EU relating to the making available on the market of simple pressure vessels	Simple Pressure Vessels (Safety) Regulations 2016	CE marking regulations. Sets out the obligations of economic operators. Category A vessels must undergo a conformity assessment to demonstrate compliance with the essential safety requirements of the Regulations, and Category B vessels (of a lower capacity and pressure and therefore a lower risk than Category A) must be designed and manufactured in accordance with sound engineering practice.	'New Approach' directive which required transposition via the EC Act to enable UK enforcement. Joint enforcement responsibilities with HSE.

Directive 2014/68/EU relating to the making available on the market of pressure equipment	Pressure Equipment (Safety) Regulations 2016	Manufacturers must ensure that pressure equipment or assemblies comply with the essential safety requirements of the Directive and must classify the equipment and carry out the relevant conformity assessment procedure before the vessel is placed on the market, affixing the CE marking, labelling the equipment and ensuring it is accompanied by instructions and safety information.	'New Approach' directive which required transposition via the EC Act to enable UK enforcement. Joint enforcement responsibilities with HSE.
Directive 2014/30/EU relating to electromagnetic compatibility	Electromagnetic Compatibility Regulations 2016	Sets out the obligations of economic operators. Obligations include ensuring that apparatus has been designed and manufactured in accordance with the essential requirements having a relevant conformity assessment procedure carried out before the apparatus is placed on the market and affixing the CE marking	'New Approach' directive which required transposition via the EC Act to enable UK enforcement.
Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP)	The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013	Provides for the use of the Global Harmonised system for the classification, packaging and labelling of all chemicals	Directly applicable EU Regulation – no transposition required. The chemicals regulation framework established by the EU through CLP would be difficult to transpose directly into UK law and is also based on a global system. We enforce via UK regulations which purely give duties, powers, offences, defences. Joint enforcement responsibilities with HSE.
EC Regulation 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH)	REACH Enforcement Regulations 2008	Provides for a system of registration of the use of chemicals and the provision of safety data sheets. Sets out prohibitions and restrictions of the use of certain chemicals in products.	Directly applicable EU Regulation – no transposition required. The chemicals regulation framework established by the EU through REACH would be difficult to transpose directly into UK law; An important element of REACH, which the Government should seek to remain involved in as a minimum, is the EU registration process for chemicals. Establishing a fully stand-alone system of chemicals regulation for the UK is likely to be expensive for both the taxpayer and for industry. We enforce via UK regulations which purely give duties, powers, offences, defences. Joint enforcement responsibilities with the Environment Agency, HSE and local environmental health authorities.
Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products	The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013	Provides for the classification, packaging and labelling of all biocides	Directly applicable EU Regulation – no transposition required. The biocides regulation framework established by the EU through this Regulation would be difficult to transpose directly into UK law . We enforce via UK regulations which purely give duties, powers, offences, defences. Joint enforcement responsibilities with HSE.
Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products	The Construction Products Regulations 2013	CE marking regulation. Sets out the basic requirements for construction products and defines the obligations of economic operators.	Directly applicable EU Regulation – no transposition required. We enforce via UK regulations which purely give duties, powers, offences, defences.

Regulation (EC) No 1223/2009 on cosmetic products	Cosmetic Products Enforcement Regulations 2013	Defines a cosmetic product and has requirements re the ingredients used in a cosmetic product and the labelling. Sets out the obligations of all economic operators including registration on the EU portal, compiling a technical file and ensuring good manufacturing practice.	Directly applicable EU Regulation – no transposition required. The cosmetics framework regulation framework established by the EU through this Regulation would be difficult to transpose directly into UK law. An important element of cosmetic safety, which the Government should seek to remain involved in is the EU registration process for cosmetics through the Portal. Establishing a fully stand-alone system of cosmetics regulation for the UK is likely to be expensive for both the taxpayer and for industry. We enforce via UK regulations which purely give duties, powers, offences, defences.
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Appendix 4 - EU Directives & Regulations – Legal Metrology			
Provision	Implemented by	Provides for -	Comments - threats/opportunities
Directive 2014/31/EU on non-automatic weighing instruments	The Non-automatic Weighing Instruments Regulations 2016	The Directive provides for the placing on the market, making available on the market and putting into use of non-automatic weighing instruments. The regulations principally provide for the implementation of the Directive in the UK and for the in-service use provisions for non-automatic weighing instruments.	The Directive is based on conformity assessment of instruments by Notified Bodies. Notified Bodies either perform conformity assessment services directly or audit and approve private sector organisations to perform conformity assessment services. A large number of local weights and measures authorities in the UK hold Notified Body status to perform conformity assessment services. This status provides a legal service to trade and industry and is significant in retaining knowledge and skills within the Trading Standards profession (especially since de-regulation in the national marketplace) Furthermore, the UK has 3 principal conformity assessment bodies auditing and approving private sector organisations to perform conformity assessment services. These are NMO, BSI and SGS. These bodies provide significant support to UK, European and international manufacturers of instruments by providing the necessary audit and certification services to enable these businesses to place their production on the EU marketplace. The continued status of Notified Bodies is under question because of BREXIT. Not only will this adversely affect local weights and measures authorities in terms of knowledge, skills and competence, it will remove service provision to the private sector. The potential loss of the 3 principal conformity assessment bodies will seriously jeopardise the ability of UK businesses to place their production on and trade within the EU market. Significant income will also be lost to the UK exchequer if these bodies cease to operate. The UK actively participated in WELMEC – the European Co-operation in Legal Metrology, the body responsible for the practical implementation of the Directive for the benefit of the trade and regulatory communities. Leaving the EU will diminish the UKs role and influence in WELMEC. There are no immediate discernible opportunities. In the medium to long term the UK could implement OIML recommendations and guidance as an alternative.

<p>Directive 2014/32/EU on measuring instruments</p>	<p>The Measuring Instruments Regulations 2016</p>	<p>The Directive provides for the placing on the market, making available on the market and putting into use of a wide range of measuring instruments. The regulations principally provide for the implementation of the Directive in the UK and for the in-service use provisions for non-automatic weighing instruments.</p>	<p>The Directive is based on conformity assessment of instruments by Notified Bodies. Notified Bodies either perform conformity assessment services directly or audit and approve private sector organisations to perform conformity assessment services.</p> <p>A large number of local weights and measures authorities in the UK hold Notified Body status to perform conformity assessment services. This status provides a legal service to trade and industry and is significant in retaining knowledge and skills within the Trading Standards profession (especially since de-regulation in the national marketplace)</p> <p>Furthermore, the UK has 3 principal conformity assessment bodies auditing and approving private sector organisations to perform conformity assessment services. These are NMO, BSI and SGS. These bodies provide significant support to UK, European and international manufacturers of instruments by providing the necessary audit and certification services to enable these businesses to place their production on the EU marketplace.</p> <p>The continued status of Notified Bodies is under question because of BREXIT. Not only will this adversely affect local weights and measures authorities in terms of knowledge, skills and competence, it will remove service provision to the private sector. The potential loss of the 3 principal conformity assessment bodies will seriously jeopardise the ability of UK businesses to place their production on and trade within the EU market. Significant income will also be lost to the UK exchequer if these bodies cease to operate.</p> <p>The UK actively participated in WELMEC – the European Co-operation in Legal Metrology, the body responsible for the practical implementation of the Directive for the benefit of the trade and regulatory communities. Leaving the EU will diminish the UKs role and influence in WELMEC.</p> <p>There are no immediate discernible opportunities. In the medium to long term the UK could implement OIML recommendations and guidance as an alternative.</p>
<p>Directive 76/211/EEC on the making up by weight or volume of certain prepackaged products</p>	<p>The Weights and Measures (Packaged Goods) Regulations 2006</p>	<p>The Directive provides for the average quantity system of making up prepackages and ensures consumer protection and fair trading in relation to quantity control systems, the provision of information to consumers and the control of instruments used to make up and make checks on prepackages. The regulations principally provide for the implementation of the Directive in the UK.</p>	<p>The Directive is based on facilitating the free movement of goods throughout the EU. All producers of foodstuffs and non-foodstuffs in the UK rely on the Directive to place their produce on the UK and the EU market. The e mark further allows free movement of UK goods across the borders of EU Member States. It is unclear how this “metrological passport” will operate post-BREXIT.</p> <p>The UK actively participated in WELMEC – the European Co-operation in Legal Metrology, the body responsible for the practical implementation of the Directive for the benefit of the trade and regulatory communities. Leaving the EU will diminish the UKs role and influence in WELMEC. There are no immediate discernible opportunities. In the medium to long term the UK could implement OIML recommendations and guidance as an alternative.</p>

<p>Directive 80/181/EEC relating to units of measurement</p>	<p>Units of Measurement Regulations 1994</p>	<p>The Directive provides for the implementation of the SI / metric system of measurement for all economic, public health, public safety and administrative purposes. The Directive underpins trade, public health, health and welfare, scientific research, higher education and all aspects of measurement in a modern capitalist economy. Knowledge, understanding, commerce and scientific research are based on the principles within the Directive.</p>	<p>The Directive is based on ensuring common units and standards of measurement across the EU. This underpins and facilitates trade, commerce, industry, healthcare and science. The SI / metric system is the approved system.</p> <p>To deviate from the SI / metric system post-BREXIT would introduce significant barriers to trade, adversely affect the free movement of goods and undermine the UK's position as a signatory to the Metre Convention (BIPM).</p>
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Appendix 5 - The worldwide development of SI/Metric system	
Australia	Throughout the 1970s the Australian government co-ordinated the transition to the metric system of units of measurement. In 1977 Commonwealth and State Ministers agreed to outlaw the use of non-metric units in contractual agreements. By 1980, the metrication of Australia was largely complete.
Brazil	Brazil adopted the metric system in 1852 along with Portugal and other Portuguese colonies. Ten years later, Brazil replaced Portuguese customary units with the metric system. Brazil use the metric system for national, regional and international trade
Canada	Like Australia, Canada has a long history of using the metric system of units of measurement. The transition to the metric system was largely completed during the 1970s. For example, the use of metric units for the mass or volume of prepacked products has been required by law since 1976. The new Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU is predicated on the use of the metric system of units of measurement.
China	The metric system was first implemented in China during the Qing dynasty (1644 to 1912). In 1908, the dynasty overhauled its weights and measures legislation and retained traditional Chinese measurements but redefined them in terms of the metric system. During the 1920s traditional Chinese measures were retained for internal use only, but the metric system of units was adopted for official transactions. By 1985 all traditional Chinese measures were redefined in terms of the metric system of units of measurement.
India.	Before the metric system was introduced in India in 1956, British imperial and Indian customary units of measurement were used. In 1956, the Government of India passed legislation that aimed to make all non-metric measures illegal by 1960. Rapid progress on metrication was made between 1960 and 1962, with metric weights and measures becoming compulsory throughout the country from 1 April 1962. Today, almost all industries in India operate exclusively in metric units of measurement.
Japan	In 1921 Japan passed legislation to make the metric system the sole legal system in the country. Transition was delayed because of the Second World War and its aftermath. During the 1960s the government promoted the use of the metric system. In 1981, the Japanese Standards Association reported that the metric system of units of measurement in Japan had been completely adopted.
Russia	Following its formation five years after the revolution of 1917, the Soviet Union adopted the metric system, thus bringing both its units of measurement into line with the rest of continental Europe. After the dissolution of the Soviet Union in 1991 all fifteen of its constituent republics, including Russia, continued to use the metric system. This is still the case today.
South Africa	The South African government undertook the process of transitioning from a system of imperial and customary units of measurement to the metric system during the 1960s and 1970s, effectively completing the process in that latter decade. The country is widely acknowledged as a leader in the field of metrication and the SI system of units of measurement.
Turkey	As a significant candidate country for EU membership Turkey is duty bound to harmonise and approximate its laws with those of the EU. The country implemented legislation in 1931 to implement the metric system of units of measurement.

Appendix 6 - EU Directives & Regulations – Animal Health and Welfare/Agriculture			
Provision	Implemented by	Provides for -	Comments - threats/opportunities
Regulation 2016/429 Animal Health Law	Yet to be placed on UK Statute	<p>The aim of this Regulation is to implement the commitments and visions provided for in the Animal Health Strategy, including the 'One health' principle, and to consolidate the legal framework for a common Union animal health policy through a single, simplified and flexible regulatory framework for animal health.</p> <p>The disease-specific rules for the prevention and control of diseases provided for in this Regulation shall apply to:</p> <p>Foot and mouth disease; Classical swine fever; African swine fever; Highly pathogenic avian influenza; African horse sickness.</p>	<p>This legislation will consolidate a lot of the individual regulations that are in place within the EU for animal disease.</p> <p>Threats Legislation is focussed on disease not welfare.</p> <p>Failure for the UK to comply with 2016/429 will have a massive impact on trade outside of the UK.</p> <p>There is a need for industry to have adequate knowledge of animal health relevant to their occupational relationship. (Article 11)</p> <p>There is a need for competent authority's to have qualified personnel (Article 13) – recent clarification with DEFRA has confirmed that they confirm LA's will fall into Article 13. It is unclear as yet as to what the expectations are for baseline qualification / competency.</p> <p>Article 13 (a) requires qualified personnel, facilities, equipment, financial resources and an 'effective organisation covering the whole of the territory' of the member state.</p> <p>How does local government enforcement fit into Article 13 (a)?</p> <p>Welfare is not included, yet is often indicative of disease.</p> <p>Opportunities The UK will have to bring 2016/429 on to the statute in order to trade in animals and animal related products across the EU remainder of the world. Provisions of the regulations meet the OIE requirements (World Organisation for AH), this will keep AH firmly at the front of any EU negotiations.</p> <p>May raise the profile of AH & Welfare within local Government.</p> <p>Possibility of the opportunity to focus on regionally delivered for AH work similar to other NTS work in order to demonstrate compliance with Article 13 (a)</p>
Directive 2005/94 Community Measures for the Control of Avian Influenza	<p>The Avian Influenza and Influenza of Avian Origin in Mammals (England) (No.2) Order 2006</p> <p>The Avian Influenza (H5N1 in Poultry) (England) Order 2006</p> <p>The Avian Influenza (H5N1 in Wild Birds) (England) Order 2006</p> <p>The Avian Influenza (Preventive Measures) (England) Regulations 2006</p>	The control of Avian Influenza within the UK. Likely to be replaced by Regulation 2016/429 - Animal Health Law.	<p>Likely to be fully incorporated into Regulation 2016/429 from 2020.</p> <p>Threats & Opportunities therefore are considered as per Regulation 2016/429.</p>
Directive 92/35 EEC Control rules to combat African Horse Sickness	The African Horse Sickness (England) Regulations 2012	Laying down control rules and measures to combat African horse sickness. It sets out procedures to be followed and restrictions that apply in the event of an actual or suspected outbreak of African horse sickness.	<p>Likely to be fully incorporated into Regulation 2016/429 from 2020.</p> <p>Threats & Opportunities therefore are considered as per Regulation 2016/429.</p>

<p>Directive 2000/75</p> <p>Regulation 1266/2007</p> <p>On the control and eradication of blue tongue.</p>	<p>The Bluetongue Regulations 2008</p>	<p>On the control and vaccination for Bluetongue.</p>	<p>Likely to be fully incorporated into Regulation 2016/429 from 2020.</p> <p>Threats & Opportunities therefore are considered as per Regulation 2016/429.</p>
<p>Directive 2001/89/EC</p> <p>Directive 2002/60/EC</p> <p>Directive 92/119/EC</p> <p>For the Control and eradication of diseases of swine – ASF, CSF, SVD</p>	<p>Diseases of Swine Regulations 2014</p>	<p>The purpose of this GB-wide instrument is to simplify the regulatory landscape over England, Scotland and Wales by setting out in a single instrument the legal powers required to respond to a suspect case, or an outbreak of the diseases of swine African swine fever (“ASF”), classical swine fever (“CSF”) or swine vesicular disease virus (“SVD”).</p>	<p>Likely to be fully incorporated into Regulation 2016/429 from 2020.</p> <p>Threats & Opportunities therefore are considered as per Regulation 2016/429.</p>
<p>Directive 2003/85</p> <p>On the Control of Foot and Mouth Disease</p>	<p>Foot and Mouth Disease (England) Order 2006</p>	<p>The FMD Order provides for the measures other than vaccination in the event of suspicion or confirmation of an outbreak of FMD in England.</p>	<p>Likely to be fully incorporated into Regulation 2016/429 from 2020.</p> <p>Threats & Opportunities therefore are considered as per Regulation 2016/429.</p>
<p>Directive 90/427/EC</p> <p>Directive 2009/156/EEC</p> <p>Regulation 2015/262</p> <p>As regards the methods for the identification of Equidae</p>	<p>The Equine Identification (England) Regulations 2018 come into force from 1st October 2018, at present the Horse Passports Regulations 2009 are not presently enforceable due to a change in the EU Regulation and no implementing regulation within England.</p>	<p>The Commission Regulation has been introduced to harmonise horse identification across the EU and improve the current horse passport system to ensure horses do not enter the food chain if they have been treated with potentially harmful substances.</p>	<p>Threats</p> <p>As of the 1st January 2016, Commission Implementing Regulation (EU) 2015 / 262 laying down rules pursuant to Council Directives 90/427/ EEC and 2009/156/EC as regards the methods for the identification of equidae (Equine Passport Regulation) came in to force and repealed Regulation (EC) No 504/2008.</p> <p>Implementation of the new regulation will be by the Equine Identification (England) Regulations 2018 which comes into force from 1st October 2018</p>
<p>Regulation 1/2005</p> <p>On the Protection of Animals during Transport</p>	<p>Welfare of Animals (Transport) (England) Order 2006</p>	<p>Improving the protection and welfare of animals as well as preventing the occurrence and spread of infectious animal diseases, and putting in place more stringent requirements so as to prevent pain and suffering in order to safeguard the welfare and health of animals during and after transport.</p>	<p>Threats</p> <p>If the UK does not continue with 1/2005, it will likely affect international export trade in live animals.</p> <p>Opportunities</p> <p>It does give opportunity for the UK to strengthen existing transport provisions and make them more suited to UK industry needs, particularly relating transportation around markets / collection centres and the Highlands and Islands of Scotland.</p> <p>Possibility for improvement in animal welfare in transport.</p>
<p>Regulation 999/2001</p> <p>For the prevention, control and eradication of Transmissible Spongiform Encephalopathies.</p>	<p>The Transmissible Spongiform Encephalopathies (England) Regulations 2018</p>	<p>Lays down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (TSEs) such as bovine spongiform encephalopathy (BSE) in cattle and scrapie in sheep and goats.</p>	<p>Threats</p> <p>Failure to introduce / comply will have export trade implications.</p> <p>Implications for Public Health and Animal Health.</p>

<p>Regulation 142/2011</p> <p>Regulation 1069/2009</p> <p>Health Rules for Animal By-Products and derived products not intended for Human Consumption.</p>	<p>Animal By-Products (Enforcement) (England) Regulations 2013</p>	<p>The regulation controls the storage, movement and disposal of animal by products, extending from the disposal of carcasses from fallen stock to the use of rendered animal by products. It has been introduced to help combat fraud in the meat industry by requiring Food Business establishments and certain ABP premises to stain certain ABPs – which are by definition not intended for human consumption – to help prevent their illegal diversion back into the human food chain with potential serious harm to animal or human health.</p>	<p>Threats</p> <p>Failure to introduce / comply will have export trade implications.</p> <p>Implications for Public Health and Animal Health.</p>
<p>Directive 91/496/EEC</p> <p>Directive 97/78/EC</p> <p>Decision 2007/275</p> <p>Concerning the lists of Animals and products subject to border controls.</p>	<p>Trade in Animals and Related Products Regulations 2011</p>	<p>Gives effect to EU law concerning the importation of animals and animal products from other Member States and third countries.</p> <p>Lays down the principles governing the organisation of veterinary checks on products entering the Community from third countries</p>	<p>Threats</p> <p>Failure to introduce / comply will have export trade implications.</p> <p>Implications for Public Health and Animal Health.</p> <p>Opportunities</p> <p>Opportunity for the UK to strengthen border controls for imports – particularly the import of live mammals susceptible to rabies transported commercially (Puppies)</p> <p>Improvement in animal welfare if importation controls strengthened.</p>
<p>Regulation 998/2003</p> <p>On the Animal Health requirements applicable to non-commercial movement of pet animals.</p>	<p>Non Commercial Movement of Pet Animals Order 2011</p>	<p>Pet Travel Scheme to align rabies import requirements with those currently applied by other Member States under Regulation (EC) No 998/2003.</p>	<p>Threats</p> <p>Failure to introduce / comply will have implications for those wishing to travel with their pet cat or dog abroad.</p> <p>Opportunities</p> <p>Opportunity for the UK to strengthen border controls for imports – particularly the import of live mammals susceptible to rabies (Puppies)</p> <p>Improvement in animal welfare if importation controls strengthened.</p>
<p>Regulation 1760 /2000</p> <p>Regulation 494/98</p> <p>Regulation 820/97</p> <p>Regulation 911/2004</p> <p>Regulation 644/2005</p> <p>Laying down rules relating to Cattle Identification</p>	<p>Cattle Identification Regulations 2007</p>	<p>A regime of individual identification of cattle by means of ear tags with the number recorded on passports issued to accompany each animal from birth to death; and tracing by means of notification of births, movements and deaths of each animal on a central computer database.</p>	<p>Threats</p> <p>Failure to introduce / comply will have export trade implications and traceability of livestock.</p> <p>Implications for Public Health and Animal Health, notably disease control.</p>

<p>Directive 92/102</p> <p>Regulation 21/2004</p> <p>System for the Identification and registration of Ovine and Caprine animals</p>	<p>Sheep & Goats (Records, Identification & Movement) (England) Order 2009</p>	<p>Rules concerning the identification and the registration of ovine and caprine animals including the implementation of electronic identification. Ovine and Caprine animals should be identified properly and all their movements should be traceable.</p> <p>Significance to disease control measures, particularly foot and mouth.</p>	<p>Threats</p> <p>Failure to introduce / comply will have export trade implications and traceability of livestock.</p> <p>Implications for Public Health and Animal Health, notably disease control.</p>
<p>Regulation 1099/2009</p> <p>On the protection of Animals at the time of killing</p>	<p>Welfare of Animals at Time of Killing (England) Regulations 2015</p>	<p>Lays down requirements for the construction, layout and equipment of slaughterhouses. The domestic legislation gives powers to LA's for dealing with breaches of the legislation such as matters of illegal slaughter.</p>	<p>Threats</p> <p>If the UK does not continue with 1099/2009, it will likely affect international export trade.</p> <p>Opportunities</p> <p>It does give opportunity for the UK to strengthen existing transport provisions and make them more suited to UK industry needs, particularly relating transportation around markets / collection centres and the Highlands and Islands of Scotland.</p> <p>Possibility for improvement in animal welfare in transport.</p>
<p>Directive 2001/822 EC</p> <p>Directive 2004/28/EC</p> <p>The rules and requirements of veterinary medicines for animal use.</p>	<p>Veterinary Medicines Regulations 2013</p>	<p>Lays down the controls and procedures concerning the authorisation, manufacture, supply and use of veterinary medicines in the UK. They include provisions on medicated feeds and feed additives</p>	<p>Threats</p> <p>Failure to introduce / comply will have export trade implications for livestock and medicated products including feed / feed additives</p> <p>Implications for Public Health and Animal Health.</p>
<p>Directive 2002/ 32</p> <p>Regulation 767/2009</p> <p>Regulation 1831/2003</p> <p>Regulation 68/2013</p> <p>Regulation 1829/2003</p> <p>Regulation 178/2002</p> <p>Directive 2008/38/EC</p> <p>Directive 82/475</p> <p>Regulations and directives relating to the placing on the market of safe feed and laying down procedures for food safety.</p>	<p>Animal Feed (Composition, Marketing and Use) (England) Regulations 2005</p>	<p>Provides the legal requirements on animal feed composition, marketing and labelling.</p>	<p>Threats Failure to introduce / comply will have export trade implications for feed and feed materials including medicated feed products including feed additives</p> <p>Implications for Public Health and Animal Health.</p>
<p>Regulation 183/2005</p> <p>Directive 98/51/EC</p> <p>Regulation 152/2009</p> <p>Laying down the requirements for feed hygiene and sampling and analysis.</p>	<p>Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015</p>	<p>Provides the legal framework for feed hygiene requirements including enforcement and sampling and analysis.</p>	<p>Threats Failure to introduce / comply will have export trade implications for feed and feed materials including medicated feed products including feed additives</p> <p>Implications for Public Health and Animal Health.</p>
<p>Regulation 882/2004</p> <p>Regulation 669/2009</p> <p>Regulation 884/2014</p> <p>Relating to official feed and food controls</p>	<p>Official Feed and Food Controls (England) Regulations 2009</p>	<p>Lays down the requirements of the official feed and food, animal health and animal welfare and provides for the execution and enforcement.</p>	<p>Threats Failure to introduce / comply will have export trade implications for feed and food.</p> <p>Implications for Public Health and Animal Health.</p>

<p>Regulation 852/2004</p> <p>On the hygiene of foodstuffs</p>	<p>Food Safety and Hygiene (England) Regulations 2013</p>	<p>Laying down common principles to protect public health, in particular in relation to the manufacturers' and competent authorities' responsibilities, structural, operational and hygiene requirements for establishments, procedures for the approval of establishments, requirements for storage and transport and health marks.</p>	<p>Threats Failure to introduce / comply will have export trade implications for feed and food.</p> <p>Implications for Public Health and Animal Health.</p>
<p>Regulation 1830/2003</p> <p>Concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products from GMO's.</p>	<p>Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004</p>	<p>Harmonised EU framework for the traceability and identification, including labelling, of any product consisting of or containing genetically modified organisms (GMOs) and the traceability of food and feed produced from GMOs at all stages of the production chain.</p>	<p>Threats Failure to introduce / comply will have export trade implications for feed and food.</p> <p>Implications for Public Health and Animal Health.</p>
<p>Regulation 889/2008</p> <p>Rules for Organic production and labelling</p>	<p>Organic Products Regulations 2009</p>	<p>Laying down requirements with regard to production, labelling and control of organic products in the plant and livestock sector.</p>	<p>Threats Failure to introduce / comply will have export trade implications for feed and food.</p>

Appendix 7 - EU Directives & Regulations – Food			
Provision	Implemented by -	Provides for -	Comments threats/opportunities
Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety	Food Safety Act 1990	Defines 'food', 'unsafe food', 'placing on the market', 'food business operator' Determines whether food is injurious to health	Determining whether any food is injurious to health, for example, could be used when investigating allergen non-compliance. Unsafe food includes food after its 'Use by' date and is therefore an offence.
Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety	General Food Regulations 2004	Not placing on the market unsafe food. Labelling, advertising and presentation of food shall not mislead consumers. Food operators shall be able to trace their food suppliers and trade customers, have traceability systems in place, and make available traceability information to competent authorities. Requirement for food business to withdraw and/or recall unsafe food from the market, inform competent authorities and collaborate with them.	Food traceability requirement, used for example, when needing to trace the source and supply of unsafe food and Officers having the power to demand this traceability information. Withdrawal/recall used for example, for allergen non-compliance.
Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers	Food Information Regulations 2014	Defines 'food information', 'mass caterer', 'distance communication', 'prepacked food'. Requirement to provide and how to provide food information, including food name, ingredients list, quantities of ingredients, durability dates, storage and conditions of use, business name and address, alcohol strength, nutrition information. Food information should not mislead and should be accurate, clear and easy to understand. Food information responsibilities within the food supply chain. Requirement to provide allergy information for packaged and loose food, and how to provide allergy information for packaged food.	This is the main piece of food labelling legislation. It revoked/is revoking the Food Labelling Regulations 1996 but a lot of the requirements are based on the Food Labelling Regulations, with some additional requirements such as allergy information, nutrition information and distance sales information being mandatory, unless exempt. Unless a breach is in relation to food safety, non-compliance is dealt with by Improvement Notices. In relation to origin, Regulation (EEC) No 2913/92 defines 'place of provenance'.
		Requirement to provide food information for distance sales. Requirement to provide origin if it would mislead without and provide origin for pork, lamb, goat and poultry. Defines food after its 'use by' date as 'unsafe'.	

Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs		Protects food names, such as Welsh Lamb, Cornish Pasty, Stilton, Scottish Salmon, Melton Mowbray Pork Pie. Products must meet the requirements of the registered specifications, including labelling requirements.	
Regulation EC 1333/2008 on food additives	Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations 2013		
Regulation (EU) No 1337/2013 regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry	Country of Origin of Certain Meats Regulations 2015	Rules for applying country of origin information on meat.	Links in to Regulation (EU) No 1169/2011 on food information. Only applies to packaged meat, not loose.
Commission Implementing Regulation (EU) No 828/2014, on the provision of information on the absence or reduced presence of gluten in food labelling requirements	The Food Information (Wales) (Amendment) Regulations 2016	Conditions under which food may be labelled 'gluten free' or 'very low gluten'.	Wording and levels of gluten specified for Europe in relation to coeliac disease and gluten intolerance.
Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods	Nutrition and Health Claims Regulations 2007	Defines nutrition and health claims. EU Register of nutrition and health claims. Register includes permitted claims and their conditions of use and non-authorized claims.	
Regulation (EC) No 110/2008 of the European Parliament and the Council of 15 January 2008 on the definition, description, presentation, labelling and protection of geographical indications of spirit drinks			
Council Regulation (EEC) No. 822/87 on the common organization of the market in wine		Word wine' must not be used as part of a composite name for any drink in a way that is likely to cause confusion with products which are covered by the terms wine or table wine as defined.	
Regulation (EC) No 1830/2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and Regulation (EC) No. 1829/2003 on genetically modified (GM) food	Genetically Modified Food Regulations 2004	Labelling of products consisting of or containing Genetically Modified Organisms. Authorization of genetically modified food. Power to detain non-compliant food.	

Council Directive 83/417/EEC of 25 July 1983 on the approximation of the laws of the Member States relating to certain lacto proteins (caseins and caseinates) intended for human consumption	Caseins and Caseinates Regulations 2016	Definitions and standards for casein products. Labelling requirements.	Also Commission Directive 85/503/EEC on methods of analysis for edible caseins and caseinates and Commission Directive 86/424/EEC methods of sampling for chemical analysis of edible caseins and caseinates
Directive 2000/36/EC relating to cocoa and chocolate products	Cocoa and Chocolate Products Regulations 2003	Compositional requirements and reserved descriptions, including chocolate, milk chocolate etc. Permits additional ingredients in limited quantities, such as nuts. Prohibits the addition of certain ingredients, such as flour and animal fat not from milk. Labelling requirements such as milk solids and cocoa solids declaration.	
DIRECTIVE 1999/4/EC relating to coffee extracts and chicory extracts	Coffee Extracts and Chicory Extracts Regulations 2001	Definitions for coffee extracts and chicory extracts, including decaffeinated, and restrict the sale of must be labelled reserved description on.	
COUNCIL DIRECTIVE 2001/114/EC relating to certain partly or wholly dehydrated preserved milk	Condensed Milk and Dried Milk Regulations 2003	Labelling requirements of certain preserved milk products such as condensed milk, and the manufacturing specifications to be adhered to if products are to be described by certain reserved descriptions.	Amended by Council Directive 2007/61/EC and these amendments are addressed by the Condensed Milk and Dried Milk (Amendment) Regulations 2008
	Food Additives, Flavorings, Enzymes and Extraction Solvents Regulations 2013	Safe levels for additives.	
Commission Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs and COUNCIL DIRECTIVE relating to the fixing of the maximum level of erucic acid in oils and fats (76/621/EEC)	The Contaminants in Food Regulations 2013	Set maximum levels for contaminants in food, such as nitrates, mycotoxins, metals, dioxins and other environmental contaminants. Levels set so they are toxicologically acceptable and prevent grossly contaminated food from entering the food chain.	Also Commission Directive 80/891/EEC relating to the Community method of analysis for determining the erucic acid content in oils and fats. Numerous amending Commission Regulations, such as Commission Regulation 165/2010 which amends Regulation (EC) 1881/2006
Regulation (EC) No. 258/97 on novel foods and novel food ingredients	Novel Foods and Novel Food Ingredients Regulations 1997	Defines novel food. Novel food authorization process. Classification categories of novel foods.	Will be replaced by Regulation (EU) No. 2015/2283 on novel foods on 1/1/18.
Regulation (EU) No. 1379/2013 on the common organisation of the markets in fishery and aquaculture products.	Fish Labelling Regulations 2013	Traceability requirements. Labelling requirements, including specified names of fish species, method of production and origin.	Also COMMISSION REGULATION (EC) No 2065/2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products

Appendix 8- EU Directives and Regulations – Intellectual Property			
Provision	Implemented by -	Provides for -	Comments - threats/opportunities
The EU Directives in relation to IP are to be found under the Community Acquis Chapter 7 and there are a large number of Directives affecting IP Law.	The principle Directives are: Enforcement Directive Trade Mark Directives Copyright Directives Design Directives Patent Directives In addition, there are many Directives and Regulations supporting these principle directives.		All these directives, amongst other things, enable free movement of goods throughout Europe. Any alteration to the directive minima could be a barrier to trade.
Enforcement Directive (on Enforcement of Intellectual Property Rights) 48/2004 (IPRED)	Intellectual Property (Enforcement, etc.) Regulations 2006	Applies effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting and piracy	Any dilution to the IP protections enshrined in the EU directive would be detrimental to UK business
Trade Marks Trade Mark Directive 2008/95/EC	Trade Marks Act 1994	Implements provisions of the European trade mark system to ensure EU harmonisation	Currently allows free movement of goods within EU any dilution of provisions could be a barrier to trade
Copyright Copyright Directive 2001/29/EC etc.	Copyright, Designs & Patents Act 1988 and various regulations there under	Implements provisions of WIPO Copyright Treaty and the Berne Convention and ensure EU harmonisation	There are at least 12 subordinate Directives in relation to Copyright Currently allows free movement of goods within EU any dilution of provisions could be a barrier to trade
Designs Design Directive 98/71/EC (on the legal protection of designs)	Registered Designs Act 1949 and the Copyright, Designs & Patents Act 1988	Implements provisions of the European design registration system to ensure EU harmonisation	Currently allows free movement of goods within EU any dilution of provisions could be a barrier to trade
Patents The European Patent Convention (EPC) establishes the European Patent Office (EPO) and is the body which grants European Patents	Patents Act 1977	Establishes tests for patentability, registration system, term, defines infringement and penalties	The EPO is NOT an EU or Council of Europe body but is established under the EPC, the UK is one of 37 countries who are signatories to the Convention. Does this fall within the terms of Brexit? Similar to the ECHR which is a body of the Council of Europe.
Customs Union EU Regulation 608/2013	Customs and Excise Management Act 1979	Concerns customs enforcement of intellectual property rights (IPR)	Facilitates free movement of goods and enables UK plc to be competitive
TRIPS The Agreement on Trade-Related Aspects of Intellectual Property Rights	International Agreement WTO – World Trade Organisation	Establishes minimum standards for the regulation by national governments of many forms of intellectual property in order to facilitate world trade	Facilitates free movement of goods and enables UK plc to be competitive

Appendix 9- EU Directives and Regulations – Travel			
Provision	Implemented by -	Provides for -	Comments - threats/opportunities
On 25 November 2015	UK Regulation by July 2018	The rules will extend protection of the 1990 EU Package Travel Directive beyond traditional package holidays organised by tour operators, giving unclear protection to 120 million consumers who book other forms of combined travel	There are problems with the interpretation of the Directive and more information will be available after implementation
Directive 2008/122/EC the Timeshare Directive.	Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010	Extends the scope of the current timeshare rules to cover long term holiday products (i.e. holiday clubs) as well as shorter term contracts – all exchange services. Provides requirements for key information and a right of withdrawal for consumers	Important protections that should be retained in full after we leave the EU.
EU Regulation 261/2004	Directly applicable	Provides for compensation for denied boarding, delay and cancellation. Redress on a sliding scale depending on circumstances.	Relied on heavily by UK travellers to the EU and should be retained wherever possible.
Directive 2005/29/EC. The UCPD	The Consumer Protection from Unfair Trading Regulations 2008	Control of unfair trading practices affecting the economic interests of consumers, specifically regarding individual components of holiday bookings (e.g. accommodation only bookings)	CPR's replaced many different controls over misleading claims as well as bringing in wider coverage of aggressive and unfair practices.