
Post-Brexit - A New Consumer Rights Bill

Position Paper - Enhancing Consumer Rights

Frank Brehany - frankbrehany.com - 30 January 2019



Consumers
Campaigning
Commentating

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Introduction:

This Position Paper is provided following the UK's decision to leave the European Union confirmed by the introduction of the European Union (Withdrawal) Act 2018. The Act provides for the incorporation of direct European Union Law onto the Statute books of the United Kingdom. This pre-supposes that there will be a deal underpinning the Withdrawal Act.

Further, there is no doubt that upon withdrawal, there will be pressure upon the UK Parliament to deal with deficits in law, following through on removing aspects of EU Law which are no longer compatible with UK Law and Objectives. With substantial change about to take place within the UK Legal Landscape, there is a need to follow up upon UK Politicians pronouncements since 2016, that Consumer Protections will be preserved. It is important to not only preserve existing rights but also to enhance them within the Single Market that is the United Kingdom. Enhancing UK Consumer Rights is also vital to meet the challenges of co-existence with the European Market and to present to the world at large, the position that the United Kingdom offers high standards for goods and services in partnership with Consumers.

In the absence of real political dialogue and innovation, this Position Paper presents a solution through its Draft Bill - The Consumer Rights (Amendment) Act 2019.

About the Author:

Frank Brehany is a retired Police Officer and a self-funded Solicitor.

He works extensively in the media, providing comment on Travel Consumer related issues.

He is not connected to nor does he work within or with any Law Firm or other Legal entity.

In the last 10 years, he has provided extensive comment to the UK & EU about Travel Consumer issues, creating over 65 reports to highlight the detriment they suffer. He has also provided Consumer commentary to the FAA (USA), the Australian House of Representatives and The World Tourism Organisation.

For 14 years, Frank was the Consumer Director of the Independent Travel Consumer Organisation, HolidayTravelWatch (HTW), until he left that post in July of 2017.

Frank has 20 years experience, both in the handling of holiday claims and as a Consumer Campaigner, helping Consumers to deal with their Travel Complaints. Whilst at the helm of HTW, he proudly aided 97.5% of holidaymakers to self-resolve their complaints. In less than 2% of holidaymakers cases, where it was clear that they would not be capable of settlement by self-resolution methods, he worked with Partner Lawyers and Consumers to help them secure a just resolution to their complaints.

Since leaving HTW, he remains associated with Consumer issues, principally but not limited to the areas of Carbon Monoxide, Holidaymakers Rights, Justice & Consumers, General Consumer Rights, Whistleblowers, Toxins, Cabin Air Quality.

Frank is active in the field of Standards. he is currently the Chair of the BSI's ACE1/_/1 Cabin Air Quality sub-committee (UK); he is a voting member and UK representative on CEN TC436 Cabin Air Quality (Europe); he is a voting member representing Consumers on ASHRAE SSPC 161 Cabin Air Quality (USA).

Frank does not receive any funding from any source and my continuing work to independently advocate the Consumer position is entirely self-funded.

Explanatory Notes: This Draft Bill has been prepared by Frank Brehany, Independent Consumer Campaigner & Commentator (www.frankbrehany.com)

European Convention on Human Rights: Secretary of State [INSERT NAME] has made the following statement under Section 19 (1) (a) of the Human Rights Act 1998:

In my view the provisions of the Consumer Rights Act (Amendments) Bill are compatible with the Convention rights.

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Create new provisions to enhance Consumer Rights & Stakeholder Engagement of Consumers and to provide powers for the Secretary of State to create new Regulations to ensure compatibility across legal instruments enacted within the United Kingdom.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority the same, as follows:-

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| | <i>Title:</i> |
| Section 1 | The Title of this Bill shall be The Consumer Rights Act (Amendments) Bill |
| | <i>Preamble on Existing Law & Brexit:</i> |
| Section 2 | The following preamble describes the relationship of legal expectations under EU Law which obligates the United Kingdom and how those obligations will be transposed and enhanced in UK law following Brexit |
| | In recognition of the decision taken by the United Kingdom on 23 June 2016 to leave the European Union and any subsequent Acts of Parliament or other instruments that give effect to that decision along with any change in any law that may affect the rights of Consumers in the United Kingdom |
| | Acknowledging that changes within UK Law following the departure of the UK from the European Union intend to transpose all European Law and legal instruments into UK domestic law, all such instruments shall ensure consistency and equality of applicability to the amendments contained within this Bill |
| | The provisions of this Bill create an opportunity to energise the Consumer & Commercial Sector, through active engagement and partnership. The purpose of this Bill is to ensure that partnership is to be developed across multiple platforms thereby creating personal and commercial profit through an enhanced relationship model |
| | In recognition of the provisions of EU Directive 2011/83/EU, The Consumer Rights Directive implemented into UK Law as the Consumer Rights Act |
| | In recognition of other associated Consumer Rights Regulations or Directives transposed either directly or through UK Law either by Regulation or by an Act of Parliament as set out in Schedule 1 to this Bill |

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| | In recognition that the UK membership of the European Union imposed enforcement obligations under The Treaty of the Functioning of the European Union and in particular the obligation to provide a high standard of Consumer Protection within legislative and social policy and in particular through the various European Union Regulations and Directives |
| | It being the objective to create a new level of high regulatory observance, safety and enforcement in the field of Consumer Rights, once the UK has ceased to be a member of the European Union, this Bill provides additional levels of compliance and obligations in the field of Consumer Rights |
| | The provisions of this Bill will amend the current Consumer Rights Act so enhancing Consumer Rights within the UK following the departure of the UK from the European Union |
| | With regards to those Statutes referred to in Schedule 1, each such Regulation or Act of Parliament shall be amended to refer and incorporate the amended provisions of the Consumer Rights Act so as to ensure equal applicability and equal access to these provisions across all areas of Consumer Rights |
| | To ensure continued benefit for Consumers within a global Digital Market, reciprocal agreements will be entered into by the UK and are obligated to ensure that Consumers have Equal Access to Law and Rights within markets external to the UK |
| | To ensure the continued protection of Consumers in a global Digital Market, these amendments provide for recognition of the difficulties of the Consumer to navigate that market where it relies upon intelligent architecture and so to ensure that Consumers have access to information that defines their position and interaction within that market |
| Section 3 | <i>Definitions; the following shall mean:</i> |
| “Algorithm” | a set of rules to solve a class or set of problems. Such algorithm’s can perform calculations, data processing and automated reasoning tasks |
| “Artificial Intelligence” | a machine or system, learning from and using strong Human Reasoning or how Human Reasoning works or uses Human Reasoning as its model, deploying various degrees of Human Reasoning which provides for that machine or system to advance from deep learning from Human Reasoning, for the benefit of smarter technology, communication or other human activity |
| “Claim” | a claim for redress or damages brought by a Consumer in Civil Law |
| “Commercial Development” | any commercial entity seeking to develop its business, products, services or ideas through the assistance of laws, regulations or standards |
| “Commercial Market” | any geographical area where any commercial entity operates to produce, sell, distribute their product or services |
| “Company or Companies” | that which is defined as set out under Section 1159 of the Companies Act 2006 |
| “Complaint” | an indication of a dispute given by a Consumer to a Company or Companies either in writing or by any other means for the purpose of indicating a dispute or claim |
| “Consumer” | Shall mean that which is defined as set out under Section 2 of the Consumer Rights Act 2015 |
| “Consumer Education” | Shall mean information that is provided to a Consumer including, but not limited to, warnings, signs, text, public information utilising any method of communication designed to inform and educate the Consumer |

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| <i>“Consumer Representative”</i> | a Consumer who is not a member or employee or consultant of a Consumer Body or Bodies |
| <i>“Consumer Bodies or Body”</i> | those bodies engaged in Consumer Representation that may be formed as a Company or Charity or in receipt of Public Funding for the purposes of advocating on behalf of Consumers |
| <i>“Consumer Body Representatives”</i> | those persons who are members, employees or consultants for a Consumer Body |
| <i>“Consumer Transactions”</i> | those activities made by a Consumer for the purpose of obtaining a product or service secured by a direct or indirect method either in person or by a digital or electronic method from a company |
| <i>“Consumer Protection”</i> | the laws, regulations and standards that provides a level of protection to a Consumer when obtaining a product or service from a company |
| <i>“Equal Access”</i> | that in granting or providing access to any law, regulation or standards making or creation, shall ensure that any Stakeholder shall have an equal access to the mechanics, methodology, consultation, representatives of that law, regulation or standards making or creation; it shall also mean that any law, regulation or standards so made or created shall ensure equal access to all Stakeholders or beneficiaries |
| <i>“Equal Applicability”</i> | that any law, regulation or standard made or created shall follow the ‘equal applicability principle’ |
| <i>“Global”</i> | worldwide, the whole world |
| <i>“Global Digital Market”</i> | a worldwide marketplace founded on digital or electronic technology |
| <i>“Intelligent Architecture”</i> | the infrastructure presented by Companies as part of their Commercial Development for the benefit of the Commercial Marker and used by Consumers that is either constructed electronically or by artificial intelligence |
| <i>“Key Consumer Objectives”</i> | those Objectives as defined by Section 4 of this Act |
| <i>“Legal Devices”</i> | laws, regulations, standards or International Treaties |
| <i>“Observer”</i> | a Consumer, Consumer Representative or Consumer Body Representative appointed to act as an Observer during the process of the making or creation of a law, regulation, standard or International Treaty |
| <i>“Ombudsman”</i> | a person or body, established by parliament, statute, underpinned by statute or through voluntary arrangement to deal with an unresolved Consumer Complaint against a public sector body or a private sector entity and empowered to find a solution to that complaint |
| <i>“Participant”</i> | a Consumer, Consumer Representative or Consumer Body Representative appointed to act or participate during the process of the making or creation of a law, regulation, standard or International Treaty |
| <i>“Reciprocal Agreements”</i> | an agreement created between government and industry or organisations or intra-government for the purpose of creating agreement between parties for the benefit of each other or third parties |
| <i>“Regulator”</i> | Shall mean a person or body that is appointed by law or other device to act and to regulate a particular issue as defined by that law or other device |
| <i>“Regulated Body”</i> | a body that is appointed by law or other device to act and to regulate a particular issue as defined by that law or other device |

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| <i>“Regulated Person”</i> | that person who is appointed to act within or manage a regulated body or any person who by regulation is required to be regulated by a regulated body |
| <i>“Special Status”</i> | a person given an elevated position and recognition |
| <i>“Stakeholder”</i> | Shall mean a person or body who offer an interest, expertise or opinion to a particular endeavour |
| <i>“Standards Body”</i> | a company formed to create Standards or formed or created through mandate to create Standards complying with the requirements of law or regulation and potentially in receipt of Public Funding for the benefit of Standards-making |
| <i>“Standards-making”</i> | the process by which Standards are created |
| Section 4 | <i>Key Consumer Objectives</i> |
| Section 4 (1) | The following key Consumer Objectives shall be imported into the Consumer Rights Act and shall form the basis of underpinning those rights and to form the basis for continual development of those rights within the Act, the same obligation shall also be imported to those Statutes contained in Schedule 1:- |
| Section 4 (2) | The Primary Objective objective of the amendments to this Bill shall be to replicate the provision within the Charter of Fundamental Rights of The European Union, that ‘UK policies shall ensure a high level of Consumer Protection’; |
| Section 4 (3) | The Second Objective shall ensure that within any new or existing regulatory framework, that the Consumer is given special status and equal rights of access to government. Such a right is not just to be held exclusively for Consumer Bodies, but extended to all Citizens/Consumers in an open, transparent and fully engaged methodology; |
| Section 4 (4) | The Third Objective shall provide that individual Consumers and not just the Consumer Bodies, will have equal right of access to all parliamentary law-making, standards-making, commercial development, not just within the UK but across Europe and any other National or International body either as a Stakeholder, Participant or Observer where the rights of Consumers and Commerce are discussed and developed; |
| Section 4 (5) | The Fourth Objective will ensure that Consumer education will become paramount in any National legislative, standards, regulatory or commercial development framework, so empowering individual Consumers; |
| Section 4 (6) | The Fifth Objective shall produce the Right of Equal Access to Law where disputes arise, such an access will not be impeded by any device that acts as a disincentive to access this Right. In accessing such a Right full regard will be given to assistance provided to all parties and that extra-routes to resolution are not defeated by device, a lack of independence or transparency or a lack of ease-of-use of an effective Appeal process. The creation of this Objective will ensure that Consumers as Stakeholders in the Commercial Market can act as facilitators to the development of that Market, where it fails them; |
| Section 4 (7) | The Sixth Objective shall create through reciprocal agreements or other legal devices, the ability of Consumers to transact with ease across any Commercial Market anywhere in the world. In developing this Objective, due regard must be had to the Right of Equal Access to Law within those Markets. |

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| Section 5 | <i>Artificial Intelligence & The Global Digital Market</i> |
| Section 5 (1) | The Consumer Rights Act shall recognise the daily interaction and use of intelligent architecture by Consumer Transactions and provide Consumers with the following rights:- |
| Section 5 (2) | Where a Consumer notifies a Company of a complaint or claim with any product or service, in addition to providing a response to that complaint or claim, the Company shall provide to the Consumer the following information:- |
| | (1) Copies and/or transcripts of all telephone calls made between a Consumer and a Company within 21 days of a Consumer Complaint or Claim; |
| | (2) Copies of all written records created or stored by a Company during a Consumer Transaction within 21 days of a Consumer Complaint or Claim; |
| | (3) Information about any artificial intelligence or intelligent architecture used by the Company during any Consumer Transaction; |
| | (4) Information about any algorithm used by the Company during any Consumer Transaction; |
| | (5) The Information described in 5 (2) (3) & (4) above shall provide a basic description of that artificial intelligence, intelligent architecture or algorithm along with the date and location of its creation and shall include information that on that artificial intelligence, intelligent architecture or algorithm that describes they operate to influence a Consumer demographic through the Consumer Transaction journey or how that artificial intelligence, intelligent architecture or algorithm is designed or is designed to operate to influence a Consumer and the decision they make during any Consumer Transaction all such information is to be provided within 30 days of the Consumer Complaint or Claim; |
| | (6) In providing information about any artificial intelligence, intelligent architecture or algorithm the Company shall provide all written, recorded or transcripts created by the said artificial intelligence, intelligent architecture or algorithm and they shall provide it within 30 days of the Consumer Complaint or Claim; |
| | (7) It shall not be a defence for any Company to rely upon such artificial intelligence, intelligent architecture or algorithm as being held by a third party within the UK or other external territory to prevent them from satisfying their obligations under this Section; |
| | (8) If the said information held by artificial intelligence, intelligent architecture or algorithm is not held by the Company but by a Third Party to the Consumer Transaction either within the UK or within an external territory to the UK, the Company shall secure the information required to be given to the Consumer within 60 days of the Consumer Complaint or Claim; |
| | (9) Where the information from the artificial intelligence, intelligent architecture or algorithm is held by the Company, then the Consumer shall not be charged for access to the information required by this Section. Where the information is held by a third party either in the UK or in an external territory, then the Consumer may be charged by the Company a maximum of £10 in totality for all the information required by this section. |

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| Section 6 | <i>Representation</i> |
| Section 6 (1) | The Secretary of State shall introduce provisions within the Consumer Rights Act that ensures Consumer Representation within Company Boards |
| Section 6 (2) | Consumer Representatives in addition to those from Consumer Bodies shall sit as active members on the boards of UK Companies, employing more than 250 people. |
| Section 6 (3) | Consumer Representatives in addition to those from Consumer Bodies shall sit on Regulatory Boards and Standards-making Bodies and their Committees |
| Section 6 (4) | Consumer Representatives in addition to those from Consumer Bodies shall provide advocacy for the Consumer position and such advocacy will not serve as a block to the development of Products or Services, but add a unique perspective of use and experience of those Products or Services |
| Section 6 (5) | To supplement the role of Consumer Representation & Advocacy, UK Companies employing more than 250 people and engaged in the manufacture or delivery of goods or services shall provide an exclusive and dedicated Consumer Safety Director for its board who will be required to ensure compliance and audit of the Company's business activity and work with those Consumer Representatives appointed to the Board of that company and sufficient resources shall be provided to Consumer Representatives to facilitate a positive contribution |
| Section 7 | <i>Consumer Operational Goals</i> |
| Section 7 (1) | In satisfaction of the requirements of Section 6, each Consumer Representative shall undergo training:- |
| | (1) that will equip the said Consumer Representative to understand the nature and structure of a Board of a Company; |
| | (2) that will equip the said Consumer Representative with a knowledge and understanding of Company Law; |
| | (3) that will equip the said Consumer Representative with a knowledge and understanding of Public Interest Disclosure issues; |
| | (4) that will equip the said Consumer Representative with knowledge of International legal and standards-making issues in relation to the Products and Services of the Company; |
| Section 7 (2) | To equip Consumer Representatives in the role as board members, the cost of training will be borne equally by both Consumer Representative and the Company to a maximum of £500 each annually. Any addition costs will be borne through Public Taxation |
| Section 7 (3) | Each Consumer Representative shall seek to achieve the following operational goals whilst they remain members of the board of a UK Company:- |
| | (1) Highlight deficits within the development, nature, sales or delivery of Products or Services; |
| | (2) Act as an equal Stakeholder to help define and develop solutions for the benefit of Consumers; |
| | (3) To actively promote and develop law, standards and policy, thereby ensuring a high standard of Products & Services & Equal Treatment for all; |
| | (4) To be central to the development and creation of Public Information Campaigns; |

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| | (5) To actively understand, define, promote and develop solutions within any Cross-Border digital and commercial activity for the benefit of Consumers; |
| | (6) To advocate for effective National or Cross-Border complaints and resolution methodologies; |
| Section 7 (4) | The Consumer Representative shall not be paid for their role whilst sitting on the board of a UK Company but reasonable expenses or attendance costs will be paid by the Company for attendance at Board Meetings or any other meetings necessary for the benefit of the Consumer Representative or the Company |
| Section 7 (5) | The Secretary of State shall introduce a Regulation for the protection of Consumer Representatives and the Company and create a central body to help both parties achieve a successful partnership and avoid a defeat of the intention of this amendment or exploitation. Such a central body shall be funded through a levy raised from companies. |
| Section 8 | <i>Inclusivity & Future-proofing</i> |
| Section 8 (1) | The Secretary of State shall at all times ensure and give full force to the amendments to the The Consumer Rights Act which demonstrate inclusivity and delivers the benefit of future-proofing of the provisions of these amendments. The Secretary of State shall make Regulations that ensure compliance with this Section and the Secretary of State shall give due consideration to the following areas which are not intended to be exhaustive but including:- |
| | (a) Artificial Intelligence; |
| | (b) Intelligent Architecture; |
| | (c) Algorithms; |
| | (d) Blockchain; |
| | (e) Global Governance Participation; |
| | (f) Behavioural Transformations within Media & Social Mediums |
| | (g) Trans-National Actors Participation; |
| | (h) Trans-National Connectivity |
| | (i) Trans-National Linking; |
| | (j) The Internet of Things; |
| | (k) Virtual & Augmented Realities; |
| | (l) Robotics |
| Section 9 | <i>Increasing the Obligations of Regulatory Bodies toward Consumers</i> |
| | The Secretary of State shall make Regulations that repeals any enactment that limits the obligations of a Regulator or Ombudsman toward a Consumer and their Complaint against a Regulated Person, Regulated Body or Company. The Secretary of State shall ensure that Regulation made shall ensure: |

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| | (1) That all Regulators and Ombudsman shall create a Consumer focussed methodology that accepts, deals with, manages and informs the Consumer about their complaint against a Regulated Body, Regulated Person or Company; |
| | (2) The Regulator shall create a methodology that provides for a continuous update as to the progress of their complaint against a Regulated Body, Regulated Person or Company; |
| | (3) The Regulator or Ombudsman shall provide a resolution to the Consumer complaint or complaints; |
| | (4) The Regulator or Ombudsman shall ensure that the Regulated Body, Regulated Person or Company delivers to the Consumer any resolution created; |
| | (5) The Regulator or Ombudsman shall provide to the Consumer details of the Regulators or Ombudsmans own complaints process along with any onward resolution options available to the Consumer |
| Section 10 | <i>Standards & The Consumer</i> |
| Section 10 | The Secretary of State shall introduce Regulation that gives acknowledgement to the importance of Consumers as Stakeholders in Standards work. Such a Regulation shall ensure that: |
| | (1) Where a National Standards Body is in receipt of Public Funding, that National Standards Body shall create a Policy that promotes the inclusivity of Consumers in the process of Standards-making; such a Policy will be open to review and Public Audit; |
| | (2) Regulation shall require that in any Standards-making work, the National Standards Body shall ensure that Consumer Stakeholders are promoted into Standards-Making along with Consumer Body Representatives; |
| | (3) To ensure equality of arms, a National Standards Body, through Regulation shall demonstrate that the split between Consumers and Consumer Body Representatives acting as members of a Standards Committee shall be identified as a 60/40 ratio respectively; |
| | (4) In order to satisfy the Regulatory requirement in favour of Consumers, a National Standards Body shall proactively seek Consumer members for Standards Committee's and shall ensure that Consumers are trained accordingly on Standards-making; all reasonable travelling expenses will be paid to Consumers in satisfaction of their duties as members of a Standards Committee by the National Standards Body; |
| | (5) Regulation shall not impose any financial burden on a National Standards Body in respect of any Consumer Body Representatives; the Organisations they represent shall bear the cost of being Members of a Standards Committee except where travel expenses are paid by the National Standards Body in pursuance of the work of that Standards Committee; |
| | (6) Regulation made by the Secretary of State shall ensure that qualifications or lack of qualifications shall not be a bar to Consumers in their application or invitation to become Members of a Standards Committee; |

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| | (7) Regulation shall require the National Standards Body to Report on their obligations as required under this Regulation to the Secretary of State each year. |
| Section 11 | <i>Enforceability</i> |
| | The Secretary of State shall make Regulation along with the Regulation required at Section 6 & 7 of this amendment that will ensure full compliance with the provisions of this amendment and the Secretary of State shall ensure that Regulation will adequately resource and identify a National Enforcement Body to ensure such compliance by all parties obligated by this amendment |
| Section 12 | <i>Extent, commencement and short title</i> |
| | (1) This Act extends to the whole of the United Kingdom |
| | (2) This Act comes into force on the day it is enacted |
| | (3) This Act may be cited as the Consumer Rights (Amendments) Act 2019 |

Schedule 1

Associated Regulations & Statutes:

| Originating Legislation: | UK Legislation: | Further Commentary: |
|---------------------------------------|--|----------------------------|
| Consumer Rights Directive | Consumer Rights Act 2015 | |
| | Companies Act 2006 | |
| General Data Protection Regulation | Data Protection Act 2018 | |
| | Public Interest Disclosure Act 1998 | |
| Unfair Commercial Practices Directive | The Consumer Protection from Unfair Trading Regulations 2008 | |
| | Digital Economy Act 2017 | |
| General Product Safety Directive | The General Product Safety Regulations 2005 | |
| | European Union (Withdrawal) Act 2018 | |

Conclusion:

This Bill is radical!

This Bill will enhance Products and Services in Partnership with Consumers!

In the new Britain that will follow, there is now a need for a new Consumer-radicalism, but such radicalism is secured with the force of process and law but not at the expense of business nor innovation.

It will be interesting to witness if this new Consumer requirement will be met with political courage; I for one will stand ready to work in partnership with politicians, industry and my fellow consumers

Frank Brehany
Independent Consumer Campaigner & Commentator
frankbrehany.com

30 January 2019