



18 Jan 2021 / BREXIT

# Legal action option in post-Brexit consumer disputes

The European Consumer Centre Ireland has clarified consumer rights, post-Brexit, and set out regulatory changes and available redress options.

The body has also advised that consumers exercise due diligence when entering into a transaction with traders based outside Ireland and the EU/EEA, directly in person or online, or via a marketplace/shopping platform.

## Secure payment

“Irish consumers should exert due diligence and take steps to protect themselves by reading all of the applicable terms and conditions, informing themselves on the trader’s returns and cancellation policies, and using a secure method of payment that facilitates redress if something goes wrong,” the body urges.

Consumers unable to resolve disputes directly with the trader can contact the European Consumer Centre Ireland for advice.

While Brexit creates new barriers to trade in goods and services between the EU and the UK, the free trade agreements and its associated Horizontal Agreement on Governance becomes the new regulatory instrument for cross-border trade detailing the enforcement and dispute settlement mechanisms.

The trade rules above will change from 1 July 2021.

Goods entering Northern Ireland from Great Britain will constitute “imports”, which will be subject to customs formalities and other regulatory checks and controls for safety, health and other public-policy purposes.

## **'Proof of origin'**

The 'proof of origin' rule applies to all products coming into Ireland from the UK, and that are made in the UK.

Goods originating in the EU, imported into the UK, and then exported from the UK into Ireland will be subject to import duty.

As of 1 January, the EU and the UK form two separate markets and distinct regulatory and legal spaces, albeit with preferential arrangements for trade in goods and services to ensure that rights of consumers are respected.

With respect to EU-UK trade, no tariffs apply to goods exported out of the UK, certified to be of UK origin, and accompanied by a customs declaration.

The new rules apply provisionally until 28 February and will change further from 1 July.

## **Costs**

From 1 January, additional costs will apply for Irish consumers who shop directly from the UK (excluding Northern Ireland) when an order is shipped from the UK.

EU rules will continue to apply to cross-border transactions that started before 1 January.

From that date, Irish consumers who shop directly on UK websites/brands that have a registered base in Ireland, will face no additional costs.

The same will apply if the purchase is delivered from a base elsewhere in the European Union.

## **Consumer rights**

When buying goods and services anywhere in the European Union, Irish consumers have clear rights when it comes to:

- Contract information,
- Pricing and payments,
- Value Added Tax, shipping and delivery, guarantees and returns.

These consumers' rights will remain unchanged when a purchase is made in/from a UK shop/brand which has a registered presence in Ireland.

## **Deal**

The Brexit deal commits the UK and the EU to maintaining existing EU-type consumer protections on a mutual basis.

As a general rule, EU consumer rules cover goods and services that have been bought in the EU, including when purchased from a non-EU (now including UK) online trader who has specifically targeted EU consumers.

From 1 January 2021, however, Irish consumers who shop directly from the UK (excluding Northern Ireland) the applicable consumer rights will be set down in UK law, which is similar to and based on EU law.

## **Redress options**

If Irish consumers make a purchase from a UK trader with a registered presence in Ireland, their redress options and any request for repair, replacement, or refund remain unchanged.

Complaints against UK brands with a retail presence in Ireland should be forwarded to Competition and Consumer Protection Commission (CCPC) [here](#).

If Irish consumers return a purchase to the seller in the UK, Revenue has detailed how to claim back the taxes.

Consumers based in the Republic who have a purchase dispute with a trader based in the United Kingdom (including Northern Ireland) can seek assistance from the European Consumer Centre Ireland, which in 2021 works in collaboration with the Consumer Centre UK to facilitate resolution for disputes.

## **Dispute**

If the trader based in the UK or outside the EU/EEA marketed goods in the country where the consumer lives and the transaction resulted in a dispute, initiating legal action through the national courts (for example the Irish court system) is also a possibility.

In practice, however, asserting one's consumer rights with a trader based outside the EU may prove difficult, the European Consumer Centre Ireland says.

“We advise consumers to seek legal advice before commencing any cross-border proceedings against a trader established outside the EU.

“The most convenient redress option in cases of non-delivery of a non-EU/UK purchase remains a request for chargeback through the consumer’s bank or financial institution.

“Redress options no longer available to EU consumers in respect to UK traders are: the European Small Claims Court and the Online Dispute Resolution procedure and platform,” the body points out.

## **Passenger rights**

In the field of transport, the EU-UK co-operation agreement provides for continued and sustainable air, road, rail and maritime connectivity and calls for measures to protect basic passenger rights, such as access to information, special measures for disability and reduced mobility, reimbursement and compensation, and handling of complaints.

## **Air travel**

As of 1 January, when the UK became a third (non-EU) country, EU air passenger rights will continue to apply to:

- Flights operated from the UK to the EU by an EU airline,
- Flights operated from the EU to the UK,
- Flights departing from non-EU countries that arrive on EU airports and are operated by EU-licensed carriers.

The right to assistance by air carriers (meals, refreshments, accommodation) continues to apply to air passengers departing from an UK airport and arriving

into an EU airport, if the flight is operated by an EU airline.

EU air passenger rights will no longer apply to UK-operated flights from the UK to the EU, unless the operating UK air-carrier of the flight concerned has an operating licence granted by an EU Member State.

EU law granting specific rights for disabled persons and persons with reduced mobility will no longer apply to commercial passenger air services that depart from / transit through / arrive at an airport in the United Kingdom.

## **Other rights**

From 1 January, EU law on ship passenger rights continues to apply where the port of embarkation is in the EU or in the United Kingdom, provided that the port of disembarkation is in the EU and the service is operated by a carrier established within the territory of a Member State or offering passenger transport services to or from an EU Member State.

From 1 January, EU law on bus/coach passenger rights continues to apply to passengers travelling with regular services of 250km+ to/from the United Kingdom where the boarding or the alighting point is in the EU.

From 1 January, EU law on rail passengers' rights continues to apply to services within the European Union, provided that the railway operator is licensed in the EU.

Ireland-UK updates on rail, maritime and coach/bus rights with respect to travel to/from/within the UK will be updated by the National Transport Authority, when finalised.

## **Package holidays**

EU consumer protections apply to a package holiday bought from / booked with a UK-based travel agency / tour operator only if that particular package

was marketed to consumers in Ireland. All other packages are governed by UK law.

Independent holiday individual services purchased from operators outside the EU will continue to be governed by the terms and conditions specified in the contracts, which also details the applicable jurisdiction law.

## Roaming

EU mobile data and calls roaming rules will change in the UK and further updates will be made available from the Commission for Communications Regulation. Nevertheless, mobile operators may not apply additional charges.

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