

Consumer Charter for Brexit

Introduction

Which? has a very simple goal when it comes to Britain's departure from the European Union:

We want the Government to deliver a Brexit that puts consumers first.

We are ready to help them do it.

We believe that the success of Brexit will ultimately be defined by what it delivers for consumers and what matters to them most - standards, choice, rights and price.

There are clearly both opportunities and challenges ahead.

There is work to be done to reassure people that their existing rights will be protected and standards won't be compromised.

But as we leave the EU, we should also grasp the opportunity to forge an even better environment for consumers. With control over all aspects of consumer protection, we can make improvements to be truly world-leading here in the UK.

That's why we are introducing our Consumer Charter for Brexit - that sets out our views on what needs to happen to minimise those risks and maximise those opportunities.

It is not just the Government who has the responsibility to put consumers first in the Brexit process. As the consumer's champion, we want to work with Government and business to deliver on the priorities set out in our Charter.

And our vision is clear: an economy where people are supported by high levels of rights and protection - and with greater access than ever before to quality, affordable products and services.

The Consumer Charter for Brexit

Our Charter sets the framework for how Brexit, and what follows, should deliver for consumers. We propose four consumer tests - these are the principles that matter most to consumers.

1 Standards

It's essential that consumers can have confidence in product quality and safety standards. Current levels should be maintained and where appropriate enhanced, and this shouldn't be compromised where we negotiate deals with countries that may have lower standards.

2 Choice

There is the opportunity to bring greater choice to consumers. A key test for our post-Brexit trade policy is whether it maintains or enhances consumer choice of high quality products and services.

3 Rights

Consumers currently benefit from a range of rights, and when things go wrong we need to be confident that consumers are supported with a system that ensures these rights continue. This stability is important for businesses as well.

4 Price

We know that price and cost are important to the UK consumer, so post-Brexit policy must limit the potential for unnecessary price rises and increases in the cost of living.

Priorities

Our Charter sets out the more detailed priorities that we believe need immediate attention from the Government to reassure consumers that Brexit will avoid disruption, and deliver a better deal for them:

Consumer Landscape

- 1** In leaving the EU, the UK should take the opportunity to maintain its world-leading consumer rights framework, deliver competitive markets, and put in place a system that better serves consumers by enforcing their rights.
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Food

- 2** Food and farming policy must maintain and incentivise high quality and safety standards for consumers and UK food producers.
 - 3** Effective food enforcement must be a priority, including robust checks on imports as well as co-operation with the EU and other countries on food risks.
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Energy

- 4** The UK should maintain or enhance access to affordable, sustainable and secure energy as we leave the EU, to both keep bills to a minimum and deliver our commitments to decarbonisation.
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Travel

- 5** The UK should maintain access to the EU common aviation area (ECAA) and ensure the same level of access around the world to avoid disruption and increased costs to travel.
 - 6** Agreement is needed with the EU to ensure continued reciprocal access to healthcare for travellers.
 - 7** There should be no mobile roaming charges for UK consumers travelling across the EU.
 - 8** Existing insurance rights and protections should be maintained for products and contracts bought through EU companies or used when travelling in the EU.
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Transition

- 9** A transition period must allow adequate time for communicating changes in consumer rights, and creating a credible framework for how domestic rights interact with cross border rights and protections.

Consumer Landscape

- 1 In leaving the EU, the UK should take the opportunity to maintain its world-leading consumer rights framework, deliver competitive markets, and put in place a system that better serves consumers by enforcing their rights.**

Why does it matter to consumers?

Empowered consumers who can make good choices in competitive markets rely on a robust framework of consumer rights and protections. Currently, this is largely determined at an EU level and includes competition policy aimed at making sure markets function well for consumers, as well as wider consumer protections and rights that underpin this.

Competition policy will be decided by the UK. The Competition and Markets Authority (CMA) will need to deal with complex investigations that are currently handled by the European Commission, such as the recent Google antitrust cases. Many international companies will continue to operate across Europe and the UK with similar business practices. It is therefore likely that mergers or anti-competitive behaviour that affect more than one future EU jurisdiction will also affect the UK.

> ACTION: The CMA needs to be fully equipped to take on these competition policy and enforcement responsibilities. It needs adequate resources for its competition as well as consumer enforcement work, appropriate processes to match international practices at pace, and an agreement for on-going co-operation with EU competition authorities.

Consumer rights currently in EU law should be transposed into UK law through the EU (Withdrawal) Bill. The UK and EU approach have been generally aligned and UK consumer law was recently updated through the Consumer Rights Act 2015. But ensuring these rights are effective in practice could become more complicated post-Brexit, particularly for purchasing in the EU.

85%

of people think that it is important that they can get a replacement if they buy a faulty good online from a business in an EU country.

➤ **ACTION:** The current framework of consumer rights, that the UK has played a leading role in establishing, should be upheld through legislation following the EU (Withdrawal) Bill.

➤ **ACTION:** Cross-border co-operation on consumer rights must be agreed with the EU as part of the negotiations, given the scale of cross-border trade and online shopping from companies based in EU Member States (e.g. Amazon, based in Luxembourg). This includes continued co-operation between UK and EU enforcement authorities, for example through the Consumer Protection Co-operation (CPC) Network.

82%

want the ability to take legal action in the UK if they buy a substandard or faulty product from the EU.

Eighty-five per cent of people think that it is important that they can get a replacement if they buy a faulty good online from a business in an EU country. Eighty-two per cent want the ability to take legal action in the UK if they buy a substandard or faulty product from the EU¹.

People need confidence in an effective system of consumer enforcement which ensures their consumer rights are respected. Over the last decade, the UK's regime has, however been in decline. It relies heavily on Trading Standards Services based in local authorities, many of which have been hit by funding cuts, and many services have been dramatically reduced. Both the CMA and the National Trading Standards Board are limited in their scope and often lack the resources to take action. This has become a particular cause for concern with regard to unsafe products, such as the recent issue with fire risk Whirlpool tumble dryers. It is important that the Government acts to ensure that Brexit does not exacerbate these challenges, since enforcement bodies may need to look at different types of risk that could be more work intensive. Instead, the opportunity must be taken to overhaul the system and put in place a world-leading regime.

➤ **ACTION:** The consumer rights regime needs to be underpinned by a more effective system of consumer enforcement. The current system is too reliant on under-resourced local authority Trading Standards Services. Leaving the EU should be used as an opportunity to overhaul the system and put in place a world-leading regime fit for the future.

1. Which? Brexit Tracker, January 2018

➤ **ACTION:** There must be an overhaul of the product safety regime, including the creation of a centralised, independent body to enhance consumer protection and prepare for risks that may be posed by a potentially more complex trading environment.

Consumers also need the means to enforce their rights themselves. There are reciprocal arrangements in place between the UK, EU and European Free Trade Association (EFTA) countries which enable legal action to be pursued from the country of residence. This covers both contractual and non-contractual arrangements and extends to the ability to pursue legal action in the courts of the home country. This may no longer apply.

➤ **ACTION:** Agreement needs to be reached on reciprocal judicial arrangements so that consumers are in a position to privately enforce their rights through the UK courts for goods or services originating in an EU or EFTA country.

Brexit could mean that a range of responsibilities that are currently dealt with by EU agencies – such as chemical, medicine or aviation safety – will need to be transferred to UK regulatory or scientific bodies. In some cases equivalent bodies exist but their remits will need to be expanded; for other areas, new bodies may need to be created.

➤ **ACTION:** There needs to be effective scrutiny where regulatory and technical responsibilities are transferred from the EU to the UK so that consumers can have confidence that there are robust, consumer focused regulators in place post-Brexit. This includes where responsibilities are transferred from EU agencies to new or existing UK regulators.

Food

2 Food and farming policy must maintain and incentivise high quality and safety standards for consumers and UK food producers.

Why does it matter to consumers?

Ninety-three per cent think it is important that existing food standards are maintained when the UK leaves the EU.

The UK food supply and its regulation has been closely intertwined with the EU for decades. Over three-quarters of imported food sold by retailers originates from the EU². National food and farming policy has been shaped by the Common Agricultural Policy (CAP) which, despite attempts to reform it, is focused on supporting producers without tackling important wider challenges such as enhancing food safety and quality or reducing obesity rates. As a result, we think the UK having control over farming policy is a key opportunity to craft a better system for consumers.

> ACTION: The opportunity should be taken to replace the CAP with a joined up national food and farming policy that ensures food is produced in a way that meets people's health needs, protects the environment and landscape, promotes high animal welfare standards, and develops the UK's reputation for high quality affordable food. Consumer views should help to shape this food policy.

93%

think it is important that existing food standards are maintained when the UK leaves the EU.

The UK is subject to the EU's legislative framework for food. This has evolved in response to food scares, such as the BSE crisis and horsemeat scandal. Unlike the CAP, this has generally served consumers well and little needs to change once the UK leaves the EU.

Food imports into the EU are required to meet its standards, but they can come from countries that have lower domestic standards. Production processes and ingredients that are subject to independent safety assessments and approval in the EU are not subject to the same rules in some other countries, and some have limited infrastructures to assure food safety.

2. *A Fair Brexit for Consumers, The Tariff Roadmap*, British Retail Consortium, Summer 2017 (Based on BRC survey of members in 2016)

> **ACTION:** The future Government food framework needs to maintain current food safety, quality and welfare standards, ensuring a high level of protection.

Leaving the EU provides an opportunity to seek new trade deals to enable more choice of foods from different countries, potentially at cheaper prices which would be welcome to consumers. This could also present risks to food safety and quality, if current standards are not maintained on imports. Lowering standards on imported foods could mean that UK producers struggle to compete with imports produced at lower costs and standards. Consumers could ultimately be more reliant on imported food than UK produced food (currently 49% of what we eat³), storing up longer term problems and costs, reduced consumer protection, human and animal health risks, and loss of confidence in the UK food system more generally.

> **ACTION:** The Government must not trade away food standards as part of any trade deals with countries that have lower standards for food safety and quality.

3 Effective food enforcement must be a priority, including robust checks on imports as well as co-operation with the EU and other countries on food risks.

Why does it matter to consumers?

Consumers rely on food rules being complied with so that they can trust it is safe and honestly labelled. But the current enforcement system, which largely falls to local authority Environmental Health and Trading Standards departments, is under increasing strain.

Food production is becoming more complex, and supply chains more globalised, while enforcement resources are limited. Recent incidents including failings at the 2 Sisters poultry plant and the Russell Hume meat scare, on top of the horsemeat scandal in 2013, have highlighted the importance of independent checks to ensure compliance.

49%
of what we eat
currently is produced
in the UK.

3. *Food Statistics Pocketbook*, Defra, 2017

Leaving the EU will present new challenges for the system, with changing trading patterns and potential for products to come from countries with lower domestic standards than the UK. We must ensure that the UK is fully equipped to deal with this challenge, so it can still deliver high standards of food to consumers.

The Food Standards Agency (FSA) and Food Standards Scotland (FSS) are reviewing how food enforcement works and how it can be strengthened, including through increased use of data to monitor compliance. It may be some time before these reviews are implemented and people need confidence that there will be robust checks to protect them post-Brexit.

➤ **ACTION:** The Government should enhance the UK's food enforcement system to ensure there is sufficient independent capacity, skills and intelligence sharing to deal with any new challenges for food safety and standards. This includes border controls and checks on high risk foods.

Co-ordination and oversight is currently carried out at the EU level through a series of formalised networks – including the EU's Rapid Alert System for Food and Feed (RASFF), safety assessments and intelligence sharing through the European Food Safety Authority (EFSA), checks on production facilities in countries that the EU imports food from, and the TRACES system for sharing of information about food consignments entering EU ports. It's important in the UK's future system that no gaps are allowed to develop in this space.

➤ **ACTION:** The UK must negotiate to co-operate with key EU networks and intelligence systems to ensure continuation of the rapid exchange of information between the UK and EU countries about food safety risks and dangerous imports. The UK should lead in strengthening international networks with a wider range of countries for food safety and food fraud.

Energy

64%
of people are worried
about energy prices.

- 4** The UK should maintain or enhance access to affordable, sustainable and secure energy as we leave the EU, to both keep bills to a minimum and deliver our commitments to decarbonisation.

Why does it matter to consumers?

Over the last twenty years the EU has developed an increasingly integrated Internal Energy Market (IEM) which has liberalised the electricity and gas markets. It has led to greater efficiency in trading electricity and gas, and enabled access to diverse sources of energy at reduced costs to consumers and improvements in security of supply.

A key issue for consumers as the UK leaves the EU is any impact on security of supply and the price that consumers pay for energy. Consumers spend 4.4% of their total expenditure on household fuel on average, rising to 8.6% for people in the lowest earning 10% of households⁴. Sixty-four per cent of people were worried about energy prices in January 2018⁵.

> ACTION: The Government must maintain open energy trading arrangements between the UK and EU through the negotiations in order to ensure there is ongoing flexible access to gas and electricity to help avoid increased costs for consumers.

Interconnectors between the UK and EU enable the UK to access supplies from the EU when there are surges and shortages of supply and vice versa. Around 12% of gas and 5% of electricity supplies came from the EU in 2016⁶. Research commissioned by the National Grid estimates that if no other policy measures are put in place, there is a risk to the UK economy of up to £500 million per year by the early 2020s as a result of being outside the IEM⁷.

> ACTION: If there is no agreement with the EU, domestic energy policy will need to take account of greater uncertainty and less stability over longer-term periods, without the flexibility that is provided by a larger EU supply network. Clear and early communication from Government to businesses will be critical if this looks likely, in order to allow them to adapt and minimise disruption.

4. Living Costs and Food Survey, 2016/17

5. Which? Consumer Insight Tracker, January 2018

6. Digest of UK Energy Statistics (DUKES) 2017

7. *Brexit: energy security*; House of Lords European Union Committee, 29th January 2018

There is currently a single electricity market for Ireland and Northern Ireland, which the Government has said should continue without prejudice to the wider UK-EU energy relationship.

> ACTION: The single electricity market for Ireland and Northern Ireland must be maintained.

A number of regulatory bodies have a role in supporting the functioning of the IEM. When the UK leaves the EU, it will be outside these bodies unless an agreement is reached on co-operation. This includes the Agency for the Co-operation of Energy Regulators (ACER) and the European Network of Transmission System Operators for Electricity (ENTSO-E) and Gas (ENTSO-G). REMIT (the EU regulation on energy market integrity and transparency) provides a regulatory framework for enforcement co-operation to prevent market abuse. The Government has stated that the UK would also leave the Euratom Agreement, which sets the legal framework for the generation and waste disposal of nuclear material. The UK's eight nuclear power stations currently provide 24% of the UK's electricity needs⁸. The Government has said that it will build a domestic framework that enables it to operate to Euratom standards and will seek new agreements with the International Atomic Energy Agency (IAEA).

> ACTION: The negotiations must secure continued co-operation with the regulatory and standards bodies that govern the cross-border energy market, including Euratom.

Policy makers and regulators need to remain focused on longer-term challenges facing the energy sector, such as decarbonisation. It may be beneficial to stay linked to some aspects of the EU system (e.g. the Emissions Trading Scheme) but the UK will have the opportunity to set its own national targets, whether for renewables or the roll out of smart meters.

> ACTION: Effective consumer engagement will be essential in shaping a successful future energy policy which maximises benefit for consumers.

8. UK Energy Statistics – 2017 Provisional Data, BEIS, February 2018

Travel

84%

of people think that maintaining access to the Common Aviation Area is important.



UK residents took
53 million trips
to the EU each year.

- 5 The UK should maintain access to the EU Common Aviation Area (ECAA) and ensure the same level of access around the world to avoid disruption and increased costs to travel.**

Why does it matter to consumers?

UK residents take more than 70 million trips abroad each year, with around 75% of these (over 53 million) to the other 27 EU member states and 34 million to holiday destinations Spain, France, Italy, Portugal, Greece, Cyprus and Malta⁹. The UK is a member of the EU Common Aviation Area (ECAA). This enables UK airlines to travel to destinations across the EU (and certain other European countries) and vice versa. Through “open skies” agreements that the EU has reached with other countries, such as the US and Australia, UK consumers have a choice of airlines to many destinations.

Consumers want continued access to a choice of affordable flights to a wide range of destinations after the UK leaves the EU. Eighty-four per cent of people think that maintaining access to the Common Aviation Area is important.

If the UK will leave the ECAA, it is important that negotiators ensure access to EU destinations for UK airlines. The Government will need to renegotiate, and improve where possible, the agreements that the EU has with other countries.

> ACTION: The negotiations with the EU must include unlimited access to all EU destinations for all UK airlines as under current arrangements.

Securing this in the negotiations will avoid UK airlines seeking permission to fly to each specific destination, as the default position is no access. This would enable EU airlines to continue to fly from the UK to other destinations – so flights on Norwegian or Iceland Air to the US, for example, would continue.

9. *Travelling Together: the value of UK outbound tourism*, ABTA, 2017

➤ **ACTION:** UK negotiators must ensure the same level of access to EU airlines flying to other destinations, such as the US, via the UK. As part of wider trade negotiations, UK negotiators must ensure that current arrangements for UK airlines with countries outside the EU are replicated, and look for opportunities to increase the choice for UK consumers.

Airlines sell tickets for flights many months in advance. Consumers could therefore find themselves in a position of having purchased flight tickets which, if no agreement is reached with the EU on maintaining access on the same terms, would no longer be useable. This could result in consumers suffering great inconvenience, disappointment and, unless clarity is provided about the status of these tickets and how to get compensation, significant financial loss. Some travel operators (e.g. Thomas Cook) and airlines (e.g. Ryanair) are including clauses relating to the closure of airspace in their terms and conditions.

➤ **ACTION:** The Government must provide clarity as soon as possible regarding consumers' rights (and airline and insurer obligations) in the event that consumers are left with tickets for flights that are no longer able to operate and the exclusion clauses some travel operators are now introducing into their terms and conditions.

Consumers have protections for flight cancellations and package holidays under existing EU laws. To still be effective post-Brexit, these need to be transposed through the EU (Withdrawal) Bill. However, the Government will need to reach an agreement in the negotiations on how these protections will continue - for example, if someone has a ticket that they purchased from an EU airline arriving in the UK or from an UK airline travelling from a third country to an EU airport. It is also unclear what rights would exist if air space is closed to UK airlines.

Consumers want continued compensation rights for cancelled or delayed flights. Seventy-five per cent of people think it is important for the UK to uphold the right to compensation for flight delay or cancellation.

> ACTION: The UK Government must transpose all existing consumer protections relating to compensation for flight delays and cancellations into UK law and, through negotiations with the EU, ensure that all related cross-border rights are maintained.

75%

of people think it is important for the UK to uphold the right to compensation for flight delay or cancellation.

6 Agreement is needed with the EU to ensure continued reciprocal access to healthcare for travellers.

Why does it matter to consumers?

The European Health Insurance Card (EHIC) gives people the right to access state-provided healthcare during a temporary stay in another EU Member State, European Economic Area (EEA) country or Switzerland. It covers treatment that is medically necessary until their planned return home. The treatment is provided on the same basis as it is to people who live in the country - either free or subject to a contribution. It covers pre-existing medical conditions and also routine maternity care.

For this to continue the Government and the EU need to reach an agreement. The EHIC card was used over 215,000 times by UK citizens in 2015¹⁰. Without the EHIC card, people may have to pay for access to the same level of healthcare, either directly or by claiming on a travel insurance policy. The EHIC is not a substitute for medical care that is included as part of travel insurance. If it is removed, people will likely have to pay more for cover with higher insurance premiums because insurers currently set their premiums taking into account what is already covered by EHIC. People with pre-existing conditions could also find it more difficult to get cover.

> ACTION: The Government must ensure that as part of the negotiations, there is a reciprocal agreement between the UK and EU on continued access to free or reduced cost healthcare for people while they are travelling.



The EHIC card was used over 215,000 times by UK citizens in 2015.⁹

10. *Making a Success of Brexit for Travel and Tourism: Priorities for the Brexit negotiations*, ABTA, 2017

83%

think continued access to healthcare when travelling in the EU is important.

Annual travel insurance policies will start to be sold from April 2018 that will extend into the period after the Government's stated EU exit date. As these are currently based on consumers' ability to use the EHIC, there could be confusion about what insurers will cover.

We welcome that the Government has secured continued access to healthcare rights as part of the first phase of negotiations on the rights of UK citizens living in the EU and vice versa. This does not apply to people who are on a temporary visit. Eighty-three per cent think continued access to healthcare when travelling in the EU is important.

➤ **ACTION:** Clarity is needed on the status of annual travel insurance policies that cut across the EU exit date, to ensure people have confidence they are adequately covered for any medical treatment that they may need.

7 There should be no mobile roaming charges for UK consumers travelling across the EU.

Why does it matter to consumers?

Consumers currently benefit from free roaming when they are travelling in EU and EEA countries. The EU regulation enabling consumers to "Roam Like at Home" (RLAH) was introduced in June 2017 and means that people can use their mobile device when travelling in the EU and pay domestic prices for roaming calls, SMS and data in line with their domestic package. Without an agreement in the negotiations this could end when we leave the EU, leading to consumers paying more to make calls or use data when travelling.

If the UK transposes the RLAH requirements into UK law, then the Government must also reach an agreement that limits wholesale charges for UK operators from mobile companies in the EU, so that customers can continue to use their networks when abroad without extra costs. The amount that they can charge is currently capped at an agreed level across the EU.

Two thirds (66%) of people think it is important that free roaming exists when travelling in the EU.

- **ACTION:** The UK should retain Roam Like at Home (RLAH) to protect UK consumers from high roaming surcharges when travelling in EU (and EEA) countries. EU law on retail surcharging for roaming should be transposed into UK law and the UK must reach an agreement with the EU to retain cap on wholesale charges.

When we leave the EU, the UK will no longer be able to dictate the wholesale charges that EU foreign operators levy on UK operators for UK customers who roam in the EU and vice versa. Without a price cap agreement for wholesale roaming charges after Brexit, wholesale and retail prices for roaming services are likely to increase.

- **ACTION:** As part of the negotiations, the UK should ensure that it is able to influence any revision of the wholesale cap.

New roaming provisions have been popular with consumers. We would encourage the UK to roll this out further through future trade deals across the world.

- **ACTION:** The Government should put roaming on the agenda for future trade agreements with non-EU countries to expand the RLAH benefits for people travelling to a wider range of destinations.

66%

of people think it is important that free roaming exists when travelling in the EU.

74%

think it is important to be able to resolve a car insurance claim with your UK insurer if you experience a collision in another EU country, where the driver was not from the UK.

8 Existing insurance rights and protections should be maintained for products and contracts bought through EU companies or used when travelling in the EU.

Why does it matter to consumers?

When the UK leaves the EU, some consumers may be unable to make claims or receive benefits on existing consumer contracts, such as retirement income or savings. UK consumers have 6 million contracts of this kind worth £20bn with EEA companies which could in effect be voided according to the Bank of England¹¹.

➤ **ACTION:** The Government should reach an agreement with the EU that enables UK and EU companies to honour all insurance and pensions contracts entered into before Brexit.

The green card system currently applies for 47 countries, including all 28 in the EU, EEA countries, Switzerland, Russia and several countries in the Middle East and bordering the Mediterranean. It enables the movement of vehicles across borders without having to show insurance documents. The EU has gone further so that a physical green card is not required for travel to the EEA, Andorra, Serbia and Switzerland. Under the EU scheme, green cards are free and issued by the recognised national bureau. In the UK, this is the Motor Insurance Bureau (MIB) and it delegates the responsibility to insurers. This enables victims to return home and pursue claims in their home country, either through a local representative of the foreign insurer, or MIB.

Three-quarters of people (74%) think it is important to be able to resolve a car insurance claim with your UK insurer if you experience a collision in another EU country, where the driver was not from the UK.

➤ **ACTION:** The UK should reach an agreement with the EU that enables continued road travel abroad without having to physically show a green card or purchase additional insurance, and ensures that victims of traffic accidents can pursue claims in their home country.

11. *Financial Stability Report*, Issue No.42, Bank of England, November 2017

Transition

- 9 A transition period must allow adequate time for communicating changes in consumer rights, and creating a credible framework for how domestic rights interact with cross border rights and protections.**

Why does it matter to consumers?

It is likely that there will be a transition period before the UK leaves the EU. The terms of this are still to be confirmed - including the extent to which EU laws will continue to apply and be enforced, as well as the UK's relationship with relevant EU bodies and networks. It is unclear how new laws that the EU adopts during this period will apply.

- > ACTION:** It is essential that consumers have clarity as to how their rights and protections will be maintained and applied during a transition period. This includes reciprocal arrangements for co-operation and enforcement of cross-border consumer rights and laws during this period.

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Which? is the trading name of Consumers' Association - a registered charity No' 296072

Which?