

THE BOOKSELLERS ASSOCIATION LAW REPORT – AUTUMN 2016

Brexit

On Thursday 23rd June, the UK voted narrowly to leave the European Union. The full results were as follows: Leave: 51.9 % Remain: 48.1 %. If you're interested, a full breakdown of the results can be found here: http://www.bbc.co.uk/news/politics/eu_referendum/results

Throughout the referendum period, the BA maintained a position of neutrality on the question of the UK's membership of the EU. At the same time we believed, and continue to do so, in the importance of areas relevant to booksellers and in particular three clear business priorities:

- Consumer confidence is paramount.
- Goods should be able to move freely and easily across borders.
- Retail needs a clear and proportionate regulatory environment.

UK Prime Minister Theresa May has now confirmed that Article 50 will be triggered no later than March 2017. Once Article 50 is triggered, the UK will enter into a complex and difficult negotiation in which the UK's objectives are potentially pitted against those of 27 Member States and the European institutions.

The structure of the EU's negotiating team has become clearer since June's referendum. The Commission's Chief Negotiator Michel Barnier will lead the EU's negotiations, drawing substantially on all Directorates-General for technical expertise and support. The political steer of Barnier's negotiation position must be provided by the Council.

Meanwhile, the European Parliament will use the threat of its veto to ensure its Brexit Representative, Guy Verhofstadt, and the Parliament's Conference of Presidents are directly plugged into negotiations from the start.

Reaching a consensus among Member States will be no small feat. There is a potential misconception that Member States will inevitably refrain from imposing tough sanctions on the UK through fear of harming their own

economies. By extension, there is a view that Germany's economic ties with the UK will ultimately see them persuade other Member States to adopt a more accommodating position.

The reality is far more complicated and points towards a much more difficult negotiation than many in the UK acknowledge. Each Member State has a unique mixture of political, economic and social variables which exert domestic political pressure on its leaders and will inform its government's negotiation position.

The BA will work closely with other bodies to try and ensure the best outcome for members.

Competition

The Complaint made by The BA in June 2015 is still being considered by the European Commission. Following the formal submission of the Complaint in June 2015 a delegation from The BA met with Mrs Larsson Haug and officials from DG Competition in Brussels in November 2015 to expand on the issues. CEO Tim Godfray, and Head of Corporate Affairs, Giles Clifton, subsequently met with Mrs Larsson Haug and officials in Brussels on Tuesday 28th June. A decision on further developments is pending.

Business Rates

Further to the Budget in Spring 2016, the BA acknowledges Government's commitment that non-residential property should be taxed. The current Government has committed to:

- Implement more frequent revaluations
- Permanently remove small independent businesses
- Introduce CPI indexation
- Standardise and digitalise billing

We welcome these commitments, and indeed, for many of our members they have resulted in decreased or indeed the elimination of Business Rates, but they do too little to address the fundamental problem – business rates are deterring investment and leading to shop closures and job losses and will

continue to do so after some of the Government's reforms kick-in in four years' time. The reality is:

1. After the announced changes at the Budget, business rates will continue to increase every year.
2. The changes to come into effect by 2020 are not a long-term sustainable solution.
3. 2020 is too late to prevent yet more damage to our high streets and communities.

Despite plans to reform the system the burden for retailers will be higher by 2020 than today. In addition, booksellers are undergoing an overall increase in centrally driven costs from policies such as the National Living Wage and the Apprenticeship Levy.

Cost pressures are increasing at a time when growth in consumer expenditure is subdued. This is occurring when the rate of change within the workforce is quickening as the digital transformation reshapes the industry and accelerated by the diverging costs of labour versus technology.

In the internet age, multinational online retailers should not be able to shift costs and sales from country to country so that they obtain a competitive advantage over national businesses; neither should they be permitted to operate from huge warehouses way out of town that don't involve the very high business rates that high street operations are required to pay.

The scale of the problem was revealed in a telling exchange during a session of the Business, Innovation and Skills Select Committee on 8th March this year, on The Digital Economy, when Richard Fuller MP (Conservative, Bedford) raised to our mind the staggering discrepancy between what the Waterstone's Branch on Silver Street, Bedford pays per square metre in Business Rates (£850), and what Amazon pay at their Marston Gate Distribution Centre in the constituency – £52.50 per square metre. This is 16 times higher for Waterstone's. The present Business Rates' system is no longer fit for purpose. UK business rates are the highest commercial property tax in the European Union, at 4.1% of GDP. For every £1 in Corporation Tax, retailers pay £2.31 in Business Rates, compared to £1 to £0.44 for other industries.

Fundamental reform is needed, that is:

- Fairer to businesses across the UK; and
- Flexible enough to respond to the economic cycle.

American Booksellers Association Compliant re Amazon's Abuse of Its Dominance in the Book Market

As you will know the ABA took part in an unprecedented joint action in which U.S. booksellers, authors, and literary agents called on the U.S. Department of Justice (DOJ) to investigate the business practices of Amazon.com. The action comes as similar efforts are underway in the European Union. This is on-going.

Consumer Protection

A reminder that legislation came into effect in October last year that introduces new mechanisms to assist consumers in resolving their disputes with a business. The 'Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015' requires that all businesses, once they fail to resolve the consumer's complaint through their own customer service methods, indicate an alternative dispute resolution body relevant to their dispute.

Please see <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>

Unfair Contract Terms

A reminder also that The Consumer Rights Act 2015 (in force from 1 October 2015) updates the law on the use of unfair contract terms in consumer contracts. This guidance for businesses will help you to understand what makes terms and notices unfair, and what the risks are if you use unfair wording.

Please see <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

Proposed New Irish Consumer Rights Bill

The Department of Jobs, Enterprise and Innovation in Dublin has put forward suggested amendments to the Irish Consumer Rights Bill. However, the deliverance of the Bill is still unclear since the election in Ireland this year delivered an uncertain political future.

Please see <http://www.eccireland.ie/minister-announces-consultation-on-new-consumer-rights-bill/>

Environment & CSR

As you will know the Government introduced a new law requiring large organisations with over 250 employees to charge 5p for all single use plastic carrier bags from 5th October 2015.

It is a requirement that businesses use the Government portal to report by 31st May each year on the number of bags given out and what has been done with the proceeds.

The first reporting period for this data is 5th October 2015 to 6th April 2016. This should have been reported by 31 May 2016.

If you need further information on the plastic bag charging scheme please see here: <https://www.gov.uk/government/collections/carrier-bags>

If you need further help on how to report please contact PlasticBagCharge@defra.gsi.gov.uk

Scottish Business Rates Update

Following new elections to the Scottish Parliament in May 2016 the BA attended an event in Edinburgh over the summer to assess what the future road-map of Business Rates may look like, and to ensure that the voice of Scottish booksellers was clearly heard both in the Scottish Retail Consortium and Holyrood.

Sunday trading review

Under current laws, large stores (over 3,000sq ft) in England and Wales can open for a maximum of six hours on a Sunday, with certain exemptions such as shops at airports and railways stations.

The Government had wanted to implement devolved powers to allow mayors and local councils the ability to determine trading hours in their areas. To this effect the Secretary of State for Business, Innovation and Skills, Rt Hon Sajid Javid MP, announced on 9th February that the Government proposed to devolve the power to extend Sunday trading hours across England & Wales. This is a devolved matter for both Northern Ireland and Scotland.

However, following cross-party opposition, these proposals have now been dropped.

If you are unsure on any aspects of Sunday Trading, please ask.

Copyright Enforcement

The BA submitted its views on the Government's consultation on the transitional arrangements for the repeal of Section 52 of the Copyright Designs and Patents Act 1988.

The Government has now published updated guidance on the repeal of section 52 of the Copyright, Designs and Patents Act 1988 (CDPA). This guidance is aimed at businesses, organisations and individuals affected by the repeal of section 52 and the transitional provisions related to this. The guidance is available at <https://www.gov.uk/government/publications/copyright-protection-of-industrially-manufactured-artistic-works>.

Libraries

The BA has been active in raising the importance of libraries and has asked Government to establish a Parliamentary Commission to further the general duty as set out in the Public Libraries and Museums Act 1964 to “provide a comprehensive and efficient library service for all persons” and to consider amending the legislation if necessary. This issue was also looked at by the House of Lords Thursday 13th October, in a debate sponsored by Lord Bird, better known as John Bird, the *Big Issue* founder.

The motion being debated was:

“That this House takes note of the cultural, civic and educational significance of libraries, bookshops and booksellers in the United Kingdom.”

The full debate can be viewed on this link
<https://hansard.parliament.uk/lords/2016-10-13/debates/C8C0345D-B9F6-4EF9-BFE2-A58A6618529D/LibrariesBookshopsAndBooksellers>