

Our guide to the Digital Markets, Competition and Consumers Bill – focusing on consumer law



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The [Digital Markets, Competition and Consumers Bill](#) was introduced to the UK parliament on 25 April 2023, following a Green Paper back in 2018 and consultation by the government in 2021. The government said that one of the primary purposes of the Bill is to protect consumers by *strengthening* the enforcement of consumer protection law (including by giving the CMA significant new powers and the prospect of GDPR style fines) and introducing *new consumer rights*, including by tackling subscription traps that it says currently cost consumers £1.6 billion.

In addition to updating consumer laws, the Bill introduces new provisions relating to digital markets and competition law. However, this Guide focuses on the rules about consumer law, found in Parts 3 and 4 of the Bill.

Sarah Cardell of the CMA has called the Bill a “watershed moment” in protecting consumers.

Consumer rights and Protection from unfair trading

The Bill repeals and reinstates the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) (CPRs). There are some changes, most of which are minor. However, the Bill amends and supplements the list of commercial practices that are always considered unfair to reflect the fact that consumers and traders increasingly interact online. In addition, it amends some the definitions such as “average consumer” “commercial practice” and “transactional decision”.

Commercial practices that are always considered unfair

The CPRs contain a list of ‘blacklisted practices’ in Schedule 1 – these are practices that are considered unfair in all circumstances, without the need to show they affect a consumer’s purchasing decision. Many of these have been largely replicated in the new Bill, but in some cases the wording has been slightly tweaked, resulting in a wider application.

For example, the banned practice of “falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice” has been amended to remove the words “very”, making this unfair practice wider in scope. This change aligns with the broader regulatory movement to crack down on “[Online Choice Architecture](#)” or “Dark Patterns”.

A more detailed breakdown of the changes to the “blacklisted practices” is available on request.

Given there will be powers to amend the list of unfair commercial practices (see below), additional banned practices might follow in the future.





Power to amend the list of unfair commercial practices

The Secretary of State will have the power to add to the current list of automatically unfair practices using secondary legislation. This will allow consumer laws to adapt more quickly than has been possible under previous legislation to changes in the market, consumer practices, and technology. However, as the banned practices are treated as strict liability offences, without the need to prove consumer harm, any new additions will need to be carefully assessed by the Secretary of State to ensure there isn't room for misapplication. While the Bill works its way through Parliament, the government has said that it will consult on the use of such a power to create the following banned practices:

- ▶ Commissioning or providing incentives to any person to write and/or submit a fake consumer review of goods or services;
- ▶ Hosting consumer reviews without taking reasonable and proportionate steps to check they are genuine; and
- ▶ Offering (or advertising) to put forward, commission or facilitate fake reviews.

These additions would bring the UK position closer to that of the EU where the Enforcement and Modernisation Directive (also known as the "Omnibus Directive") brought in similar prohibitions on fake reviews and endorsements.

There have also been [calls](#) to introduce "drip pricing" to the list of unfair practices. Drip pricing is where only part of an item's price is shown during the early part of the consumer journey, and the total amount to be paid is revealed at or near the end of the buying process. This is a practice the CMA has already declared potentially harmful as part of its investigations into online choice architecture.

Subscription contracts

A key area of change in the Bill relates to subscription contracts. The government estimates that consumers spend £1.6 billion per year on subscriptions they do not want, due to unclear terms and complicated cancellation procedures. The ASA has also been active in trying to reduce harm in this [area](#).

A subscription contract is defined in the Bill as a business-to-consumer contract for the supply of goods, services or digital content which meets either or both of the following criteria:

- ▶ It auto-renews unless the consumer takes action to terminate it; and/or
- ▶ It contains a free trial or reduced-price period after which the contract continues with the consumer liable to make payments, or payments at a higher rate than the original rate, unless the consumer takes action to terminate it.

Schedule 19 lists contracts that are excluded from this definition, including contracts for the supply of utilities, financial services, certain healthcare and medical contracts, contracts for the supply of services regulated by Ofcom, residential accommodation rental contracts, leisure activities on a specific date, package holiday and package travel contracts, and contracts for the supply of childcare and school age education.

Pre-contract information

Where a trader enters into a subscription contract, it must give the consumer key pre-contract information and give or make available full pre-contract information. This includes information about the contract's auto-renewal mechanism, the charges that apply after any initial trial period, the amount and frequency of payments, and details of how the consumer can terminate the contract. It must be provided as close in time to entering into the contract as possible, and be provided:

- ▶ Separately from the full pre-contract information and other information (so that it is not obscured);
- ▶ In writing (unless the contract is concluded orally and remotely); and
- ▶ So that the consumer does not have to take any steps to read the information, such as clicking on links or downloading separate documents, other than the steps needed to enter into the contract itself.



Reminder notices

For subscriptions where payment is taken every 6-months or more frequently, reminders must be sent at least once every six months. Reminders must also be given in respect of the first subscription renewal payment (no matter how often payments are made). For subscriptions where payment is taken less often than every 6-months, reminders must be sent just for each renewal payment.

Traders must issue reminder notices to consumers explaining that a subscription contract will continue and that a renewal payment will be due unless the consumer takes steps to end it. The reminder notice must include the date the renewal payment is due and the amount the consumer is liable to pay, details of any price increase compared to the previous payment and details of how the consumer can end the contract before becoming liable for the next payment.

The reminder notice must be given between three and five working days before the last day on which the consumer can end the contract and avoid becoming liable for the next renewal payment. For subscription contracts that renew for a period of 12 months or more, the trader must issue an extra reminder 10-14 working days before the renewal date. Secondary legislation will deal with what the notice period should be if the current notice periods don't work (for example, if a consumer signs up and the first renewal payment comes round quicker than the notice periods allow).

Reminder notices have to be given separately from other information and should not be used for marketing purposes.

Ending the contract

A trader must facilitate the consumer ending the subscription contract in a single communication and without having to take any unreasonably necessary steps to end the contract.

They must also acknowledge the cancellation request and refund any overpayments. That notice must be given in writing, on a durable medium, and set out when the contract was cancelled or will come to an end. Unless other regulations apply, it must be provided within three working days after the day on which the consumer gives notice of cancellation or, where the consumer gives notice online, within 24 hours of cancellation.

Where the subscription contracts is entered into online, the trader must also allow termination online. Instructions for terminating the subscription must also be provided online in one or more places that a consumer is likely to find them. However, a consumer can, in any case, use another method to end the contract as long as it is sufficiently clear.

Implied terms

The trader's duties to provide pre-contract information and reminder notices and aid easy termination become implied terms in every subscription contract. If they are breached, the consumer may cancel the contract without penalty.

Cooling-off rights

A consumer can cancel a subscription contract, without any penalty, during the initial cooling-off period and any renewal cooling-off period. The cooling-off period starts on the day the contract is entered into, and ends:

- ▶ For goods contracts, at the end of the period of 14 days starting on the day after the day on which the consumer first receives goods.
- ▶ For other contracts, at the end of the period of 14 days starting on the day after the day on which the contract is entered into.

If traders do not provide the pre-contract information about the initial cooling-off period, they are committing a criminal offence. Company officers can be liable if it happens with their consent or connivance or due to their neglect.

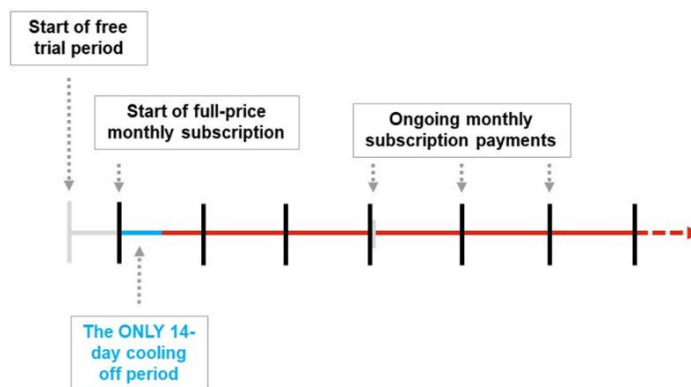


The renewal cooling-off period starts on the day on which a "relevant renewal" takes place and ends 14 days after the day after the day when the renewal took place. A relevant renewal is when:

- a consumer first becomes liable for a renewal payment after a free-trial or reduced-price trial period; or
- a consumer becomes liable for a renewal payment and the next payment is not due for 12 months or more (e.g., an annual subscription where the consumer pays once a year); or
- a consumer becomes liable for a renewal payment and no further payments are due, but the contract continues for 12 months or more.

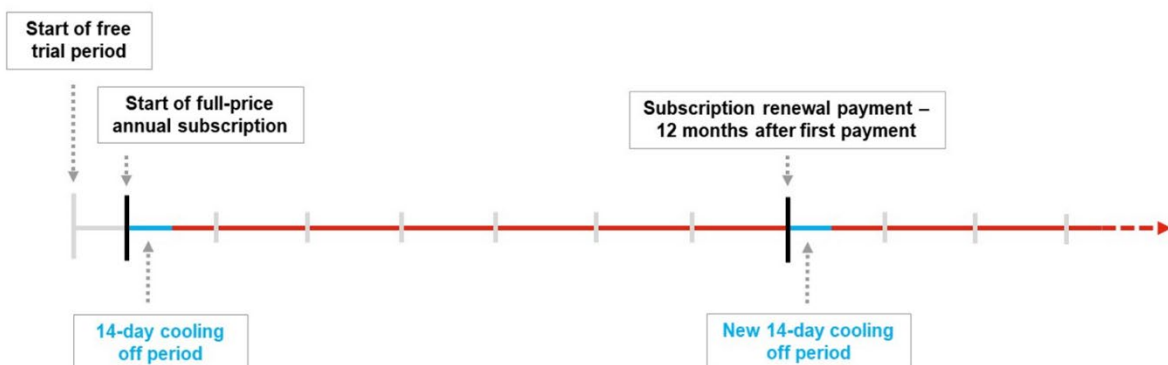
Cooling off period (Example 1)

Free trial followed by monthly subscription



Cooling off period (Example 2)

Free trial followed by annual subscription





A trader must tell a consumer about each renewal cooling-off period. The notice must state, among other things, that the contract is continuing, and the consumer has a right to cancel it during the renewal cooling-off period. It must be given on the first day of the renewal cooling-off period or as soon as reasonably practicable afterwards and must be provided separately from other information.

The Bill takes into account that people may subscribe to services from overseas and states that the rules will apply to overseas contracts if they have a close connection to the UK.

Other changes

The Bill also reforms Christmas Club savings schemes and alternative dispute resolution schemes.

Enforcement changes

So, what happens if you don't comply with the above? The Bill substantially enhances the CMA's role in enforcing the consumer protection regime. Currently, the CMA must rely on court proceedings to enforce any breaches of consumer law, which it says causes delays and limits its impact. However, the Bill allows the CMA to directly investigate suspected infringements and practices that may harm the collective interests of consumers in the UK, and issue enforcement notices without going to court first. Other regulators such as the FCA will also have enhanced rights but will have to go to court first.

The CMA will have powers to:

- ▶ issue provisional and final infringement notices where the respondent has engaged or is an accessory to a relevant consumer law infringement;
- ▶ take enhanced 'consumer measures', taking into account the likely benefit and associated costs of any issued measures;
- ▶ issue online interface notices to traders operating websites, apps or other digital content promoting the sale of services, goods or digital content which may (among other things) require the removal of certain content or the deletion of a domain name;
- ▶ seek undertakings after an investigation (instead of issuing an infringement or online interface notice) and issue enforcement notices if they are not complied with;
- ▶ enforcement directions; and
- ▶ information notices.

The CMA will also have the power to impose significant fines. If the Bill passes in its current form the CMA will be able to impose fines of up to:

- ▶ £300,000 or 10% of annual global turnover (whichever is higher) in relation to final infringement notices;
- ▶ £150,000 or 5% of annual global turnover (whichever is higher), plus an additional daily penalty if breach persists thereafter of up to £15,000 or 5% daily global turnover (whichever is higher) for failure to comply with an enforcement direction or a breach of an undertaking made to the CMA under the DMCC Bill; and
- ▶ £30,000 or 1% of annual global turnover (whichever is higher), plus an additional daily penalty if breach persists thereafter of up to £15,000 or 5% daily global turnover (whichever is higher) for non-compliance with an information notice or for the provision of materially false or misleading information.

Individuals may also be fined as part of this new regime.

There are also [calls](#) to introduce a collective redress regime for consumer protection cases, as already exists for competition cases. However, in its current form, the Bill does not include such a regime.



What isn't in the Bill?

There are a number of issues which were anticipated to be in the Bill but have been omitted. For example:

- ▶ In August 2022, the CMA had asked for new rules around secondary ticketing but the government has rejected this;
- ▶ It does not cover specific rules about greenwashing, as the government has said this can be dealt with as a misleading practice;
- ▶ It does not (yet) cover issues around consumer reviews, although as flagged above, rules are expected to be introduced at some point; and
- ▶ There are only limited changes in respect of Online Choice Architecture / Dark Patterns.

What happens next?

The Bill will come into effect as soon as possible following parliamentary approval. Secondary legislation and guidance will be issued.

The new consumer protection measures of the Bill are intended to apply to the whole of the UK. Consumer protection policy is devolved to Northern Ireland but reserved for Scotland and Wales. As a result, legislative consent will be required from the Northern Ireland Assembly.

The Bill is expected to be in force from the middle to end of 2024. It will only apply to contracts entered into after it comes into force.

While the Bill progresses through parliament, there will also be a number of other potential changes to monitor, including:

- ▶ The government's consultation on the proposed ban on fake reviews;
- ▶ The CMA's statement about the considerations relevant to the exercise of its powers to impose financial penalties (which it is required to publish under the Bill);
- ▶ The size and nature of the maximum penalties that can be imposed; and
- ▶ Any potential secondary legislation.

What does this mean for businesses?

With the introduction of the DMCC Bill, the UK will be entering into a new era for consumer protection. The CMA has already been making moves to improve and modernise how it works – a point it highlighted in its [annual plan](#). With its new powers under the DMCC Bill, businesses can expect more regulatory action. With potentially eye-watering fines on the table, many companies who previously took a “risk-based approach” to compliance with consumer laws will need to reassess their position. Cross-border businesses will also now need to take account of the divergence in consumer law between the UK and EU.





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