
Committee Stage: Friday 23 June 2023

Digital Markets, Competition and Consumers Bill

(Amendment Paper)

This document lists all amendments tabled to the Digital Markets, Competition and Consumers Bill. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

Paul Scully

Gov 34

Clause 94, page 56, line 14, leave out subsection (2)

Member's explanatory statement

This amendment removes a gloss on the definition of “officer” of a body corporate so that the term has its usual meaning in relation to offences committed by officers as well as bodies corporate.

Paul Scully

Gov 35

Clause 98, page 58, line 23, leave out “undertaking” and insert “person”

Member's explanatory statement

The requirements to which clause 98 relates can apply to persons other than undertakings. This amendment clarifies that a costs order under this clause can be made against any person, whether or not they are an undertaking, who fails to comply with a requirement.

Paul Scully

Gov 36

Clause 98, page 58, line 25, leave out paragraph (b) and insert—

“(b) where the person responsible for the failure is an undertaking, any officer of a body corporate that is or is comprised in that undertaking.”

Member's explanatory statement

This amendment clarifies the circumstances in which a costs order under this clause can be made against an officer of a body corporate.

Paul Scully

Gov 37

Clause 104, page 63, line 31, at end insert—

“(aa) what, if any, provision to make in reliance on section 17 of the 2023 Act;”

Member's explanatory statement

This amendment prevents decisions about whether and how to exercise the power in clause 17 being delegated to a member of the CMA Board or a member of the staff of the CMA.

Paul Scully

Gov 38

Clause 110, page 69, line 15, after “imposed” insert “or is considering imposing”

Member's explanatory statement

This amendment permits notices such as information notices to be served on a person outside the United Kingdom if the CMA is considering imposing a penalty under clause 85(2) or (3) as the case may be.

Paul Scully

Gov 39

Clause 115, page 72, line 42, leave out “anything else done” and insert “any other activity carried out”

Member's explanatory statement

This amendment makes the definition of “relevant service or digital content” consistent with the definition of “digital activity” in clause 3(1).

Kevin Hollinrake

Gov 40

Schedule 12, page 284, line 5, at end insert—

“(1A) In subsection (4) omit “, 94A(6)”.”

Member's explanatory statement

This amendment removes a reference in section 124(4) of the Enterprise Act 2002 to section 94A(6) of that Act, which is being repealed by paragraph 11 of Schedule 9 to the Bill.

Kevin Hollinrake

Gov 41

Schedule 12, page 284, line 7, at end insert—

“(aa) omit “, 94A(3) or (6)”;

Member's explanatory statement

This amendment removes a reference in section 124(5) of the Enterprise Act 2002 to section 94A(3) and (6) of that Act, which are being repealed by paragraph 11 of Schedule 9 to the Bill.

Kevin Hollinrake

Gov 42

Schedule 12, page 284, line 12, after “section” insert “94AB(9) or”

Member's explanatory statement

This amendment corrects a drafting omission by providing that regulations under section 94AB(9) of the Enterprise Act 2002 (inserted by paragraph 11 of Schedule 9 to the Bill) are subject to annulment in pursuance of a resolution of either House of Parliament.

Kevin Hollinrake

Gov 43

Schedule 12, page 285, line 10, after “section” insert “167B(9) or”

Member's explanatory statement

This amendment corrects a drafting omission by providing that regulations under section 167B(9) of the Enterprise Act 2002 (inserted by paragraph 17 of Schedule 9 to the Bill) are subject to annulment in pursuance of a resolution of either House of Parliament.

Kevin Hollinrake

Gov 44

Schedule 12, page 285, line 23, at end insert—

“(8A) In subsection (10), for “174D” substitute “174A(10)”.”

Member's explanatory statement

Paragraph 26 of Schedule 8 to the Bill inserts a new subsection (10) into section 174A of the Enterprise Act 2002 which replaces the existing provision made by section 174D(10) of that Act (which is being repealed by paragraph 28(12) of that Schedule). This amendment amends the Enterprise Act 2002 to replace a reference in section 181(10) of that Act to the latter provision with a reference to the former.

Kevin Hollinrake

Gov 59

Clause 140, page 88, line 18, leave out “trader” and insert “person”

Member's explanatory statement

This amendment ensures that the definition of "commercial practice" for the purposes of Part 3 of the Bill includes an act or omission by a trader relating to the promotion or supply of a consumer's product to another consumer.

Kevin Hollinrake

Gov 60

Clause 177, page 118, line 12, at end insert—

"(2A) Subsections (1) to (6) of section 156 (inclusion of enhanced consumer measures in undertakings) apply to an undertaking under this section as they apply to an undertaking under section 155(2)."

Member's explanatory statement

This amendment ensures that requirements imposed by undertakings given under clause 177 may include the taking of enhanced consumer measures (as defined by clause 213).

Kevin Hollinrake

Gov 61

Clause 181, page 121, line 28, at end insert—

"(e) state that the respondent has a right to appeal against the notice and the main details of that right (so far as not stated in accordance with paragraph (d))."

Member's explanatory statement

This amendment requires that the information contained in a final breach of undertakings enforcement notice includes information about rights of appeal.

Kevin Hollinrake

Gov 62

Schedule 16, page 329, line 17, leave out sub-paragraph (b)

Member's explanatory statement

See explanatory statement for Amendment 63.

Kevin Hollinrake

Gov 63

Schedule 16, page 329, line 23, at end insert—

"5A In Schedule 14 (provisions about disclosure of information) at the appropriate place insert—

"Chapters 3 and 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023.""

Member's explanatory statement

This amendment, which is made for drafting consistency, inserts a reference to Chapters 3 and 4 of Part 3 of the Bill into Schedule 14 to the Enterprise Act 2002 instead of achieving the same effect by adding that reference into section 238(1) of that Act.

Kevin Hollinrake**Gov 64**

Schedule 16, page 337, line 2, at end insert—

“Part 4 of the Digital Markets, Competition and Consumers Act 2023.”

Member's explanatory statement

This amendment adds Part 4 of the Bill to the list of enactments in the new paragraph 20A of Schedule 5 to the Consumer Rights Act 2015 (inserted by paragraph 8(10) of Schedule 16), with the effect that authorised enforcers will be able to exercise the investigatory powers conferred by Part 4 of Schedule 5 to CRA 2015 in connection with infringements of Part 4 of the Bill.

Kevin Hollinrake**Gov 65**

Schedule 17, page 338, line 1, leave out from “means” to end of line 11 and insert “—

- (a) Part 8 of EA 2002, as that Part had effect immediately before the commencement date, and
- (b) any provisions of law (including in particular Schedule 5 to CRA 2015) relating to Part 8 of EA 2002, as those provisions had effect immediately before the commencement date.”

Member's explanatory statement

This amendment clarifies that the definition of “the old law” for the purposes of the transitional provisions in Schedule 17 to the Bill includes Schedule 5 to the Consumer Rights Act 2015 (which confers investigatory powers on enforcers).

Richard Thomson**66**

Schedule 18, page 343, line 2, at end insert—

- “32 Commissioning or incentivising any person to write or submit a fake consumer review of goods or services.
- 33 Hosting consumer reviews without taking reasonable and proportionate steps to check they are genuine.
- 34 Offering or advertising to submit, commission or facilitate fake reviews.”

Member's explanatory statement

This amendment seeks to prevent and deter fake reviews by including them in the list commercial practices which are in all circumstances considered unfair.

Richard Thomson

68

Schedule 18, page 343, line 2, at end insert—

- “32 Making claims about—
- (a) the environmental benefits, or
 - (b) the sustainability (as defined by section 234(1C)) of a product or service which are not based on evidence which can be verified by a court.”

Member's explanatory statement

This amendment seeks to ban the practice of “greenwashing”. It would include the making of unsubstantiated claims about the sustainability of products and services an unfair commercial practice.

Richard Thomson

70

Schedule 18, page 343, line 2, at end insert—

- “32 Promoting a product or service at a particular price, and then including further charges as the consumer continues the purchasing process.”

Member's explanatory statement

This amendment seeks to require online sellers and service providers to set out prices with non-optional add-ons at the beginning of a transaction, through including the practice of “drip pricing” in the list of commercial practices which are in all circumstances considered unfair.

Richard Thomson

67

Clause 225, page 152, line 30, at end insert—

- “(4A) The Secretary of State must by regulations make any further provision necessary to ensure that the rights of redress available under this Chapter are equivalent to, and not lesser than, those available under the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277).”

Member's explanatory statement

This amendment seeks to ensure that the “Consumer Rights to Redress” that will be set out through secondary legislation cannot offer a reduced level of the protection than the Consumer Protection from Unfair Trading Regulations 2008.

Richard Thomson

69

Clause 234, page 157, line 29, at end insert—

- “(1A) The Secretary of State must consult on a definition of sustainability for the purposes of paragraph 32 of Schedule 18.
- (1B) A consultation under subsection (1A) must—

- (a) set out which products and services can be labelled sustainable; and
 - (b) require the definition to comply with international standards.
- (1C) Following a consultation under subsection (1A) the Secretary of State must by regulations amend this Chapter to add a definition of sustainable.”

Member's explanatory statement

This amendment seeks to ban the practice of “greenwashing”. It requires the Government to define which products and services can be labelled “sustainable” and requires that this definition complies with international standards.

Paul Scully

Gov NC1

To move the following Clause—

“Decision not to make final offer order

- (1) The CMA may decide not to make a final offer order in relation to the transaction where it has reasonable grounds to believe that there has been a material change of circumstances since the final offer initiation notice was given.
- (2) For the purposes of this section and section 42(3) a material change of circumstances includes an agreement between the designated undertaking and the third party with respect to terms as to payment in relation to the transaction.
- (3) Where the CMA decides not to make a final offer order, it must give a notice to that effect to the designated undertaking and the third party.
- (4) The notice must include the reasonable grounds referred to in subsection (1).
- (5) As soon as reasonably practicable after giving a notice under subsection (3), the CMA must publish a statement summarising the contents of the notice.”

Member's explanatory statement

This new clause, together with Amendment 10, ensures that the CMA can end the final offer mechanism without making a final offer order at any time after giving a final offer initiation notice. It would appear after clause 41.

Alex Davies-Jones

NC2

Seema Malhotra

To move the following Clause—

“Recognised news publisher: definition

- (1) In section 20, “recognised news publisher” means any of the following entities—
 - (a) the British Broadcasting Corporation,
 - (b) Sianel Pedwar Cymru,

- (c) the holder of a licence under the Broadcasting Act 1990 or 1996 who publishes news-related material in connection with the broadcasting activities authorised under the licence, and
 - (d) any other entity which—
 - (i) meets all of the conditions in subsection (2), and
 - (ii) is not an excluded entity (see subsection (3)).
- (2) The conditions referred to in subsection (1)(d)(i) are that the entity—
- (a) has as its principal purpose the publication of news-related material, and such material—
 - (i) is created by different persons, and
 - (ii) is subject to editorial control,
 - (b) publishes such material in the course of a business (whether or not carried on with a view to profit),
 - (c) is subject to a standards code,
 - (d) has policies and procedures for handling and resolving complaints,
 - (e) has a registered office or other business address in the United Kingdom,
 - (f) is the person with legal responsibility for material published by it in the United Kingdom, and
 - (g) publishes—
 - (i) the entity's name, the address mentioned in paragraph (e) and the entity's registered number (if any), and
 - (ii) the name and address of any person who controls the entity (including, where such a person is an entity, the address of that person's registered or principal office and that person's registered number (if any)).
- (3) An "excluded entity" is an entity—
- (a) which is a proscribed organisation under the Terrorism Act 2000 (see section 3 of that Act), or
 - (b) the purpose of which is to support a proscribed organisation under that Act.
- (4) For the purposes of subsection (2)—
- (a) news-related material is "subject to editorial control" if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for the material, including responsibility for how it is presented and the decision to publish it;
 - (b) "control" has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act.
- (5) In this section—
- "news-related material" means material consisting of—
- (a) news or information about current affairs,
 - (b) opinion about matters relating to the news or current affairs, or
 - (c) gossip about celebrities, other public figures or other persons in the news;

“publish” means publish by any means (including by broadcasting), and references to a publisher and publication are to be construed accordingly;

“standards code” means—

- (a) a code of standards that regulates the conduct of publishers, that is published by an independent regulator, or
- (b) a code of standards that regulates the conduct of the entity in question, that is published by the entity itself.”

Member's explanatory statement

This new clause is linked to Amendment 58.

Alex Davies-Jones

NC3

Seema Malhotra

To move the following Clause—

“CMA annual report on final offer mechanism

- (1) The CMA must, once a year, produce a report about the final offer mechanism.
- (2) Each report must include information about—
 - (a) the number of final offer orders the CMA has made over the previous year;
 - (b) for each final offer order—
 - (i) the amount of time taken between final offer initiation notice being given and the final offer order being made.
 - (ii) whether bids were submitted by both the undertaking and the third party, and
 - (iii) the outcome of the process; and
- (3) The CMA may provide the information in such a way as to withhold any details that the CMA considers to be commercially sensitive.
- (4) The first report must be published and laid before both Houses of Parliament within one year of this Act being passed.”

Member's explanatory statement

This new clause requires the CMA to publish an annual report on the workings of the final offer mechanism. The report will be made publicly available and will be laid in both Houses of Parliament.

Alex Davies-Jones

NC4

Seema Malhotra

To move the following Clause—

“Annual report on operation of CMA functions

- (1) The Secretary of State must, at least once a year, produce a report on the operation of the CMA’s functions under Part 1 of this Act.
- (2) Each report must include an assessment of the following matters—
 - (a) the outcomes of SMS investigations carried out by the CMA, with regard to the number of undertakings found—
 - (i) to have SMS, and
 - (ii) not to have SMS;
 - (b) the extent to which designated undertakings have fulfilled any conduct requirements imposed by the CMA; and
 - (c) the effectiveness of any pro-competition interventions made by the CMA.
- (3) The first report must be published and laid before Parliament within one year of this Act being passed.”

Member's explanatory statement

This new clause requires the Secretary of State to produce an annual report on the operation of the CMA’s functions under Part 1. The report will be made publicly available and will be laid in Parliament.

Order of the House

[17 May 2023]

That the following provisions shall apply to the Digital Markets, Competition and Consumers Bill:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Public Bill Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Tuesday 18 July.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Consideration and Third Reading

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which proceedings on Consideration are commenced.

5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and up to and including Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.

Order of the Committee

[13 June 2023]

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 13 June) meet—
 - (a) at 2.00 pm on Tuesday 13 June;
 - (b) at 11.30 am and 2.00 pm on Thursday 15 June;
 - (c) at 9.25 am and 2.00 pm on Tuesday 20 June;
 - (d) at 11.30 am and 2.00 pm on Thursday 22 June;
 - (e) at 9.25 am and 2.00 pm on Tuesday 27 June;
 - (f) at 11.30 am and 2.00 pm on Thursday 29 June;
 - (g) at 9.25 am and 2.00 pm on Tuesday 4 July;
 - (h) at 11.30 am and 2.00 pm on Thursday 6 July;
 - (i) at 9.25 am and 2.00 pm on Tuesday 11 July;
 - (j) at 11.30 am and 2.00 pm on Thursday 13 July;
 - (k) at 9.25 am and 2.00 pm on Tuesday 18 July;
2. the Committee shall hear oral evidence in accordance with the following Table:

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Tuesday 13 June	Until no later than 9.55 am	Competition and Markets Authority
Tuesday 13 June	Until no later than 10.25 am	Which?; Citizens Advice
Tuesday 13 June	Until no later than 4.45 pm	Chartered Trading Standards Institute

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Tuesday 13 June	Until no later than 5.15 pm	News Media Association; Publishers Association; DMG Media
Tuesday 13 June	Until no later than 2.45 pm	Professor Jason Furman, Harvard University; Professor Philip Marsden, College of Europe; Professor Amelia Fletcher, University of East Anglia
Tuesday 13 June	Until no later than 3.30 pm	The Consumer Council; Consumer Scotland; National Consumer Federation
Tuesday 13 June	Until no later than 3.45 pm	Professor Geoffrey Myers, London School of Economics and Political Science
Tuesday 13 June	Until no later than 4.00 pm	British Retail Consortium
Tuesday 13 June	Until no later than 4.15 pm	Open Markets Institute
Thursday 15 June	Until no later than 11.45 am	techUK
Thursday 15 June	Until no later than 12.15 pm	Coalition for App Fairness; Geradin Partners
Thursday 15 June	Until no later than 1.00 pm	Match Group; Gener8; Kelkoo
Thursday 15 June	Until no later than 2.30 pm	XigXag; Paddle
Thursday 15 June	Until no later than 2.45 pm	Google

3. proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 36; Schedule 1; Clauses 37 to 59; Schedule 2; Clauses 60 to 121; Schedule 3; Clauses 122 to 124; Schedule 4; Clause 125; Schedule 5; Clauses 126 to 131; Schedule 6; Clause 132; Schedule 7; Clauses 133 to 136; Schedules 8 to 10; Clause 137; Schedule 11; Clause 138; Schedule 12; Clauses 139 to 142; Schedules 13 and 14; Clauses 143 to 200; Schedule 15; Clauses 201 to 207; Schedule 16; Clause 208; Schedule 17; Clauses 209 to 217; Schedule 18; Clauses 218 to 247; Schedule 19; Clause 248; Schedule 20; Clauses 249 to 276; Schedule 21; Clauses 277 to 287; Schedule 22; Clauses 288 to 292; Schedule 23; Clauses 293 to 300; Schedule 24; Clauses 301 to 308; Schedule 25; Clauses 309 and 310; Schedule 26; Clauses 311 to 317; new Clauses; new Schedules; remaining proceedings on the Bill;
4. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 18 July.

Withdrawn Amendments

The following amendments were withdrawn on 14 June 2023:

5