
Committee Stage: Wednesday 28 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 Any withdrawn amendments are listed at the end of the document.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.

★ New Amendments.

☆ Amendments which will comply with the required notice period at their next appearance.

New Amendments: 114 to 117, NC5 and NC6

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).

Kevin Hollinrake

Gov 71

☆ Clause 217, page 146, line 5, leave out second “trader” and insert “person”

Member's explanatory statement

This amendment ensures that the definition of “commercial practice” for the purposes of Chapter 1 of Part 4 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.

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.

Seema Malhotra

115

Alex Davies-Jones

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

“32 At any stage of a purchase process, presenting a price for a product which omits obligatory charges or fees (or an estimate thereof) which are payable by the majority of consumers, which are not revealed to the consumer until later in the purchase process.”

Member's explanatory statement

This amendment adds the practice of “drip-pricing”, a pricing technique in which traders advertise only part of a product’s price and reveal other obligatory charges later as the customer goes through the buying process, to the list of unfair commercial practices.

Seema Malhotra

116

Alex Davies-Jones

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

“32 Commissioning, incentivising or authorising the writing or submission of false consumer reviews or endorsements, in order to promote products.

33 Offering or advertising to submit, commission or facilitate false consumer reviews or endorsements.

34 Displaying consumer reviews of products on an online interface—

(a) without taking reasonable and proportionate steps to ensure that such reviews are submitted by consumers who have used or purchased the products in question;

(b) where any consumers who provided reviews were incentivised to describe certain products in a particular way, without taking reasonable and proportionate steps to ensure this is not the case; or

(c) in a way that deceives or manipulates consumers, or where a practice has been undertaken in relation to reviews that otherwise materially distorts or impairs the ability of consumers to make free and informed decisions, without taking reasonable and proportionate steps to ensure this is not the case.”

Member's explanatory statement

This amendment adds the practice of commissioning fake reviews, offering services to write fake reviews, and displaying consumer reviews without taking reasonable steps to verify their accuracy, to the list of unfair commercial practices.

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.

Seema Malhotra

114

Alex Davies-Jones

★ Clause 225, page 152, line 33, at end insert—

“(7) The Secretary of State must—

- (a) prepare a report on the merits of introducing a consumer right to individual and collective redress by regulations set out in 225(1), and
- (b) lay a copy of this report before Parliament.

(8) The report must be laid within the period of 12 months beginning with the day on which this Act is passed.”

Member's explanatory statement

This amendment would require the Secretary of State to prepare and lay before Parliament a report on the merits of introducing a consumer right to individual and collective redress through secondary legislation, as is the case in EU member states.

Kevin Hollinrake

Gov 72

☆ Clause 230, page 154, line 32, at end insert “subsection (1), (2), (3), (6) or (7) of”

Member's explanatory statement

This amendment ensures that the defence provided for in clause 230(1) (defence of due diligence) does not apply in relation to an offence under clause 229(4) (offence of engaging in an unfair commercial practice which involves a contravention of the requirements of professional diligence). This replicates the current position under the Consumer Protection from Unfair Trading Regulations 2008.

Kevin Hollinrake

Gov 73

☆ Clause 230, page 155, line 5, after “under” insert “subsection (1), (2), (3), (6) or (7) of”

Member's explanatory statement

This amendment ensures that the defence provided for in clause 230(3) (defence of innocent publication) does not apply in relation to an offence under clause 229(4) (offence of engaging in an unfair commercial practice which involves a contravention of the requirements of professional diligence). This replicates the current position under the Consumer Protection from Unfair Trading Regulations 2008.

Kevin Hollinrake

Gov 74

- ☆ Clause 231, page 155, line 30, after “under” insert “subsection (1), (2), (3), (6) or (7) of”

Member's explanatory statement

This amendment ensures that the imposition of liability on another person does not apply in relation to an offence under clause 229(4) (offence of engaging in an unfair commercial practice which involves a contravention of the requirements of professional diligence). This replicates the current position under the Consumer Protection from Unfair Trading Regulations 2008.

Kevin Hollinrake

Gov 75

- ☆ Clause 231, page 155, line 31, leave out “section” and insert “subsection”

Member's explanatory statement

This amendment is consequential on Amendment 74.

Kevin Hollinrake

Gov 76

- ☆ Clause 231, page 155, line 40, after “under” insert “subsection (1), (2), (3), (6) or (7) of”

Member's explanatory statement

This amendment is consequential on Amendment 74.

Kevin Hollinrake

Gov 77

- ☆ Clause 231, page 155, line 41, leave out “section” and insert “subsection”

Member's explanatory statement

This amendment is consequential on Amendment 74.

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.

Kevin Hollinrake

Gov 78

☆ Clause 243, page 161, line 21, at end insert—

“(3A) In section 393(5) of the Communications Act 2003 (exceptions to general restrictions on disclosure of information), after paragraph (r) insert—

“(s) Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2023.””

Member's explanatory statement

This amendment enables OFCOM to disclose information to the CMA for the purpose of the CMA exercising its functions under Chapter 1 of Part 4 of the Bill in the same way that OFCOM may currently disclose information to the CMA for the purpose of the CMA exercising its functions under the Consumer Protection from Unfair Trading Regulations 2008.

Richard Thomson

117

★ Schedule 19, page 348, line 14, at end insert—

“Non-commercial society lotteries

- 13 (1) A contract under which a lottery ticket or tickets are purchased for one or more non-commercial society lotteries.
- (2) In sub-paragraph (1), “non-commercial society” has the meaning given by section 19 of the Gambling Act 2005, and “lottery ticket” has the meaning given by section 253 of that Act.”

Member's explanatory statement

This amendment seeks to exclude lottery tickets purchased for non-commercial society lotteries from the scope of the provisions on subscription contracts.

Giles Watling

113

☆ Clause 256, page 170, line 22, leave out “any circumstances” and insert “circumstances where the consumer has not yet made use of the goods or service provided under the contract”

Kevin Hollinrake

Gov 79

- ☆ Clause 264, page 176, line 31, after “period” insert “or date”

Member's explanatory statement

This amendment corrects a drafting error.

Kevin Hollinrake

Gov 80

- ☆ Clause 272, page 180, line 35, leave out “pre-contract”

Member's explanatory statement

This is a drafting amendment to expand the definition of “durable medium”.

Kevin Hollinrake

Gov 81

- ☆ Clause 272, page 181, line 1, leave out “pre-contract”

Member's explanatory statement

This is a drafting amendment to expand the definition of “durable medium”.

Kevin Hollinrake

Gov 82

- ☆ Clause 272, page 181, line 4, leave out “pre-contract”

Member's explanatory statement

This is a drafting amendment to expand the definition of “durable medium”.

Kevin Hollinrake

Gov 83

- ☆ Clause 283, page 189, line 5, leave out subsection (9) and insert—

“(9) For the meaning of “exempt ADR provider” and “exempt redress scheme” see section 287.”

Member's explanatory statement

The amendment provides a signpost for the reader to clause 287, which identifies who are exempt ADR providers for the purposes of Chapter 4.

Kevin Hollinrake

Gov 84

- ☆ Clause 284, page 189, line 34, leave out “(the gas code)” and insert “, or by section 12(1) or (2) of the Energy Act (Northern Ireland) 2011 (2011 c. 6),”

Member's explanatory statement

The provisions of the Gas Act 1986 referred to in clause 284(3)(b) do not extend to Northern Ireland. This amendment would add a reference to the corresponding legislation in Northern Ireland.

Kevin Hollinrake

Gov 85

- ☆ Clause 284, page 189, line 39, leave out “(the electricity code)” and insert “or by paragraph 3(1) or (2) of Schedule 6 to the Electricity (Northern Ireland) Order 1992 (S.I.1992/231 (N.I.1))”

Member's explanatory statement

The provisions of the Electricity Act 1989 referred to in clause 284(3)(d) do not extend to Northern Ireland. This amendment would add a reference to the corresponding legislation in Northern Ireland.

Kevin Hollinrake

Gov 86

- ☆ Clause 284, page 190, line 4, at end insert “or Part 2 of the Electricity (Northern Ireland) Order 1992”

Member's explanatory statement

Part 1 of the Electricity Act 1989 does not extend to Northern Ireland. This amendment would add a reference to the corresponding legislation in Northern Ireland.

Kevin Hollinrake

Gov 87

- ☆ Clause 284, page 190, line 6, at end insert “or Part 2 of the Gas (Northern Ireland) Order 1996 (S.I.1996/275 (N.I.2))”

Member's explanatory statement

Part 1 of the Gas Act 1986 does not extend to Northern Ireland. This amendment would add a reference to the corresponding legislation in Northern Ireland.

Kevin Hollinrake

Gov 88

- ☆ Clause 284, page 190, line 8, at end insert—

- “(b) a person supplying water under a water services licence within the meaning of the Water Services etc. (Scotland) Act 2005 (asp 3), or
- (c) a water undertaker within the meaning of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I.2006/3336 (N.I.21)).”

Member's explanatory statement

The definition of “water supplier” in Part 1 of the Water Industry Act 1991 only extends to England and Wales. This amendment would add references to the corresponding suppliers in Scotland and Northern Ireland. In the current text of the definition, the words after “means” will become paragraph (a).

Kevin Hollinrake

Gov 89

- ☆ Clause 284, page 191, leave out line 4

Member's explanatory statement

The amendment deletes an unnecessary word: the term "business" does not need to be defined as it is not used in Chapter 4 of Part 4 of the Bill.

Kevin Hollinrake

Gov 90

- ☆ Clause 286, page 191, line 39, after "the" insert "accredited"

Member's explanatory statement

This is a drafting amendment to clarify which ADR provider is referred to in clause 286(2)(a).

Kevin Hollinrake

Gov 91

- ☆ Clause 286, page 192, line 4, after "the" insert "accredited"

Member's explanatory statement

This is a drafting amendment to clarify which ADR provider is referred to in clause 286(2)(c).

Kevin Hollinrake

Gov 92

- ☆ Clause 287, page 192, line 11, leave out subsection (1) and insert—

“(1) In this Chapter—

“exempt ADR provider” means a person who—

- (a) is listed (or of a description of persons listed) in Part 1 of Schedule 22, or
- (b) is (when carrying out ADR or making special ADR arrangements) acting under or for the purposes of an exempt redress scheme;

“exempt redress scheme” means a scheme or other similar arrangement which is listed (or of a description listed) in Part 1A of Schedule 22.”

Member's explanatory statement

The amendment reflects the approach proposed by the government amendments to Schedule 22 to have two lists: Part 1 will list particular authorities (or descriptions of authorities) who are (if and to the extent they carry out ADR or make special ADR arrangements) exempt ADR providers. Part 1A will list “exempt redress schemes”. A person who carries out ADR or makes ADR arrangements under or for the purposes of an exempt redress scheme will be an exempt ADR provider.

Kevin Hollinrake

Gov 93

☆ Clause 287, page 192, line 19, leave out subsection (3) and insert—

- “(3) Regulations under subsection (2) may, in particular—
- (a) provide for an entry in Part 1 of Schedule 22 to apply to a specified person or to any person of a specified description;
 - (b) provide for an entry in Part 1A of that Schedule to apply to a specified scheme or any scheme of a specified description;
 - (c) limit the scope of the exemption given to a person by virtue of an entry in Part 1 or 1A of that Schedule, whether in relation to carrying out ADR or making special ADR arrangements (or both).”

Member's explanatory statement

This amendment clarifies the scope of the power to make regulations under clause 287(2). The effect of the exemption given to a person by an entry in Part 1 or 1A of Schedule may be limited, for example by reference to the purposes for which an otherwise prohibited activity is carried out or to the kinds of otherwise prohibited activity that are (or are not) exempt.

Kevin Hollinrake

Gov 94

☆ Clause 287, page 192, line 34, leave out subsection (5) and insert—

- “(5) Subject to any limitation on its scope provided for by Schedule 22—
- (a) an exemption given to a person by virtue of an entry in Part 1 of that Schedule covers anything done by the person in the exercise of the person's functions that would otherwise be prohibited, and
 - (b) an exemption given to a person by virtue of an entry in Part 1A of that Schedule covers anything done under or for the purposes of an exempted redress scheme that would otherwise be prohibited.”

Member's explanatory statement

The amendment clarifies the general scope of an exemption that will apply by default, unless there is provision in the Schedule for it to be more limited.

Kevin Hollinrake

Gov 95

☆ Clause 287, page 192, line 37, after “section” insert “—

“prohibited” means prohibited by section 285(1) or (2);”

Member's explanatory statement

The amendment defines “prohibited” for the purposes of the clause by reference to clause 285.

Kevin Hollinrake

Gov 96

☆ Clause 287, page 193, line 1, leave out subsection (8)

Member's explanatory statement

The amendment omits a subsection that is no longer needed as a result of the other government amendments to clause 287 and Schedule 22.

Kevin Hollinrake

Gov 108

- ☆ Schedule 22, page 356, leave out from beginning of line 31 to end of line 11 on page 357 and insert—

"LIST OF EXEMPT PERSONS

The Commission for Local Administration in England (also known as the Local Government and Social Care Ombudsman) and each Local Commissioner within the meaning of section 23(3) of the Local Government Act 1974

The Consumer Council for Water

The Health Service Commissioner for England

The Legal Ombudsman

The Northern Ireland Public Services Ombudsman

The Office of the Independent Adjudicator for Higher Education (registered company number 04823842) in relation to its functions as the designated operator under section 13 of the Higher Education Act 2004

The Parliamentary Commissioner for Administration

The Pensions Ombudsman"

Member's explanatory statement

This amendment alters the list of persons in Part 1 of Schedule 22. The listed persons will, subject to any limitation on their exemption provided for in the Schedule, be exempt from the prohibitions in clause 285. The first, sixth and seventh entries are new. Other entries currently in Part 1 are omitted because they are superseded by entries in Part 1A of Schedule 22 as proposed by Amendment 109.

Kevin Hollinrake

Gov 109

- ☆ Schedule 22, page 357, line 15, at end insert—

"PART 1A**EXEMPT REDRESS SCHEMES**

An approved estate agents redress scheme

An approved postal operators redress scheme

An approved social housing ombudsman scheme

Approved public communications provider dispute procedures

The Financial Ombudsman Scheme

A qualifying lettings agency work redress scheme
A qualifying property management work redress scheme
A qualifying redress scheme for the gas or electricity sector"

Member's explanatory statement

The amendment inserts a Part 1A in Schedule 22 listing schemes or similar arrangements that are to be "exempt redress schemes" for the purposes of Chapter 4 of Part 4 (ADR).

Kevin Hollinrake

Gov 110

☆ Schedule 22, page 357, line 18, leave out "Part 1" and insert "this Schedule"

Member's explanatory statement

This amendment is consequential on the insertion of Part 1A of Schedule 22 proposed by Amendment 109.

Kevin Hollinrake

Gov 111

☆ Schedule 22, page 357, line 28, at end insert—

"approved social housing ombudsman scheme" means a scheme which is approved for the purposes of Schedule 2 to the Housing Act 1996;

"qualifying lettings agency work redress scheme" means a redress scheme which is approved as mentioned in section 83(1)(a), or is a government scheme for the purposes of section 83(1)(b), of the Enterprise and Regulatory Reform Act 2013;

"qualifying property management work redress scheme" means a redress scheme which is approved as mentioned in section 84(1)(a), or is a government administered redress scheme for the purposes of section 84(1)(b), of the Enterprise and Regulatory Reform Act 2013;"

Member's explanatory statement

The amendment defines three expressions used in entries in Part 1A as proposed to be inserted by Amendment 109.

Kevin Hollinrake

Gov 97

☆ Clause 289, page 195, line 3, leave out "as extended"

Member's explanatory statement

This is a drafting amendment to make clear that new accreditation conditions imposed when extending an accreditation are not limited to any particular part of the extended accreditation.

Kevin Hollinrake

Gov 98

- ☆ Clause 289, page 195, line 4, leave out “condition on the existing” and insert “existing condition on the”

Member's explanatory statement

This amendment and Amendment 99 are drafting amendments to clarify which accreditation conditions can be varied or removed by the Secretary of State when extending an accreditation.

Kevin Hollinrake

Gov 99

- ☆ Clause 289, page 195, line 21, leave out “condition on the existing” and insert “existing condition on the”

Member's explanatory statement

See the member’s explanatory statement for Amendment 98.

Kevin Hollinrake

Gov 100

- ☆ Clause 289, page 195, line 26, at end insert—

“(14) Where an accreditation covers the making of special ADR arrangements, conditions on the accreditation may be framed so as to secure that the accredited ADR provider is responsible for acts or omissions of other ADR providers who carry out ADR under special ADR arrangements made by the accredited ADR provider.”

Member's explanatory statement

This amendment would clarify that accreditation conditions can be worded so as to make an accredited ADR provider directly responsible for things done by another ADR provider who carries out ADR under special ADR arrangements made by the accredited provider under its accreditation. This could enable regulatory action under clause 290 or 293 to be taken against the accredited ADR provider in relation to acts of the other ADR provider.

Kevin Hollinrake

Gov 101

- ☆ Clause 291, page 197, line 9, leave out “potential applicants for accreditation” and insert “accredited ADR providers”

Member's explanatory statement

The amendment would correct a mistake in clause 291(3) which should refer to accredited ADR providers, as they are the persons who pay fees under the clause.

Kevin Hollinrake

Gov 102

- ☆ Clause 294, page 199, line 1, after “(1)(a)” insert “or (b)”

Member's explanatory statement

This amendment, with Amendments 103 to 105, would ensure that the power in subsection (1)(b) of clause 294 is subject to similar constraints to those currently provided for by subsection (3) in relation to the power in subsection (1)(a). The regulation making powers in clause 294(1) are not to be available for imposing requirements to provide information for purposes other than those set out in subsection (3)(a) to (c).

Kevin Hollinrake**Gov 103**

- ☆ Clause 294, page 199, line 3, leave out from “following” to end of line 4

Member's explanatory statement

See the explanatory statement for Amendment 102.

Kevin Hollinrake**Gov 104**

- ☆ Clause 294, page 199, line 5, leave out “provided to the Secretary of State”

Member's explanatory statement

See the explanatory statement for Amendment 102.

Kevin Hollinrake**Gov 105**

- ☆ Clause 294, page 199, line 10, at end insert—

“(3A) It is immaterial for the purposes of subsection (3) whether the publication, monitoring or evaluation is carried out by the Secretary of State, by a person with functions conferred by regulations under section 298 or by any other person acting under arrangements made with that other person by the Secretary of State or a person with such functions.”

Member's explanatory statement

See the explanatory statement for Amendment 102.

Kevin Hollinrake**Gov 106**

- ☆ Clause 295, page 200, line 13, leave out from “legislation” to end of line 14

Member's explanatory statement

The amendment would omit words that unnecessarily duplicate a definition in clause 297(6).

Kevin Hollinrake

Gov 107

- ☆ Clause 296, page 200, line 35, leave out “power conferred by this section is” and insert “powers conferred by this section are”

Member's explanatory statement

The amendment would clarify that the words at the end of subsection (4) apply to both of the powers conferred by the clause.

Kevin Hollinrake

Gov 112

- ☆ Schedule 24, page 360, line 22, leave out “duties and powers” and insert “legislation”

Member's explanatory statement

This is a drafting amendment to ensure there is an accurate description of the content of paragraph 11 of Schedule 5 to the Consumer Rights Act 2015.

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.

Seema Malhotra

NC5

Alex Davies-Jones

★ To move the following Clause—

“Contract renewal: option to opt in

- (1) Before a trader enters into a subscription contract with a consumer where section 246(2) applies, the trader must ask the consumer whether they wish to opt into an arrangement under which the contract renews automatically at one or more of the following times—
 - (a) after a period of six months and every six months thereafter, or
 - (b) if the period between the consumer being charged for the first and second time is longer than six months, each time payment is due.
- (2) If the consumer does not opt into such an arrangement, the trader must provide a date by which the consumer must notify the trader of the consumer’s intention to renew the contract, which must be no earlier than 28 days before the renewal date.
- (3) If the consumer has not—
 - (a) opted into an arrangement under subsection (1),

- (b) given notification of the consumer's intention to renew by the date specified under subsection (2), the contract will lapse on the renewal date."

Member's explanatory statement

This new clause would allow the consumer to opt-out of their subscription auto-renewing every six months, or if the period between payments is longer than six months, before every payment. If the consumer does not opt-in of auto-renewal, they would be required to notify the trader manually if they wanted to renew.

Seema Malhotra

NC6

Alex Davies-Jones

★ To move the following Clause—

"Contract renewal: variable rate contracts

- (1) Before a trader enters into a subscription contract with a consumer where section 246(3) applies, the trader must ask the consumer whether they wish to opt into an arrangement under which the contract renews automatically on the date the consumer becomes liable for the first charge or the first higher charge.
- (2) If the consumer does not opt into an arrangement under subsection (1), the trader must provide a date by which the consumer must notify the trader of the consumer's intention to renew the contract, which must be no earlier than five days before the renewal date.
- (3) The trader must also ask the consumer whether they wish to opt into an arrangement under which the contract renews automatically—
 - (a) after a period of either six months from the first charge or higher charge and every six months thereafter, or
 - (b) if the period between the consumer being charged for the first and second time is longer than six months, each time payment is due.
- (4) If the consumer does not opt into an arrangement under subsection (3), the trader must provide a date by which the consumer must notify the trader of the consumer's intention to renew the contract, which must be no earlier than 28 days before the renewal date.
- (5) If the consumer has not—
 - (a) opted into an arrangement under subsection (1) or subsection (3), or
 - (b) given notification of the consumer's intention to renew by the date specified under (as the case may be) subsection (2) or subsection (4),
 the contract will lapse on the next renewal date."

Member's explanatory statement

This new clause would introduce an option for the consumer to opt out of their subscription auto-renewing after their free or discounted trial. Otherwise, they would have to notify the trader

manually if they wanted to continue the subscription. It also introduces an option for the consumer to opt out of their subscription auto-renewing.

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.
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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
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

<i>Date</i>	<i>Time</i>	<i>Witness</i>
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.
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Withdrawn Amendments

The following amendments were withdrawn on 14 June 2023:

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