
Report Stage: Thursday 16 November 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 Any withdrawn amendments are listed at the end of the document.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: 187 to 228 and NC28 to NC31

Secretary Kemi Badenoch

Gov NC5

☆ To move the following Clause—

“Collective submissions

- (1) Where the CMA considers that—
 - (a) the conditions in section 38(2), (3) and (4) are met in relation to a single transaction between the designated undertaking and two or more third parties, and
 - (b) the third parties are capable of acting jointly in relation to final offer payment terms relating to the transaction,the CMA may exercise the power in section 38(1) to invite the third parties (the “joined third parties”) to make a single submission to the CMA of final offer payment terms that the joined third parties collectively regard as fair and reasonable for the transaction.
- (2) Where the CMA proceeds in reliance on subsection (1), sections 39 to 43 apply as if—
 - (a) in section 39(4) references to “the third party” were to any one or more of the joined third parties;
 - (b) all other references to “the third party” were to the joined third parties.
- (3) Where the CMA considers that—

- (a) the conditions in section 38(2), (3) and (4) are met in relation to two or more transactions between the designated undertaking and two or more third parties,
- (b) the same terms as to payment are capable of applying to the transactions, and
- (c) the third parties are capable of acting jointly in relation to final offer payment terms relating to the transactions,

the CMA may exercise the power in section 38(1) to invite the third parties (the “grouped third parties”) to make a single submission to the CMA of final offer payment terms that the grouped third parties collectively regard as fair and reasonable for the transactions (the “grouped transactions”).

- (4) Where the CMA proceeds in reliance on subsection (3), sections 39 to 43 apply as if—
 - (a) in the following provisions, references to “the third party” were to any one or more of the grouped third parties—
 - (i) section 39(4);
 - (ii) section 40(2)(b);
 - (iii) section 41(1)(b);
 - (iv) section 42(2);
 - (b) all other references to “the third party” were to the grouped third parties;
 - (c) in section 42(1) and (2), the reference to “the transaction” were to any one or more of the grouped transactions;
 - (d) all other references to “the transaction” were to the grouped transactions.”

Member's explanatory statement

This new clause (which would be inserted into Chapter 3 of Part 1 of the Bill) provides for two or more third parties to make a single collective submission of final offer payment terms.

Secretary Kemi Badenoch

Gov NC6

☆ To move the following Clause—

“Protected disclosures

In the Public Interest Disclosure (Prescribed Persons) Order 2014 (S.I. 2014/2418), in the table in the Schedule, in the entry for the Competition and Markets Authority, in the right hand column, after “Kingdom” insert “, including matters relating to Part 1 of the Digital Markets, Competition and Consumers Act 2024 (digital markets)”. ”

Member's explanatory statement

This new clause (which would be inserted into Chapter 8 of Part 1 of the Bill) confirms that matters relating to Part 1 of the Bill (digital markets) are covered by the entry for the Competition and Markets Authority in the Public Interest Disclosure (Prescribed Persons) Order 2014.

Secretary Kemi Badenoch

Gov NC7

☆ To move the following Clause—

“Repeal of exclusions relating to the European Coal and Steel Community

- (1) Part 1 of CA 1998 (competition) is amended as follows.
- (2) In Schedule 3 (planning obligations and general exclusions) omit paragraph 8 (coal and steel).
- (3) In section 3 (Chapter 1: excluded agreements), in subsection (3)(b)(ii) omit “, 2, 8”.
- (4) In section 19 (Chapter 2: excluded cases) omit subsection (3).”

Member's explanatory statement

This new clause (which would be inserted into Chapter 1 of Part 2 of the Bill) would repeal paragraph 8 of Schedule 3 to the Competition Act 1998, which has been redundant since the expiry of the Treaty establishing the European Coal and Steel Community.

Secretary Kemi Badenoch

Gov NC8

☆ To move the following Clause—

“Use of damages-based agreements in opt-out collective proceedings

- (1) In section 47C(9) of CA 1998 (collective proceedings: damages and costs), for paragraph (c) substitute—
 - “(c) “damages-based agreement” has the same meaning as in section 58AA of the Courts of Legal Services Act 1990 but as if in subsection (3)(a) of that section, in the words before sub-paragraph (i), for “, litigation services or claims management services” there were substituted “or litigation services”.”
- (2) The amendment made by subsection (1) is treated as always having had effect.”

Member's explanatory statement

This new clause (which would be inserted into Chapter 1 of Part 2 of the Bill) responds to the Supreme Court judgment in R (PACCAR Inc) v Competition Appeal Tribunal [2023] UKSC 28. It provides that a damages-based agreement is only unenforceable in opt-out collective proceedings before the Competition Appeal Tribunal if the agreement is with a provider of advocacy or litigation services.

Secretary Kemi Badenoch

Gov NC9

☆ To move the following Clause—

“Mergers of energy network enterprises

Schedule (*Mergers of energy network enterprises*) makes provision amending Part 3 of EA 2002 and Schedule 16 to the Energy Act 2023 in relation to mergers involving energy network enterprises.”

Member's explanatory statement

This new clause (which would be inserted into Chapter 2 of Part 2 of the Bill) introduces the Schedule inserted by NS1 which amends Part 3 of the Enterprise Act 2002 to facilitate the investigation of mergers involving energy networks enterprises under sections 68B or 68C of that Act and under section 22 or 33 of that Act by the same CMA Group, and to make other minor amendments to provisions relating to mergers involving energy network enterprises.

Secretary Kemi Badenoch

Gov NC10

☆ To move the following Clause—

“Power to make a reference after previously deciding not to do so

- (1) Section 131B of EA 2002 (market studies and the making of decisions to refer: time limits) is amended as follows.
- (2) In the heading, after “time-limits” insert “etc”.
- (3) In subsection (7), for “This section is” substitute “Subsections (4) to (6) are”.
- (4) After subsection (7) insert—
 - “(8) Where the CMA—
 - (a) has published a market study notice, and
 - (b) has decided not to make a reference under section 131 in relation to the matter specified in the notice,
 the CMA may subsequently make a reference under section 131 in relation to the matter (without first publishing a market study notice in relation to the matter) only where subsection (9) applies.
- (9) This subsection applies where—
 - (a) the reference under section 131 is made two years or more after the publication of the market study report in relation to the market study notice, or
 - (b) there has been a material change in circumstances since the preparation of the report.””

Member's explanatory statement

This new clause (which would be inserted into Chapter 3 of Part 2 of the Bill) responds to the decision of the Competition Appeal Tribunal in *Apple v CMA* [2023] CAT 2. It allows the CMA to make a reference under section 131 of the Enterprise Act 2002, if it has previously made a decision not to do so, in the two cases mentioned in what will be new subsection (9) of section 131B of that Act.

Secretary Kemi Badenoch

Gov NC11

☆ To move the following Clause—

“Taking action in relation to regulated markets

- (1) In Chapter 4 of Part 4 of EA 2002 (market studies and market investigations: supplementary), section 168 (regulated markets) is amended as follows.
- (2) In subsection (3) omit paragraph (j).
- (3) In subsection (4)—
 - (a) in paragraph (g), for “the duty of the Director General of Electricity Supply for Northern Ireland under article 6 of that Order” substitute “the objective and duties of the Northern Ireland Authority for Utility Regulation under Article 12 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6))”;
 - (b) omit paragraph (l);
 - (c) in paragraph (m), for “the duties of the Director General of Gas for Northern Ireland under article 5 of that Order” substitute “the objective and duties of the Northern Ireland Authority for Utility Regulation under Article 14 of the Energy (Northern Ireland) Order 2003”;
 - (d) in paragraph (r), for “Monitor” substitute “NHS England”.
- (4) In subsection (5), in paragraph (ia), for “Monitor” substitute “NHS England”.

Member's explanatory statement

This new clause (which would be inserted into Chapter 3 of Part 2 of the Bill) tidies up section 168 of the Enterprise Act 2002 to remove spent references and to correct references that have become out of date.

Secretary Kemi Badenoch

Gov NC12

☆ To move the following Clause—

“Meaning of “working day” in Parts 3 and 4 of EA 2002

- (1) Part 3 of EA 2002 (mergers) is amended as follows.
- (2) In Chapter 1 (duty to make references)—
 - (a) in section 25 (extension of time limits)—
 - (i) in subsection (1), after “20” insert “working”;
 - (ii) in subsection (5), in paragraph (b), after “10” insert “working”;
 - (b) omit section 32 (supplementary provision for the purposes of section 25);
 - (c) in section 34ZA(3) (time limits for decisions about references) omit the definition of “working day”;
 - (d) in section 34ZB (extension of time limits) omit subsection (9);
 - (e) in section 34ZC (sections 34ZA and 34ZB: supplementary) omit subsection (9).

Member's explanatory statement

This new clause (which would be inserted into Chapter 5 of Part 2 of the Bill) amends Parts 3 and 4 of the Enterprise Act 2002, and the Enterprise Act 2002 (Merger Prenotification) Regulations 2003, so that they are consistent in providing that a bank holiday in any part of the United Kingdom is not a working day.

Secretary Kemi Badenoch

Gov NC13

☆ To move the following Clause—

“ADR fees regulations

- (1) The Secretary of State may by regulations make provision about the following descriptions of fees, namely—
 - (a) fees to be paid by applicants for accreditation under section 289(1);
 - (b) fees to be paid by applicants for the variation of their accreditation under section 289(3B);
 - (c) fees to be paid by accredited ADR providers under section 292(1).
- (2) The power to make provision about a description of fees includes power to provide—
 - (a) for fees of different specified amounts to be payable in different cases or circumstances;
 - (b) for cases or circumstances in which no fees are to be payable;
 - (c) in the case of fees to be paid under section 292, the times at which the fees are to be paid.
- (3) In making regulations under this section the Secretary of State must have regard to the need to secure that, taking one year with another—
 - (a) the total amount of fees paid does not exceed the costs to the Secretary of State of carrying out functions under this Chapter;
 - (b) the total amount of fees paid under section 289(1) does not exceed the costs to the Secretary of State of processing and determining applications for accreditation;
 - (c) the total amount of fees paid under section 289(3B) does not exceed the costs to the Secretary of State of processing and determining applications for the variation of an accreditation.
- (4) Regulations under this section are subject to the negative procedure.”

Member's explanatory statement

This new clause (which would be inserted into Chapter 4 of Part 4 of the Bill) confers power to make regulations about the fees payable under clauses 289 and 292. The power includes power to prescribe cases or circumstances in which no fee is required to be paid.

Secretary Kemi Badenoch

Gov NC14

☆ To move the following Clause—

“Power to require information about competition in connection with motor fuel

- (1) The CMA may require an undertaking involved in, or connected with, the distribution, supply or retail of motor fuel (“U”) to give specified information to it where it considers that the information would assist the CMA in—
 - (a) assessing competition in the United Kingdom in connection with the retail of motor fuel;
 - (b) publishing information about competition in the United Kingdom in connection with the retail of motor fuel;
 - (c) making proposals, or giving information or advice, to the Secretary of State about the need for, or the potential for, action to be taken (whether by the Secretary of State or another person) and what that action should be for the purposes of—
 - (i) increasing competition in the United Kingdom in connection with the retail of motor fuel;
 - (ii) benefiting consumers of motor fuel;
 - (d) assessing the effectiveness of any action taken as a result of proposals made, or information or advice given, under paragraph (c).
- (2) The power conferred by subsection (1) is to be exercised by giving U a notice (an “information notice”).
- (3) The CMA must include in an information notice—
 - (a) the time at which, or the frequency with which, the information must be given to the CMA;
 - (b) the manner and form in which the information must be given to the CMA;
 - (c) information about the possible consequences of not complying with the notice.
- (4) The power under this section to require U to give information to the CMA includes the power to—
 - (a) require U to take copies of or extracts from information;
 - (b) require U to obtain or generate information;
 - (c) require U to collect or retain information that they would not otherwise collect or retain;
 - (d) if any specified information is not given to the CMA, require U to state, to the best of their knowledge and belief, both where that information is and why it has not been given to the CMA.
- (5) An undertaking may not be required under this section to give the CMA a privileged communication.
- (6) A “privileged communication” is a communication—
 - (a) between a professional legal adviser and their client, or

- (b) made in connection with, or in contemplation of, legal proceedings, which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.
- (7) In the application of this section to Scotland—
- (a) the reference to the High Court is to be read as a reference to the Court of Session, and
 - (b) the reference to legal professional privilege is to be read as a reference to the confidentiality of communications.
- (8) In this section—
- “consumer” has the same meaning as in Part 4 of EA 2002 (see section 183(1) of that Act);
- “motor fuel” has the same meaning as in the Motor Fuel (Composition and Content) Regulations 1999 (see regulation 2 of those Regulations), but as if paragraphs (c) and (d) of the definition of that term were omitted;
- “specified” means—
- (a) specified, or described, in the information notice, or
 - (b) falling within a category which is specified, or described, in the information notice;
- “United Kingdom” includes a part of the United Kingdom.
- (9) The Secretary of State may by regulations amend the definition of “motor fuel” in subsection (8).
- (10) Regulations under subsection (9) are subject to the negative procedure.
- (11) In this Chapter, “undertaking” has the same meaning it has for the purposes of Part 1 of CA 1998 (competition: agreements, abuse of dominant position etc).”

Member's explanatory statement

This new clause (which, along with the new clauses inserted by NC15 to NC21, would form a new first Chapter in Part 5 of the Bill) allows the CMA to give an information notice to undertakings involved in the distribution, supply or retail of petrol or diesel requiring them to provide the CMA with information for the purposes mentioned in subsection (1) of the clause.

Secretary Kemi Badenoch

Gov NC15

☆ To move the following Clause—

“Penalties for failure to comply with notices under section (Power to require information about competition in connection with motor fuel)

- (1) The CMA may impose a penalty on an undertaking where it considers that the undertaking has, without reasonable excuse—
- (a) failed to comply with an information notice under section (*Power to require information about competition in connection with motor fuel*);

- (b) destroyed, otherwise disposed of, falsified or concealed, or caused or permitted the destruction, disposal, falsification or concealment of, any document which the undertaking has been required to produce by an information notice under that section;
 - (c) given the CMA information which is false or misleading in a material particular in connection with an information notice under that section;
 - (d) given information which is false or misleading in a material particular to another undertaking knowing that the information was to be used for the purpose of giving information to the CMA in connection with an information notice under that section.
- (2) The amount of a penalty imposed on an undertaking under this section may be such amount as the CMA considers appropriate, provided it does not exceed the amounts set out in subsection (4).
- (3) The amount of a penalty under this section must be—
 - (a) a fixed amount,
 - (b) an amount calculated by reference to a daily rate, or
 - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (4) The maximum amounts of a penalty that may be imposed on an undertaking are—
 - (a) in the case of a fixed amount, an amount equal to 1% of the total value of the undertaking's turnover (both inside and outside the United Kingdom);
 - (b) in the case of an amount calculated by reference to a daily rate, for each day an amount equal to 5% of the total value of the undertaking's daily turnover (both inside and outside the United Kingdom);
 - (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate.
- (5) In imposing a penalty under this section by reference to a daily rate—
 - (a) no account is to be taken of any days before the service on the undertaking concerned of the provisional penalty notice under section 112(A1) of EA 2002 (as applied by section (*Procedure and appeals*)), and
 - (b) unless the CMA determines an earlier day (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the day on which the undertaking first complies with the requirement in question.
- (6) The Secretary of State may by regulations make provision for determining the turnover (both inside and outside the United Kingdom) of an undertaking for the purposes of this section.
- (7) The regulations may, among other things—
 - (a) make provision about amounts which are, or are not, to be included in an undertaking's turnover;

- (b) make provision about the date or dates by reference to which an undertaking's turnover is to be determined;
- (c) confer on the CMA the power to determine and make provision about matters specified in the regulations (including the matters mentioned in paragraphs (a) and (b)).

(8) Regulations under subsection (6) are subject to the negative procedure."

Member's explanatory statement

This new clause would allow the CMA to impose financial penalties on undertakings who fail to comply with an information notice given under the new clause inserted by NC14.

Secretary Kemi Badenoch

Gov NC16

☆ To move the following Clause—

"Procedure and appeals

- (1) Sections 112 (penalties: main procedural requirements), 113 (payments and interest by instalments), section 114 (appeals) and 115 (recovery of penalties) of EA 2002 apply in relation to a penalty imposed under section (*Penalties for failure to comply with notices under section (Power to require information about competition in connection with motor fuel)*) as they apply in relation to a penalty imposed under section 110(1) of that Act.
- (2) For the purposes of this section—
 - (a) sections 112 to 115 of EA 2002 are to be read as if references to "the appropriate authority" were references to the CMA only;
 - (b) section 114(5A) of EA 2002 is to be read as if the words "In the case of a penalty imposed on a by the CMA or OFCOM," were omitted;
 - (c) section 114(12) of EA 2002 is to be read as if, for paragraph (b), there were substituted—
 - "(b) "the relevant guidance" means the statement of policy which was most recently published under section (*Statement of policy on penalties*) of the Digital Markets, Competition and Consumers Act 2024 at the time of the act or omission giving rise to the penalty."

Member's explanatory statement

This new clause applies provision in sections 112 to 115 of the Enterprise Act 2002, with modifications, for the purposes of the new clause inserted by NC15.

Secretary Kemi Badenoch

Gov NC17

☆ To move the following Clause—

“Statement of policy on penalties

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of powers to impose a penalty under section (*Penalties for failure to comply with notices under section (Power to require information about competition in connection with motor fuel)*).
- (2) The statement must include a statement about the considerations relevant to the determination of—
 - (a) whether to impose a penalty under section (*Penalties for failure to comply with notices under section (Power to require information about competition in connection with motor fuel)*), and
 - (b) the nature and amount of any such penalty.
- (3) The CMA may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) In preparing or revising its statement of policy the CMA must consult—
 - (a) the Secretary of State, and
 - (b) such other persons as the CMA considers appropriate.
- (5) A statement of policy, or revised statement, may not be published under this section without the approval of the Secretary of State.
- (6) Subsection (7) applies where the CMA proposes to impose a penalty under section (*Penalties for failure to comply with notices under section (Power to require information about competition in connection with motor fuel)*) on an undertaking.
- (7) The CMA must have regard to the statement of policy most recently published under this section at the time of the act or omission giving rise to the penalty when deciding—
 - (a) whether to impose the penalty, and
 - (b) if so, the amount of the penalty.”

Member's explanatory statement

This new clause requires the CMA to publish a statement of policy about the imposition of penalties under the new clause inserted by NC15.

Secretary Kemi Badenoch

Gov NC18

☆ To move the following Clause—

“Offences etc

Destroying or falsifying information

- (1) A person ("P") commits an offence if, having been required to give information to the CMA under section (*Power to require information about competition in connection with motor fuel*), P—
 - (a) intentionally or recklessly destroys or otherwise disposes of it, falsifies or conceals it, or
 - (b) causes or permits its destruction, disposal, falsification or concealment.

False or misleading information

- (2) A person ("P") commits an offence if—
 - (a) P gives information to the CMA in connection with an information notice under section (*Power to require information about competition in connection with motor fuel*),
 - (b) the information is false or misleading in a material particular, and
 - (c) P knows that it is or is reckless as to whether it is.
- (3) A person ("P") commits an offence if P gives information to another person which is false or misleading in a material particular and P—
 - (a) either—
 - (i) knows the information to be false or misleading in a material particular, or
 - (ii) is reckless as to whether the information is false or misleading in a material particular, and
 - (b) knows that the information will be given to the CMA in connection with an information notice under that section.

Sentences

- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Offences by officers of a body corporate etc

- (5) If an offence under this section committed by a body corporate is proved—
 - (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to neglect on the part of an officer of the body corporate,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

- (6) If the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate.

- (7) If an offence under this section committed by a partnership in Scotland is proved—
- (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to neglect on the partner's part,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (8) In subsection (7), "partner" includes a person purporting to act as a partner."

Member's explanatory statement

This new clause makes it an offence for a person to destroy or falsify information the person is required to give to the CMA by virtue of an information notice given to the person under the new clause inserted by NC14 or to provide the CMA with false or misleading information in connection with such an information notice.

Secretary Kemi Badenoch

Gov NC19

☆ To move the following Clause—

"Penalties under section (Penalties for failure to comply with notices under section (Power to require information about competition in connection with motor fuel)) and offences under section (Offences etc)

- (1) The CMA may not impose a penalty on a person under section (*Penalties for failure to comply with notices under section (Power to require information about competition in connection with motor fuel)*) in relation to an act or omission which constitutes an offence under section (*Offences etc*) if the person has, in relation to that act or omission, been found guilty of that offence.
- (2) A person may not be found guilty of an offence under section (*Offences etc*) by virtue of an act or omission if the person has paid a penalty imposed under section (*Penalties for failure to comply with notices under section (Power to require information about competition in connection with motor fuel)*) in relation to that act or omission."

Member's explanatory statement

This new clause prevents a person from being charged a penalty under the new clause inserted by NC15, and being found guilty of an offence under the new clause inserted by NC18, in respect of the same acts or omissions.

Secretary Kemi Badenoch

Gov NC20

☆ To move the following Clause—

“Information sharing

In Schedule 14 to EA 2002 (provisions about disclosure of information) at the appropriate place insert—

“Chapter A1 of Part 5 of the Digital Markets, Competition and Consumer Act 2024.””

Member's explanatory statement

This new clause provides that the restrictions on the disclosure of information contained in Part 9 of the Enterprise Act 2002 apply to information that comes to the CMA in connection with the exercise of its functions under the new first Chapter of Part 5 of the Bill to be formed by the new clauses inserted by NC14 to NC21.

Secretary Kemi Badenoch

Gov NC21

☆ To move the following Clause—

“Expiry of this Chapter

- (1) This Chapter, apart from subsection (5) of this section and section (*Information sharing*), expires at the end of the relevant period.
- (2) The “relevant period” means the period of five years beginning with the day on which this Act is passed.
- (3) The Secretary of State may by regulations amend this section to change the definition of the “relevant period”.
- (4) Regulations under subsection (3) are subject to the affirmative procedure.
- (5) The expiry of this Chapter does not affect its continued operation in relation to any information notice given under section (*Power to require information about competition in connection with motor fuel*) before its expiry.”

Member's explanatory statement

This new clause provides that the new first Chapter of Part 5 of the Bill to be formed by the new clauses inserted by this Amendment, and NC14 to NC19, expires five years after it comes into force, unless the Secretary of State makes regulations extending the period for which the Chapter has effect.

Secretary Kemi Badenoch

Gov NC22

☆ To move the following Clause—

“Removal of limit on the tenure of a chair of the Competition Appeal Tribunal

In Schedule 2 to EA 2002 (the Competition Appeal Tribunal), in paragraph 2 (tenure etc) omit sub-paragraph (2).”

Member's explanatory statement

This new clause (which would be inserted into Part 5 of the Bill) removes the prohibition on a person being a chair of the Competition Appeal Tribunal for more than 8 years.

Sir Jacob Rees-Mogg

NC1

Jonathan Gullis
Craig Mackinlay
Priti Patel
Philip Davies
Esther McVey

Mrs Natalie Elphicke
James Grundy
Nick Fletcher

Sir John Hayes
Sally-Ann Hart
Sammy Wilson

Richard Drax
Stephen McPartland

To move the following Clause—

“Meaning of “payment account” and related terms

- (1) “Payment account” means an account held in the name of one or more consumers through which consumers are able to—
 - (a) place funds;
 - (b) withdraw cash; and
 - (c) execute and receive payment transactions to and from third parties, including over any designated payment system.
- (2) “Payment account” also includes the following types of account—
 - (a) savings accounts;
 - (b) credit card accounts;
 - (c) current account mortgages; and
 - (d) e-money accounts.
- (3) “Designated payment system” has the same meaning as within the Financial Services (Banking Reform) Act 2013.
- (4) “Relevant institution” means—
 - (a) any bank which has permission under Part 4A of the Financial Services and Markets Act 2000 to carry out the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22);
 - (b) any building society within the meaning of section 119 of the Building Societies Act 1986;
 - (c) any credit institution within the meaning of the Payment Services Regulations 2017;
 - (d) any authorised payment institution within the meaning of the Payment Service Regulations 2017; and
 - (e) any small payment institution within the meaning of the Payment Services Regulations 2017.
- (5) “Discriminate” means that a relevant institution acts in a way which, were that relevant institution a public authority, would constitute a breach of its

obligations under section 6(1) of the Human Rights Act 1998, in so far as those obligations relate to—

- (a) Article 8 of the European Convention on Human Rights;
- (b) Article 9 of the European Convention on Human Rights;
- (c) Article 10 of the European Convention on Human Rights;
- (d) Article 11 of the European Convention of Human Rights; and
- (e) any of the Articles listed in paragraphs (a) to (d) when read with Article 14 of the European Convention on Human Rights.”

Member's explanatory statement

This new clause defines relevant terms for the purposes of NC2.

Sir Jacob Rees-Mogg

NC2

Jonathan Gullis
Craig Mackinlay
Priti Patel
Philip Davies
Esther McVey

Mrs Natalie Elphicke
James Grundy
Nick Fletcher

Sir John Hayes
Sally-Ann Hart
Sammy Wilson

Richard Drax
Stephen McPartland

To move the following Clause—

“Rights of consumers in relation to payment accounts

- (1) A relevant institution must not discriminate against a consumer when deciding—
 - (a) whether to offer a consumer a payment account;
 - (b) whether to alter, or vary in any way, the terms of an existing payment account in use by a consumer; or
 - (c) whether to terminate or otherwise restrict a consumer’s access to their payment account.
- (2) A relevant institution, within 30 days of deciding to alter, vary, terminate, or otherwise restrict a consumer’s access to their payment account, or deciding not to offer a consumer a payment account, must provide the consumer with a written statement of reasons explaining their decision.
- (3) A written statement of reasons under subsection (2) must clearly specify—
 - (a) the basis upon which such a decision was taken, including reference to any terms and conditions within the consumer’s contract upon which the relevant institution relies, or reference to any legal obligations placed upon the relevant institution;
 - (b) all evidence taken into account by the relevant institution in reaching its decision; and
 - (c) any other matters that had bearing on the relevant institution’s decision.”

Member's explanatory statement

This new clause would place a duty on banks, building societies and similar institutions not to discriminate against consumers when offering retail banking services.

Sir Jacob Rees-Mogg**NC3**

Jonathan Gullis
Craig Mackinlay
Priti Patel
Philip Davies
Esther McVey

Mrs Natalie Elphicke
James Grundy
Nick Fletcher

Sir John Hayes
Sally-Ann Hart
Sammy Wilson

Richard Drax
Stephen McPartland

To move the following Clause—

“Rights of redress

Where a relevant institution has acted in breach of its obligations under section [Rights of consumers in relation to payment accounts] (1), the consumer shall have a right to damages in respect of any—

- (a) financial loss;
- (b) emotional distress; and
- (c) physical inconvenience and discomfort.”

Member's explanatory statement

This new clause would give consumers a right to redress if discriminated against under NC2.

Sir Jacob Rees-Mogg**NC4**

Jonathan Gullis
Craig Mackinlay
Priti Patel
Philip Davies
Esther McVey

Mrs Natalie Elphicke
James Grundy
Nick Fletcher

Sir John Hayes
Sally-Ann Hart
Sammy Wilson

Richard Drax
Stephen McPartland

To move the following Clause—

“Enforcement of rights of redress

- (1) A consumer with a right to damages by virtue of section [Rights of redress](1) may bring a claim in civil proceedings to enforce that right.
- (2) The Limitation Act 1980 applies to a claim under this section in England and Wales as if it were an action founded on simple contract.

- (3) The Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) applies to a claim under this section in Northern Ireland as if it were an action founded on simple contract.”

Member's explanatory statement

This new clause makes provision for the enforcement of redress under NC3.

Sir Robert Buckland

NC23

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

☆ To move the following Clause—

“Digital Markets Unit and CMA: annual statement to House of Commons

- (1) The Secretary of State must, once a year, make a written statement to the House of Commons giving the Secretary of State’s assessment of the conduct and operation of—
- (a) the Digital Markets Unit, and
 - (b) the CMA as a whole.
- (2) The first statement must be made by 1 February 2024.
- (3) A further statement must be made by 1 February each subsequent year.”

Member's explanatory statement

This new clause would require the Secretary of State to make a written statement about the conduct and operation of the DMU and CMA.

Sir Robert Buckland

NC24

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

☆ To move the following Clause—

“Review of Competition Appeal Tribunal

- (1) The Secretary of State must, as soon the Secretary of State considers reasonable practicable after this Act has been passed, commission a review of all processes involving the Competition Appeal Tribunal.
- (2) The Secretary of State must ensure that the review is conducted independently of the Digital Markets Unit and the CMA.

(3) The Secretary of State must lay a report of the review before Parliament.”

Member's explanatory statement

This new clause would require the Secretary of State to commission an independent review of the Competition Appeals Tribunal processes.

Sir Robert Buckland

NC25

Sir Jacob Rees-Mogg
 Sir Robert Neill
 Stephen Hammond
 Sir Brandon Lewis
 Damian Green

☆ To move the following Clause—

“Duty to treat consumer interests as paramount

- (1) In applying the provisions of this Act, the CMA and the Courts have an overriding duty to treat consumer interests as paramount.
- (2) The duty set out in subsection (1) includes a duty to—
 - (a) address consumer detriment, including the protection of vulnerable consumers;
 - (b) expedite investigations that give rise to consumer detriment; and
 - (c) narrow points of challenge in appeals to CMA decisions that engage consumer detriment.”

Member's explanatory statement

This new clause would impose a duty on the CMA and the Courts to treat consumer issues as paramount.

Sir Robert Buckland

NC26

Sir Jacob Rees-Mogg
 Sir Robert Neill
 Stephen Hammond
 Sir Brandon Lewis
 Damian Green

☆ To move the following Clause—

“Proceedings before the Tribunal: claim for damages

- (1) The Competition Act 1998 is amended as follows.
- (2) In section 47A, after subsection (2)(b) insert—
 - “(c) Part 4 of the Digital Markets Act 2023””

Member's explanatory statement

This new clause would allow claims for damages in respect of infringements of the provisions of Part 4 of this Bill.

Sir Robert Buckland

NC27

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

☆ To move the following Clause—

“Appointment of senior director of the DMU

The senior director of the Digital Markets Unit must be appointed by the Secretary of State.”

Member's explanatory statement

This new clause provides that the senior director of the DMU must be appointed by the Secretary of State.

Alex Davies-Jones

NC28

★ To move the following Clause—

“Duty of the CMA: Citizens interest provisions

- (1) The Enterprise and Regulatory Reform Act 2013 is amended as follows.
- (2) After section 25(3) insert—

“(3A) When carrying out its functions in relation to the regulation of competition in digital markets under Part 1 of the Digital Markets, Competition and Consumers Act 2024, the CMA must seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers and citizens.””

Member's explanatory statement

This new clause would give the CMA a duty to further the interests of citizens – as well as consumers – when carrying out its digital markets functions under Part 1 of the Bill.

Alex Davies-Jones

NC29

★ 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 247(2) applies, the trader must ask the consumer whether they wish

to opt-in to 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-in to 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), or
 - (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 to auto-renewal, they would be required to notify the trader manually about renewing.

Alex Davies-Jones

NC30

★ To move the following Clause—

“Contract renewal: variable rate contracts

- (1) Before a trader enters into a subscription contract with a consumer where section 247(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 about the subscription continuing. It also introduces an option for the consumer to opt-out of their subscription auto-renewing.

John Penrose

NC31

John Redwood
Damian Green
Sir Simon Clarke
Sir Iain Duncan Smith
Sir Bill Wiggin

Sir Robert Buckland
Priti Patel
Stephen Crabb
Stephen Hammond
Sir Geoffrey Clifton-Brown
Mark Pawsey
Richard Fuller
Sir Desmond Swayne

Sir Jacob Rees-Mogg
Sir Robert Neill
Sir Brandon Lewis
Sir Graham Brady
Alicia Kearns
David Simmonds
Jo Gideon
Mark Garnier

Dame Caroline Dinenage
Dr Liam Fox
Mr David Davis
Sir Robert Goodwill
Craig Mackinlay
Andy Carter
Gareth Johnson
Matt Warman

★ To move the following Clause—

"Regulatory burdens arising from competition and consumer regulation

- (1) The CMA must, at least once a year, publish a report setting out its assessment of the economic cost of regulatory burdens that have been created and removed over the previous year through the exercise by public bodies of—
 - (a) competition and consumer powers; and
 - (b) the following activities, as far as they relate to competition and consumer matters—
 - (i) the imposition of conduct requirements;
 - (ii) dispute resolution and public enforcement activities;
 - (iii) the monitoring of undertakings, and
 - (iv) the issuing of regulatory orders.
- (2) The Secretary of State must ensure that public bodies provide the CMA with information the CMA considers is necessary for completion of the report.
- (3) The Secretary of State must ensure that the net economic cost of regulatory burdens set out in the report is zero or less in every year.
- (4) In this section a "regulatory burden" means a burden as defined in section 1(3) of the Legislative and Regulatory Reform Act 2006."

Member's explanatory statement

This new clause places on Ministers a permanent duty to ensure that the net economic cost of burdens from competition and consumer regulation is zero or less each year.

Sir Robert Buckland

176

Sir Jacob Rees-Mogg
 Sir Robert Neill
 Stephen Hammond
 Sir Brandon Lewis
 Damian Green

☆ Clause 2, page 2, leave out lines 20 and 21 and insert—

“(b) distinctive digital characteristics giving rise to competition law concerns such that the undertaking has a position of strategic significance (see section 6).”

Member's explanatory statement

This amendment is linked to Amendment 182.

Alex Davies-Jones

206

★ Clause 2, page 2, line 25, after “Chapter” insert “, taking account of analysis undertaken by the CMA on similar issues that have been the subject of public consultation.”

Member's explanatory statement

This amendment aims to ensure that the CMA are able to draw on previous analysis on issues relevant to the regulatory regime.

Sir Robert Buckland

177

Sir Jacob Rees-Mogg
 Sir Robert Neill
 Stephen Hammond
 Sir Brandon Lewis
 Damian Green

☆ Clause 2, page 2, line 25, at end insert—

- “(5) The CMA must publish terms of reference setting out a summary of the evidence base for making a finding of substantial and entrenched market power or of a position of strategic significance.
- (6) The terms of reference must include a detailed statement of the competition law concerns arising from these characteristics and the relationship between the designated digital activity and other activities.
- (7) Activities with no reasonable prospect of adverse competitive effects linked to digital activity must be referred to as unrelated activities and the terms of

reference must expressly state that unrelated activities are not covered by the designation.”

Member's explanatory statement

This amendment would require the CMA to publish terms of reference summarising the evidence base for a finding of substantial and entrenched market power or a finding of strategic significance.

Sir Robert Buckland

178

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

☆ Clause 3, page 2, line 28, after “service” insert “predominantly”

Member's explanatory statement

This amendment clarifies that the provision of a service predominantly by means of the internet would be a digital activity.

Sir Robert Buckland

179

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

☆ Clause 3, page 2, line 34, leave out subsection (2)

Member's explanatory statement

This amendment is linked to Amendment 178.

Sir Robert Buckland

180

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

☆ Clause 5, page 3, line 28, at end insert—

- “(c) are not assuaged by evidence of competition arising beyond the activities of the undertaking, and
- (d) demonstrate that the perceived market power will be improved compared with the scenario in which the designation does not occur.”

Member's explanatory statement

This amendment makes additions to the definition of substantial and entrenched market power.

Sir Robert Buckland

181

Sir Jacob Rees-Mogg
 Sir Robert Neill
 Stephen Hammond
 Sir Brandon Lewis
 Damian Green

☆ Clause 6, page 3, line 31, leave out "one or more of" and insert "both"

Member's explanatory statement

This amendment is linked to Amendment 182.

Sir Robert Buckland

182

Sir Jacob Rees-Mogg
 Sir Robert Neill
 Stephen Hammond
 Sir Brandon Lewis
 Damian Green

☆ Clause 6, page 3, leave out from line 33 to line 2 on page 4 and insert—

- “(a) significant network effects are present;
- “(b) the undertaking’s position in respect of the digital activity would allow it to extend its market power.”

Member's explanatory statement

This amendment changes the definition of the term "position of strategic significance".

Sir Robert Buckland

183

Sir Jacob Rees-Mogg
 Sir Robert Neill
 Stephen Hammond
 Sir Brandon Lewis
 Damian Green

☆ Clause 7, page 4, line 17 at end insert "arising from the designated activities"

Member's explanatory statement

This amendment limits the turnover condition in relation to UK turnover to turnover arising from designated activities.

Sir Robert Buckland 184

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

☆ Clause 7, page 4, line 19, at end insert “to account for inflation on the CPI measure”

Member's explanatory statement

This amendment ensures that the sums used to determine whether the turnover condition has been met can only be amended to account for inflation on the CPI measure.

Alex Davies-Jones 194

★ Clause 11, page 6, line 36, at end insert—

“(c) give a copy of the statement to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment ensures that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Alex Davies-Jones 193

★ Clause 11, page 11, line 15, at end insert—

“(9A) A conduct requirement must be imposed within 3 months of an undertaking being designated as having SMS under section 2.”

Member's explanatory statement

This amendment ensures that a time frame of three months is imposed for the CMA to enforce conduct requirements on designated SMS firms.

Alex Davies-Jones 195

★ Clause 12, page 7, line 9, at end insert—

“(5) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

See the explanatory statement to Amendment 194.

Alex Davies-Jones

196

★ Clause 14, page 7, line 36, at end insert—

“(5A) As soon as reasonably practicable after giving an SMS decision notice, the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

See the explanatory statement to Amendment 194.

Secretary Kemi Badenoch

Gov 2

☆ Clause 15, page 8, line 34, leave out from “that” to the end of line 35 and insert “the undertaking or digital activity, as the case may be, remain substantially the same”

Member's explanatory statement

This amendment clarifies how the CMA may revise its view of an undertaking or digital activity by issuing a revised SMS decision notice.

Secretary Kemi Badenoch

Gov 3

☆ Clause 15, page 8, line 37, leave out from “not” to the end of line 38 and insert “affect—

- “(a) the day on which the designation period in relation to that designation begins, or
- (b) anything done under this Part in relation to that undertaking.”

Member's explanatory statement

This amendment confirms that giving a revised SMS decision notice does not affect anything done under this Part in relation to a designated undertaking.

Alex Davies-Jones

197

★ Clause 15, page 8, line 41, at end insert—

“(6) As soon as reasonably practicable after giving a revised SMS decision notice, the CMA must give a copy of the revised notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

See the explanatory statement to Amendment 194.

Secretary Kemi Badenoch

Gov 4

☆ Clause 17, page 9, line 23, at end insert—

“(2A) In Chapters 6 (investigatory powers and compliance reports) and 7 (enforcement and appeals), references to a “designated undertaking” are to be read as including an undertaking to which an existing obligation applies by virtue of provision made in reliance on subsection (1).”

Member's explanatory statement

This amendment provides that references in Chapters 6 and 7 to a designated undertaking include an undertaking to which an obligation applies by virtue of provision made in reliance on clause 17(1).

Secretary Kemi Badenoch

Gov 5

☆ Clause 17, page 9, line 37, at end insert—

“(ba) commitment (see sections 36 and 55);”

Member's explanatory statement

This amendment provides for the CMA to be able to apply an existing commitment, with or without modifications, in respect of certain new designations or to make transitional, transitory or saving provision in respect of a commitment when it would otherwise cease to have effect.

Secretary Kemi Badenoch

Gov 6

☆ Clause 19, page 10, line 30, leave out from “requirement” to the end of line 35 and insert “or a combination of conduct requirements on a designated undertaking if it considers that it would be proportionate to do so for the purposes of one or more of the following objectives—

- (a) the fair dealing objective,
- (b) the open choices objective, and
- (c) the trust and transparency objective,

having regard to what the conduct requirement or combination of conduct requirements is intended to achieve.”

Member's explanatory statement

This amendment provides that the CMA may only impose a conduct requirement or combination of requirements if it considers that it would be proportionate to do so, having regard to what the requirement or combination is intended to achieve.

Secretary Kemi Badenoch

Gov 7

☆ Clause 19, page 11, line 15, at end insert—

“(9A) Before imposing a conduct requirement or a combination of conduct requirements on a designated undertaking, the CMA must have regard in particular to the benefits for consumers that the CMA considers would likely result (directly or indirectly) from the conduct requirement or combination of conduct requirements.”

Member's explanatory statement

This amendment provides that the CMA must consider the likely benefits for consumers when imposing a conduct requirement or combination of conduct requirements.

Secretary Kemi Badenoch

Gov 8

☆ Clause 20, page 12, line 9, leave out from “to” to “in” on line 10 and insert “materially increase the undertaking’s market power, or materially strengthen its position of strategic significance,”

Member's explanatory statement

This amendment clarifies that a conduct requirement is permitted if it is for the purpose of preventing an undertaking from carrying on activities other than the relevant digital activity in a way that is likely to materially strengthen its position of strategic significance in relation to the relevant digital activity.

Alex Davies-Jones

190

★ Clause 20, page 12, line 9, after “to”, insert “harm competition in the relevant digital activity or the other activity,”

Member's explanatory statement

This amendment would ensure that the CMA can tackle anti-competitive conduct in a non-designated activity, provided that the anti-competitive conduct is related to a designated activity.

Alex Davies-Jones

191

★ Clause 20, page 12, line 11, after “activity”, insert “, provided that the conduct is related to the relevant digital activity”

Member's explanatory statement

See the explanatory statement to Amendment 190.

Secretary Kemi Badenoch

Gov 9

- ☆ Clause 21, page 12, line 28, after “requirement” insert “or, as the case may be, each conduct requirement as varied,”

Member's explanatory statement

This amendment clarifies how the notice requirements in clause 21 apply in relation to the variation of a conduct requirement.

Secretary Kemi Badenoch

Gov 10

- ☆ Clause 21, page 12, line 31, leave out paragraphs (b) and (c) and insert—

- “(b) the CMA’s reasons for imposing the conduct requirement, including—
- (i) the objective for the purposes of which the CMA considers it is proportionate to impose the conduct requirement (see section 19),
 - (ii) the benefits that the CMA considers would likely result from the conduct requirement (see section 19(9A)), and
 - (iii) the permitted type of requirement to which the CMA considers the conduct requirement belongs (see section 20);”

Member's explanatory statement

This amendment requires the CMA to give reasons for imposing conduct requirements on a designated undertaking. Sub-paragraph (ii) is consequential on Amendment 7.

Alex Davies-Jones

192

- ★ Clause 25, page 14, line 7, at end insert—

- “(e) whether to take action in accordance with Chapter 4 (Pro-competitive interventions) in respect of the extent to which it is complying with each conduct requirement to which it is subject and the effectiveness of each conduct requirement to which it is subject.”

Member's explanatory statement

This amendment would ensure that the CMA considers the efficacy of existing Conduct Requirements when considering whether to make Pro-Competitive Interventions.

Secretary Kemi Badenoch

Gov 11

- ☆ Clause 26, page 14, line 11, leave out “a designated” and insert “an”

Member's explanatory statement

This amendment, together with Amendments 12, 16, 29, 37, 38, 40, 42, 43 and 65, ensures that enforcement action can be taken in respect of an undertaking that has ceased to be a designated undertaking in relation to its conduct while it was a designated undertaking.

Secretary Kemi Badenoch

Gov 12

☆ Clause 26, page 14, line 18, leave out “designated”

Member's explanatory statement

See the explanatory statement for Amendment 11.

Alex Davies-Jones

198

★ Clause 26, page 15, line 3, at end insert—

“(7) As soon as reasonably practicable after giving a conduct investigation notice, the CMA must give a copy of the conduct investigation notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

See the explanatory statement to Amendment 194.

Alex Davies-Jones

187

★ Clause 27, page 15, line 8, at end insert—

“(2) The CMA may have regard to any significant benefits to users or potential users that the CMA considers have resulted, or may be expected to result, from a factor or combination of factors resulting from a breach of a conduct requirement.”

Member's explanatory statement

This amendment would ensure that the CMA considers any significant benefits to users resulting from the breach of a Conduct Requirement when it is considering representations from designated undertakings as part of a Conduct Investigation.

Alex Davies-Jones

199

★ Clause 28, page 15, line 21, at end insert—

“(5) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

See the explanatory statement to Amendment 194.

Alex Davies-Jones

188

★ Page 15, line 21, leave out Clause 29

Member's explanatory statement

This Amendment is consequential to Amendment 187.

Secretary Kemi Badenoch

Gov 13

☆ Clause 29, page 15, line 30, at end insert—

“(ba) those benefits could not be realised without the conduct,”

Member's explanatory statement

This amendment, together with Amendment 14. clarifies how the countervailing benefits exemption is to operate.

Sir Robert Buckland

186

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

☆ Clause 29, page 15, line 31, leave out subsection (c) and insert—

“(c) the conduct is necessary for the realisation of those benefits based on the best available evidence reasonably obtainable, and”

Member's explanatory statement

This amendment would change the circumstances in which the countervailing benefits exemption would apply.

Secretary Kemi Badenoch

Gov 14

☆ Clause 29, page 15, line 31, leave out “indispensable and”

Member's explanatory statement

See the explanatory statement for Amendment 13.

Sarah Olney

209

★ Clause 29, page 15, line 37, at end insert—

- “(4) The CMA may only consider that the countervailing benefits exemption applies if it has reached such a consideration within six months of the day on which the conduct investigation notice is given to the undertaking.
- (5) In subsection (2), a “benefit” means any benefit of a type set out in regulations made by the Secretary of State in accordance with the procedure under subsections (6) to (9).
- (6) The Secretary of State must, within six months of this section coming into force, lay before Parliament draft regulations setting out the types of benefit that apply for purposes of subsection (2).
- (7) A Minister of the Crown must make a motion in each House of Parliament to approve the draft regulations within 14 days of the date on which they were laid.
- (8) Subject to subsection (9), if the draft regulations are approved by both Houses of Parliament, the Secretary of State must make them in the form of the draft which has been approved.
- (9) If any amendments to the draft regulations are agreed to by both Houses of Parliament, the Secretary of State must make the regulations in the form of the draft as so amended.”

Member's explanatory statement

This amendment would introduce a 6 month time limit on the duration of investigations into countervailing benefits claims, and specifies that the Secretary of State shall introduce further legislation for Parliamentary debate providing an exhaustive list of the types of countervailing benefits SMS firms are able to claim.

Alex Davies-Jones

200

★ Clause 30, page 16, line 13, at end insert—

- “(4A) As soon as reasonably practicable after giving the notice, the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

See the explanatory statement to Amendment 194.

Secretary Kemi Badenoch

Gov 15

☆ Clause 30, page 16, line 14, leave out subsection (5) and insert—

- “(5) Subsection (1) does not apply—
- (a) where the CMA closes the conduct investigation under section 28, or

- (b) in relation to any behaviour in respect of which the CMA has accepted a commitment from the undertaking (see section 36)."

Member's explanatory statement

This amendment clarifies the circumstances in which the CMA does not have to give a notice of findings in relation to a conduct investigation.

Secretary Kemi Badenoch

Gov 16

- ☆ Clause 31, page 16, line 20, leave out "a designated" and insert "an"

Member's explanatory statement

See the explanatory statement for Amendment 11.

Alex Davies-Jones

201

- ★ Clause 31, page 17, line 3, at end insert—

"(7A) As soon as reasonably practicable after making an enforcement order (including a revised version of an order), the CMA must give a copy of the order to those undertakings that have not been designated as having SMS that are most directly affected."

Member's explanatory statement

See the explanatory statement to Amendment 194.

Alex Davies-Jones

202

- ★ Clause 32, page 17, line 35, at end insert—

"(6A) As soon as reasonably practicable after giving a notice under subsection (5), the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected."

Member's explanatory statement

See the explanatory statement to Amendment 194.

Alex Davies-Jones

203

- ★ Clause 34, page 18, line 36, at end insert—

"(4A) As soon as reasonably practicable after revoking an enforcement order, the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected."

Member's explanatory statement

See the explanatory statement to Amendment 194.

Secretary Kemi Badenoch

Gov 17

- ☆ Clause 36, page 20, line 4, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on Amendment 18.

Secretary Kemi Badenoch

Gov 18

- ☆ Clause 36, page 20, line 8, at end insert—

“(5A) A commitment under this section ceases to have effect—

- (a) subject to provision made in reliance on section 17 (existing obligations)—
 - (i) in accordance with any terms of the commitment about when it is to cease to have effect, or
 - (ii) when the conduct requirement to which the commitment relates ceases to have effect, or
- (b) when the undertaking is released from the requirement to comply with the commitment.”

Member's explanatory statement

This amendment provides for a commitment to cease to have effect in accordance with terms of the commitment.

Alex Davies-Jones

189

- ★ Clause 38, page 21, line 7, leave out “breached an enforcement order, other than an interim enforcement order” and insert “breached a conduct requirement”

Member's explanatory statement

This amendment would allow the CMA to initiate the Final Offer Mechanism after a Conduct Requirement of the type permitted by clause 20(2)(a) has first been breached, provided that the other conditions in clause 38 are met.

Secretary Kemi Badenoch

Gov 19

- ☆ Clause 38, page 21, line 18, leave out subsection (6)

Member's explanatory statement

This amendment is consequential on NC5.

Secretary Kemi Badenoch

Gov 20

- ☆ Clause 38, page 21, line 22, leave out “designated” in the second place it occurs

Member's explanatory statement

This amendment ensures that the final offer mechanism can continue to operate in relation to undertakings after they have ceased to be designated undertakings where provision made in reliance on clause 17 means a final offer order continues to have effect.

Secretary Kemi Badenoch

Gov 21

- ☆ Clause 39, page 22, line 6, at end insert—

“(3A) After giving a final offer initiation notice, the CMA may—

- (a) change its view of the transaction or the third party, provided that the new transaction or third party remains substantially the same as the previous transaction or third party,
 - (b) revise any list of joined third parties or grouped third parties, or
 - (c) change the submission date.
- (3B) The powers conferred by subsection (3A) are to be exercised by giving a revised version of the final offer initiation notice to the designated undertaking and the third party.
- (3C) Where the power conferred by subsection (3A)(b) is being exercised, the reference in subsection (3B) to “the third party” includes each person that was a joined third party or a grouped third party prior to the exercise of the power or that is to be a joined third party or a grouped third party after the exercise of the power.
- (3D) As soon as reasonably practicable after giving a revised version of a final offer initiation notice, the CMA must publish a statement summarising the contents of the revised notice.”

Member's explanatory statement

This amendment allows the CMA to revise its view of a transaction to which a final offer initiation notice relates and to use a revised final offer initiation notice to update the list of joined third parties or grouped third parties.

Secretary Kemi Badenoch

Gov 22

- ☆ Clause 39, page 22, line 15, leave out subsection (5)

Member's explanatory statement

This amendment is consequential on Amendment 21.

Secretary Kemi Badenoch

Gov 23

- ☆ Clause 40, page 22, line 23, leave out “only one of the designated undertaking and the third party” and insert “either the designated undertaking or the third party (but not both)”

Member's explanatory statement

This amendment is consequential on NC5.

Secretary Kemi Badenoch

Gov 24

- ☆ Clause 43, page 24, line 1, after “revoke” insert “, or partially revoke,”

Member's explanatory statement

This amendment provides that the CMA may partially revoke a final offer order.

Secretary Kemi Badenoch

Gov 25

- ☆ Clause 43, page 24, line 4, after “revoke” insert “, or partially revoke,”

Member's explanatory statement

This amendment is consequential on Amendment 24.

Secretary Kemi Badenoch

Gov 26

- ☆ Clause 43, page 24, line 8, after “revocation” insert “, or partial revocation,”

Member's explanatory statement

This amendment is consequential on Amendment 24.

Secretary Kemi Badenoch

Gov 27

- ☆ Clause 43, page 24, line 9, after “revoking” insert “, or partially revoking,”

Member's explanatory statement

This amendment is consequential on Amendment 24.

Secretary Kemi Badenoch

Gov 28

- ☆ Clause 43, page 24, line 10, after “revoking” insert “, or partially revoking,”

Member's explanatory statement

This amendment is consequential on Amendment 24.

Secretary Kemi Badenoch

Gov 29

- ☆ Clause 44, page 24, line 17, leave out “a designated” and insert “an”

Member's explanatory statement

See the explanatory statement for Amendment 11.

Secretary Kemi Badenoch

Gov 30

- ☆ Clause 45, page 24, line 32, leave out paragraph (b) and insert—

“(b) it would be proportionate to make the PCI for the purposes of remedying, mitigating or preventing the adverse effect on competition.”

Member's explanatory statement

This amendment provides that the CMA may make a PCI where it considers that it would be proportionate to do so.

Alex Davies-Jones

204

- ★ Clause 47, page 26, line 8, at end insert—

“(4A) As soon as reasonably practicable after giving a PCI investigation notice or a revised version of the PCI investigation notice, the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

See the explanatory statement to Amendment 194.

Alex Davies-Jones

205

- ★ Clause 50, page 27, line 28, at end insert—

“(6A) As soon as reasonably practicable after making a pro-competition order, the CMA must give a copy of the order to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

See the explanatory statement to Amendment 194.

Secretary Kemi Badenoch

Gov 31

- ☆ Clause 55, page 30, line 28, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on Amendment 32.

Secretary Kemi Badenoch

Gov 32

☆ Clause 55, page 30, line 31, at end insert—

“(6A) A commitment under this section ceases to have effect—

- (a) subject to provision made in reliance on section 17 (existing obligations)—
 - (i) in accordance with any terms of the commitment about when it is to cease to have effect, or
 - (ii) when the designation to which the commitment relates ceases to have effect, or
- (b) when the undertaking is released from the requirement to comply with the commitment.”

Member's explanatory statement

This amendment provides for a commitment to cease to have effect in accordance with terms of the commitment.

Secretary Kemi Badenoch

Gov 33

☆ Clause 60, page 34, line 29, leave out from “P” to end of line 31 and insert “that it has begun an investigation for the purposes of deciding whether it has to make a reference under section 33 of EA 2002 (duty to make references in relation to anticipated mergers) in relation to”

Member's explanatory statement

This amendment replaces a reference to giving a notice to a person under section 34ZA(1)(b) of the Enterprise Act 2002 (which is given when a decision is made about whether to make a reference under section 33 of that Act) with a reference to the CMA informing the person that it has decided to begin an investigation into whether it has to make a reference under section 33 of that Act.

Secretary Kemi Badenoch

Gov 34

☆ Clause 61, page 35, line 31, leave out subsection (6)

Member's explanatory statement

This amendment is consequential on Amendment 149.

Secretary Kemi Badenoch

Gov 35

☆ Clause 62, page 36, line 3, leave out “(as defined in section 61)”

Member's explanatory statement

This amendment is consequential on Amendment 149.

Secretary Kemi Badenoch

Gov 36

- ☆ Clause 66, page 37, line 20, leave out "106" and insert "203"

Member's explanatory statement

See the explanatory statement for Amendment 80, which would result in clause 203 being moved to Part 6 of the Bill and applying for the purposes of the whole of the Bill.

Secretary Kemi Badenoch

Gov 37

- ☆ Clause 69, page 39, line 4, after "undertaking" insert "or an undertaking that is the subject of a breach investigation"

Member's explanatory statement

See the explanatory statement for Amendment 11.

Secretary Kemi Badenoch

Gov 38

- ☆ Clause 70, page 39, line 25, after "undertaking" insert "or an undertaking that is the subject of a breach investigation"

Member's explanatory statement

See the explanatory statement for Amendment 11.

Secretary Kemi Badenoch

Gov 39

- ☆ Clause 71, page 40, line 25, leave out from "116(3))" to ", the" on line 26 and insert "the undertaking that is the subject of the digital markets investigation"

Member's explanatory statement

This amendment provides that, where a person is required to attend an interview in connection with a digital markets investigation and is connected to the undertaking that is the subject of the investigation, the CMA must notify the undertaking.

Secretary Kemi Badenoch

Gov 40

- ☆ Clause 73, page 41, line 28, leave out "designated"

Member's explanatory statement

See the explanatory statement for Amendment 11.

Secretary Kemi Badenoch

Gov 41

- ☆ Clause 73, page 42, line 20, leave out subsection (9)

Member's explanatory statement

This amendment is consequential on Amendment 149.

Secretary Kemi Badenoch

Gov 42

- ☆ Clause 78, page 46, line 12, leave out from the first "undertaking" to "for" on line 13 and insert ", an undertaking that is the subject of a breach investigation or an undertaking that is the subject of an SMS investigation (in each case, "U")"

Member's explanatory statement

See the explanatory statement for Amendment 11.

Secretary Kemi Badenoch

Gov 43

- ☆ Clause 79, page 47, line 35, leave out "a designated" and insert "an"

Member's explanatory statement

See the explanatory statement for Amendment 11.

Secretary Kemi Badenoch

Gov 44

- ☆ Clause 79, page 47, line 36, leave out "connected to (see section 116(3))" and insert ", or is connected to (see section 116(3)),"

Member's explanatory statement

The amendment, together with Amendments 45 and 46, applies the duty to preserve information to undertakings that may be subject to investigation or are required to produce compliance reports, in the same way as that duty applies to persons connected to those undertakings.

Secretary Kemi Badenoch

Gov 45

- ☆ Clause 79, page 47, line 39, leave out "connected to" and insert ", or is connected to,"

Member's explanatory statement

See the explanatory statement for Amendment 44.

Secretary Kemi Badenoch

Gov 46

- ☆ Clause 79, page 48, line 4, leave out "connected to" and insert ", or is connected to,"

Member's explanatory statement

See the explanatory statement for Amendment 44.

Secretary Kemi Badenoch**Gov 47**

- ☆ Clause 82, page 49, line 8, leave out "A designated" and insert "An"

Member's explanatory statement

This amendment clarifies that clause 82 (duty to appoint a nominated officer to monitor compliance with digital markets requirements etc) applies in relation to an undertaking that has ceased to be a designated undertaking where digital markets requirements continue to apply to it (in accordance with clause 17).

Secretary Kemi Badenoch**Gov 48**

- ☆ Clause 87, page 53, line 13, leave out from "group" to ", to" on line 14

Member's explanatory statement

This amendment provides that the references to any person's turnover in clause 87(3) are to the turnover of a group if that person is part of, or a member of, that group.

Secretary Kemi Badenoch**Gov 49**

- ☆ Clause 87, page 53, line 15, leave out subsection (5)

Member's explanatory statement

This amendment is consequential on Amendment 48.

Secretary Kemi Badenoch**Gov 50**

- ☆ Clause 87, page 53, line 22, at end insert—

"(c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate."

Member's explanatory statement

This amendment clarifies how an amount of a penalty that is a combination of a fixed amount and an amount calculated by reference to a daily rate is to be calculated in relation to an individual.

Secretary Kemi Badenoch**Gov 51**

- ☆ Clause 88, page 53, line 31, after "instalments)" insert ", 114 (appeals)"

Member's explanatory statement

This amendment, together with Amendments 52, 53, 55 and 56, ensures that appeals against penalty decisions will be determined on the merits rather than on judicial review principles.

Secretary Kemi Badenoch

Gov 52

☆ Clause 88, page 53, line 34, leave out subsection (2)

Member's explanatory statement

See the explanatory statement for Amendment 51.

Secretary Kemi Badenoch

Gov 53

☆ Clause 88, page 54, line 1, leave out subsections (3), (4) and (5) and insert—

“(3) For the purposes of this section—

- (a) sections 112 to 115 of EA 2002 are to be read as if references to “the appropriate authority” were references to “the CMA” only;
- (b) section 114(5A) of that Act is to be read as if the words “In the case of a penalty imposed on a person by the CMA or OFCOM,” were omitted;
- (c) section 114(12) of that Act is to be read as if, for paragraph (b), there were substituted—

“(b) “the relevant guidance” means the statement of policy which was most recently published under section 90 of the Digital Markets, Competition and Consumers Act 2024 at the time of the act or omission giving rise to the penalty.””

Member's explanatory statement

See the explanatory statement for Amendment 51.

Secretary Kemi Badenoch

Gov 54

☆ Clause 96, page 57, line 23, leave out subsection (2)

Member's explanatory statement

This amendment is consequential on Amendment 148.

Secretary Kemi Badenoch

Gov 55

☆ Clause 102, page 60, line 29, leave out paragraphs (b) and (c) and insert—

“(b) a decision about the imposition of a penalty under section 84 or 86 (but see section 88(1)).”

Member's explanatory statement

See the explanatory statement for Amendment 51.

Secretary Kemi Badenoch

Gov 56

- ☆ Clause 102, page 60, line 36, leave out subsections (4) and (5)

Member's explanatory statement

See the explanatory statement for Amendment 51.

Sir Robert Buckland

185

Sir Jacob Rees-Mogg
 Sir Robert Neill
 Stephen Hammond
 Sir Brandon Lewis
 Damian Green

- ☆ Clause 102, page 61, line 10, leave out subsections (6) and (7) and insert—

“(6) In determining an application under this section—

- (a) for any application made within a period of three years beginning on the day on which this Act is passed, the Tribunal must determine the application on the merits by reference to the grounds set out in the application;
- (b) for any application made thereafter, the Tribunal must apply the same principles as would be applied—
 - (i) in the case of proceedings in England and Wales and Northern Ireland, by the High Court in determining proceedings on judicial review; and
 - (ii) in the case of proceedings in Scotland, by the Court of Session on an application to the supervisory jurisdiction of the court.

(7) The Tribunal may—

- (a) for any application made within a period of three years beginning on the day on which this Act is passed, confirm or set aside the decision which is the subject of the application, or any part of it, and may—
 - (i) remit the matter to the CMA,
 - (ii) take other such steps as the CMA could itself have given or taken, or
 - (iii) make any other decision which the CMA could itself have made;
- (b) for any application made thereafter—
 - (i) dismiss the application or quash the whole or part of the decision to which it relates. and
 - (ii) where it quashes the whole or part of that decision, refer the matter back to the CMA with a direction to reconsider and make a new decision in accordance with a ruling of the Tribunal.”

Member's explanatory statement

This amendment changes for a three-year period the mechanism by which the Tribunal would determine applications for review.

Secretary Kemi Badenoch

Gov 57

☆ Clause 105, page 64, line 14, at end insert—

“(da) whether to make, and the form of, an enforcement order, other than an interim enforcement order, under section 31 of the 2024 Act;”

Member's explanatory statement

This amendment prevents the CMA from delegating to an individual staff or Board member the decision about whether to make, and the form of, an enforcement order other than an interim enforcement order. The CMA may still delegate this decision to a committee of the Board.

Secretary Kemi Badenoch

Gov 58

☆ Clause 105, page 64, line 14, at end insert—

“(db) whether to accept a commitment under section 36 or section 55 of the 2024 Act;”

Member's explanatory statement

This amendment prevents the CMA from delegating to an individual staff or Board member the decision about whether to accept a commitment from an undertaking. The CMA may still delegate this decision to a committee of the Board.

Secretary Kemi Badenoch

Gov 59

☆ Clause 105, page 64, line 14, at end insert—

“(dc) whether to exercise the power conferred by section 38(1) of the 2024 Act (power to adopt final offer mechanism);”

Member's explanatory statement

This amendment prevents the CMA from delegating to an individual staff or Board member the decision about whether to adopt the final offer mechanism. The CMA may still delegate this decision to a committee of the Board.

Secretary Kemi Badenoch

Gov 60

☆ Clause 105, page 64, line 22, at end insert—

- “(i) whether to impose a penalty on a person under section 84 or section 86 of the 2024 Act;
(j) the amount of any such penalty.”

Member's explanatory statement

This amendment prevents the CMA from delegating to an individual staff or Board member the decision about whether to impose a penalty on a person and the amount of any such penalty. The CMA may still delegate these decisions to a committee of the Board.

Secretary Kemi Badenoch

Gov 61

- ☆ Page 65, line 4, leave out Clause 106

Member's explanatory statement

This amendment would leave out clause 106 (notices under Part 1), which will no longer be needed following the moving and amending of clause 203 by Amendments 77, 78, 79 and 80.

Secretary Kemi Badenoch

Gov 62

- ☆ Clause 111, page 69, line 33, after “undertaking” insert “or an undertaking to which an obligation applies by virtue of provision made in reliance on section 17(1) (existing obligations)”

Member's explanatory statement

This amendment provides that notices may be served on a person outside the United Kingdom where the person is or is part of an undertaking to which an obligation applies by virtue of provision made in reliance on clause 17(1) (existing obligations).

Secretary Kemi Badenoch

Gov 63

- ☆ Clause 111, page 70, line 7, leave out subsection (6)

Member's explanatory statement

This amendment is consequential on Amendment 148.

Secretary Kemi Badenoch

Gov 64

- ☆ Clause 114, page 71, line 1, leave out subsection (4) and insert—

“(4) Before publishing guidance (including any revised or replacement guidance) under this section, the CMA must—

- (a) consult such persons as it considers appropriate, and
- (b) obtain the approval of the Secretary of State.”

Member's explanatory statement

This amendment requires the CMA to get the approval of the Secretary of State before publishing any guidance relating to Part 1 of the Bill.

Secretary Kemi Badenoch

Gov 65

- ☆ Clause 116, page 71, line 17, leave out from “whether” to the end of line 18 and insert “an undertaking is breaching or has breached a requirement imposed on the undertaking under this Part by virtue of the undertaking being, or having been, a designated undertaking”

Member's explanatory statement

See the explanatory statement for Amendment 11.

Secretary Kemi Badenoch

Gov 66

- ☆ Clause 116, page 72, line 22, at end insert—

““grouped third parties” has the meaning given by section (*Collective submissions*)(3);

“grouped transactions” has the meaning given by section (*Collective submissions*)(3);”

Member's explanatory statement

This amendment is consequential on NC5.

Secretary Kemi Badenoch

Gov 67

- ☆ Clause 116, page 72, line 31, at end insert—

““joined third parties” has the meaning given by section (*Collective submissions*)(1);”

Member's explanatory statement

This amendment is consequential on NC5.

Secretary Kemi Badenoch

Gov

That Clause 124 be transferred to the end of line 39 on page 219

Member's explanatory statement

This amendment would move clause 124 (offenders assisting investigations and prosecutions: powers of the CMA) from Chapter 1 of Part 2 of the Bill (competition: anti-trust) to Part 5 of the Bill (miscellaneous) to reflect the fact that the powers conferred by the clause are exercisable in relation to offences relating to consumer matters as well offences relating to competition matters.

Secretary Kemi Badenoch

Gov 69

- ☆ Clause 133, page 82, line 36, at end insert—

“(2) The Secretary of State may by regulations amend—

- (a) any sectoral enactment, or
 - (b) section 168 of EA 2002 (regulated markets),in connection with provision made by Schedule 7.
- (3) The power to make regulations under subsection (2) includes power to make provision for the CMA or Secretary of State to be able to modify, or request that another person modifies, any agreement, arrangement, condition, licence, statement (or anything of a similar nature) in connection with an implementation trial measure (within the meaning of Part 4 of EA 2002, as amended by Schedule 7).
- (4) But so far as the power to make regulations under subsection (2) is exercised to amend a sectoral enactment that is mentioned in section 168 of EA 2002 (regulated markets), the power may only make provision in connection with a relevant action mentioned in subsection (3) of that section.
- (5) For the purposes of this section the sectoral enactments are—
 - (a) the Civil Aviation Act 2012;
 - (b) the Health and Social Care Act 2012;
 - (c) the Transport Act 2000;
 - (d) the Chiropractors Act 1994;
 - (e) the Railways Act 1993;
 - (f) the Osteopaths Act 1993;
 - (g) the Water Industry Act 1991;
 - (h) the Broadcasting Act 1990;
 - (i) the Electricity Act 1989;
 - (j) the Copyright, Designs and Patents Act 1988;
 - (k) the Gas Act 1986;
 - (l) the Patents Act 1977;
 - (m) the Registered Designs Act 1949;
 - (n) the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21));
 - (o) the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));
 - (p) the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).
- (6) The Secretary of State must, before making regulations under subsection (2) that—
 - (a) amend a sectoral enactment, consult the relevant sectoral authority;
 - (b) amend section 168 of EA 2002, consult any relevant sectoral authority whom the Secretary of State considers is likely to have an interest in the amendment.
- (7) For the purposes of subsection (6) the relevant sectoral authorities are—
 - (a) in relation to the Civil Aviation Act 2012, the Civil Aviation Authority;
 - (b) in relation to the Health and Social Care Act 2012, NHS England;
 - (c) in relation to the Transport Act 2000, the Civil Aviation Authority;
 - (d) in relation to the Chiropractors Act 1994, the General Chiropractic Council;

- (e) in relation to the Railways Act 1993, the Office of Rail and Road;
 - (f) in relation to the Osteopaths Act 1993, the General Osteopathic Council;
 - (g) in relation to the Water Industry Act 1991, the Water Services Regulation Authority;
 - (h) in relation to the Broadcasting Act 1990, the Office of Communications;
 - (i) in relation to the Electricity Act 1989 and the Gas Act 1986, the Gas and Electricity Markets Authority;
 - (j) in relation to the Copyright, Designs and Patents Act 1988, the Patents Act 1977 and the Registered Designs Act 1949, the Comptroller-General of Patents, Designs and Trade Marks;
 - (k) in relation to the Water and Sewerage Services (Northern Ireland) Order 2006, the Gas (Northern Ireland) Order 1996 and the Electricity (Northern Ireland) Order 1992, the Northern Ireland Authority for Utility Regulation.
- (8) The Secretary of State may by regulations—
- (a) amend subsection (5) so as to add or remove an enactment;
 - (b) amend subsection (7) so as to add, vary or remove an entry.
- (9) Regulations under this section are subject to the affirmative procedure.”

Member's explanatory statement

This amendment gives the Secretary of State the power to amend legislation relating to regulated markets so that the CMA, or the Secretary of State, can include in an implementation trial (under Part 4 of the Enterprise Act 2002, as amended by Schedule 7 to the Bill) measures that require modifications to be made to, for example, the conditions of licences in connection with those markets.

Caroline Lucas

207

★ Clause 141, page 89, line 13, at end insert—

“(c) the collective interests of consumers include avoiding any detriment that might be incurred by consumers if the United Kingdom does not reach a level of net zero carbon emissions by 2030.”

Member's explanatory statement

This amendment would mean that part of the test of whether a commercial practice had committed an infringement would be whether the commercial practice had failed to protect consumers from any detrimental effects arising from a failure to achieve net zero by 2030.

Secretary Kemi Badenoch

Gov 70

☆ Clause 153, page 99, line 19, leave out “persons” and insert “consumers”

Member's explanatory statement

This amendment, which ensures consistency of drafting with the parallel provision in clause 177(3)(d), requires the activities mentioned in clause 153(3)(d) to be directed at consumers in the United Kingdom rather than persons more generally.

Secretary Kemi Badenoch

Gov 71

☆ Clause 158, page 103, line 18, at end insert—

“and the proposed variation or release has not been requested by the respondent.”

Member's explanatory statement

This amendment ensures that the procedural requirements in relation to the variation or release of undertakings given under clause 156 will apply only where it is the enforcer, rather than the respondent, that has suggested the variation or release in question.

Secretary Kemi Badenoch

Gov 72

☆ Clause 159, page 104, line 12, at end insert “of any kind that the enforcer concerned is authorised under this Chapter to apply for”

Member's explanatory statement

This amendment clarifies that an application in respect of a failure to comply with an undertaking given to the court may only be combined with an application for a consumer protection order of a type that the enforcer in question is otherwise authorised to apply for.

Secretary Kemi Badenoch

Gov 73

☆ Clause 160, page 105, line 7, at end insert “of any kind that the enforcer concerned is authorised under this Chapter to apply for”

Member's explanatory statement

This amendment clarifies that an application in respect of a failure to comply with an undertaking given to a public designated enforcer may only be combined with an application for a consumer protection order of a type that the enforcer in question is otherwise authorised to apply for.

Secretary Kemi Badenoch

Gov 74

☆ Clause 180, page 119, line 25, at end insert—

“and the proposed variation or release has not been requested by the person who gave the undertaking.”

Member's explanatory statement

This amendment ensures that the procedural requirements in relation to the variation or release of undertakings given under clause 178 will apply only where it is the CMA, rather than the respondent, that has suggested the variation or release in question.

Secretary Kemi Badenoch

Gov 75

☆ Clause 185, page 124, line 3, at end insert—

“(5A) Where a final breach of directions enforcement notice includes provision under subsection (5) that varies an enforcement direction or specifies other directions, the notice must (in addition to the requirements under subsection (4)) also state that the respondent has a right to appeal against the notice and the main details of that right.”

Member's explanatory statement

This amendment ensures that final breach of directions enforcement notices contain information on appeal rights if the notice varies a direction or imposes new directions.

Secretary Kemi Badenoch

Gov 76

☆ Clause 195, page 130, line 19, at end insert—

“(4A) Except in the case of an appeal relating to a final false information enforcement notice, in addition to the powers conferred by subsection (4) the appropriate appeal court may also remit any matter that is the subject of the appeal to the CMA.”

Member's explanatory statement

This amendment provides that on an appeal relating to a final infringement notice, an online interface notice, a final breach of undertakings enforcement notice or a final breach of directions enforcement notice, the court may remit a matter back to the CMA.

Secretary Kemi Badenoch

Gov 77

☆ Clause 203, page 136, line 5, leave out from “person” to end of line 6 and insert “—

- (a) under this Act by the CMA, or
- (b) under Part 3 by another enforcer (within the meaning of that Part).”

Member's explanatory statement

See the explanatory statement for Amendment 80.

Secretary Kemi Badenoch

Gov 78

☆ Clause 203, page 136, line 32, after first “the” insert “CMA or other”

Member's explanatory statement

See the explanatory statement for Amendment 80.

Secretary Kemi Badenoch

Gov 79

- ☆ Clause 203, page 136, line 38, after first “the” insert “CMA or other”

Member's explanatory statement

See the explanatory statement for Amendment 80.

Secretary Kemi Badenoch

Gov

That Clause 203 be transferred to the end of line 26 on page 220

Member's explanatory statement

This amendment would move clause 203 (notices under Part 3) to Part 6 of the Bill where, when amended by Amendments 77, 78 and 80, it would apply for the purposes of Parts 1 and 3 of the Bill, and the new first Chapter A1 of Part 5 of the Bill to be formed by NC14 to NC21.

Secretary Kemi Badenoch

Gov 81

- ☆ Clause 215, page 142, line 36, before “profession” insert “trade, craft or”

Member's explanatory statement

This amendment ensures that trades and crafts will fall within the definition of “business” for the purposes of Part 3 whether or not they are carried on for gain or reward. This ensures consistency with the definition of “business” in Chapter 1 of Part 4.

Secretary Kemi Badenoch

Gov 82

- ☆ Clause 215, page 142, line 37, leave out “a trade, craft or” and insert “any other”

Member's explanatory statement

This amendment is consequential on Amendment 81.

Secretary Kemi Badenoch

Gov 83

- ☆ Clause 215, page 143, leave out lines 12 to 17

Member's explanatory statement

This amendment is consequential on Amendment 148.

Secretary Kemi Badenoch

Gov 84

- ☆ Clause 216, page 144, line 29, leave out “Section 215” and insert “Section 312”

Member's explanatory statement

This amendment is consequential on Amendment 148.

Secretary Kemi Badenoch

Gov 85

- ☆ Clause 223, page 148, line 32, leave out “set out in subsection (2)” and insert “which is—
- (a) set out in subsection (2), and
 - (b) not already apparent from the context.”

Member's explanatory statement

This amendment provides that a trader does not, as part of an information to purchase, have to include any of the information listed in clause 223(2) if that information is already apparent to the consumer from the context.

Neil Coyle

226

- ★ Clause 224, page 150, line 27, at end insert—

“(4A) Where a commercial practice has been found to be unfair under paragraph 32 of Schedule 18 of this Act, any body listed as a public designated enforcer in section 144(1) of this Act may require the removal of the relevant online marketing from the internet.”

Member's explanatory statement

This amendment allows enforcement bodies to remove the marketing of fake or counterfeit products from the internet.

Caroline Lucas

208

- ★ Clause 224, page 150, line 29, at end insert—

- “(6) An established means used to encourage control of unfair commercial practices must include the following measures—
- (a) investigation and determination on a timely basis—
 - (i) in accordance with a pre-determined process which has been published on the internet,
 - (ii) by people who are independent of any organisation undertaking commercial practices, and
 - (iii) with the outcome of any decision published.
 - (b) the appointment of a board to oversee the investigation and determination process, with the majority of the members of the board independent of any organisation undertaking commercial practices;
 - (c) provision for the suspension of a commercial practice during an investigation and prior to a determination being made;
 - (d) provision for guidance to be issued, by the CMA, the relevant weights and measures authority or, if the established means is an organisation,

the established means itself, about the lawfulness of a commercial practice;

- (e) publication of statistical and other information about the operation of, and compliance with, the established means to enable the CMA or weights and measures authority in question to assess on an annual basis the continuing appropriateness of using the established means."

Member's explanatory statement

This amendment sets out conditions, including in relation to independence and transparency, for the means by which the control of unfair commercial practices will be encouraged.

Secretary Kemi Badenoch

Gov 86

- ☆ Clause 232, page 156, line 8, at end insert—

"(5A) If the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate."

Member's explanatory statement

This amendment provides for which members of a limited liability partnership may be guilty of an offence of engaging in an unfair commercial practice by virtue of clause 232 if the limited liability partnership is guilty of that offence.

Secretary Kemi Badenoch

Gov 87

- ☆ Clause 234, page 157, line 7, leave out subsections (3) to (6).

Member's explanatory statement

This is a drafting amendment to ensure that the time limit for prosecuting an offence under clause 230 is the same regardless of whether the offence is tried summarily or on indictment.

Secretary Kemi Badenoch

Gov 88

- ☆ Clause 244, page 161, line 25, at end insert—

"(4A) In EA 2002—

- (a) in Schedule 14 (provisions about disclosure of information) at the appropriate place insert—

"Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.";

- (b) in Schedule 15 (enactments conferring functions) at the appropriate place insert—

"Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.""

Member's explanatory statement

This amendment ensures that: a) information that comes to a public authority in connection with the exercise of its functions under Chapter 1 of Part 4 of the Bill is information to which section 237 of the Enterprise Act 2002 applies (which imposes a general restriction on disclosure of certain kinds of information unless permitted under Part 9 of that Act), and b) that information to which section 237 applies can be disclosed to a public authority for the purposes of enabling that authority to carry out its functions under Chapter 1 of Part 4.

Secretary Kemi Badenoch

Gov 89

- ☆ Clause 249, page 164, line 13, leave out from “information”)” to end of line 15

Member's explanatory statement

This amendment and Amendment 90 clarify that the information set out in paragraph 12 of Schedule 20 must be given, or made available, under clause 249(1)(b) in every case (unlike the information set out in paragraphs 13 to 27 of that Schedule which need only be given, or made available, if applicable to the subscription contract in question and not already apparent from the context).

Secretary Kemi Badenoch

Gov 90

- ☆ Clause 249, page 164, line 38, at end insert—

“(4A) The duty under subsection (1)(b) to give, or make available, full pre-contract information applies in relation to the information set out in paragraphs 13 to 27 of Schedule 20 only to the extent that the information is applicable to the contract and not already apparent from the context.”

Member's explanatory statement

See the explanatory statement for Amendment 89.

Secretary Kemi Badenoch

Gov 91

- ☆ Clause 251, page 166, line 16, after “consumer” insert “that does not include a concessionary period”

Member's explanatory statement

See the explanatory statement for Amendment 93.

Secretary Kemi Badenoch

Gov 92

- ☆ Clause 251, page 166, line 18, leave out from “of” to end of line 21 and insert “each renewal payment that relates to the end of a relevant six-month period.”

Member's explanatory statement

See the explanatory statement for Amendment 93.

Secretary Kemi Badenoch

Gov 93

☆ Clause 251, page 166, line 22, leave out subsections (2) and (3) and insert—

- “(2) A “relevant six-month period” for the purposes of subsection (1) is—
- (a) the period of 6 months beginning with the day after the day on which the contract was entered into, and
 - (b) each subsequent period of 6 months beginning with the day after the day on which the consumer last became liable for a renewal payment in respect of which a reminder notice was required under subsection (1).
- (3) Where a trader enters into a subscription contract with a consumer that includes a concessionary period, the trader must give to the consumer a reminder notice in respect of—
- (a) the first renewal payment for which the consumer will become liable under the contract, and
 - (b) each subsequent renewal payment that relates to the end of a relevant six-month period.
- (3A) A “relevant six-month period” for the purposes of subsection (3) is each period of 6 months beginning with the day after the day on which the consumer last became liable for a renewal payment in respect of which a reminder notice was required under subsection (3).
- (3B) A renewal payment “relates” to the end of a relevant six-month period for the purposes of subsections (1) and (3) if—
- (a) it is the last (or only) renewal payment for which the consumer becomes liable during that period, or
 - (b) in a case where the consumer does not become liable for any renewal payment during that period, it is the first renewal payment for which the consumer becomes liable after the end of that period.
- (3C) For the purposes of this section a subscription contract includes a concessionary period if it is a contract to which section 247(3) applies.”

Member's explanatory statement

This amendment, along with Amendments 91 and 92, provides that a reminder notice be given at six month intervals from the beginning of the contract, or from the first renewal payment in relation to a subscription contract that begun with a concessionary period, (so far as possible, depending on the payment structure of the contract).

Sir Robert Buckland

210

★ Clause 251, page 166, line 24, leave out “six” and insert “twelve”

Member's explanatory statement

This amendment would provide for traders to have to issue reminder notices to consumers about ongoing subscription contracts only every twelve months, rather than every six.

Sir Robert Buckland

211

★ Clause 251, page 166, line 36, leave out subsection (5) and insert—

“(5) The Secretary of State may, by regulations, make reasonable provision for the content and timing of reminder notices.”

Member's explanatory statement

This amendment, together with Amendments 212 and 213, would remove the detailed provision about the content and timing of reminder notices from the face of the Bill and instead give the Secretary of State the power to make such provision by regulation.

Secretary Kemi Badenoch

Gov 94

☆ Clause 251, page 166, line 39, at end insert—

“(6) The Secretary of State may by regulations provide for the requirements imposed by this section and section 252—

- (a) not to apply in relation to specified descriptions of traders or contracts;
- (b) to apply subject to modifications in relation to specified descriptions of traders or contracts.

(7) Regulations under subsection (6) are subject to the affirmative procedure.”

Member's explanatory statement

This amendment confers a power on the Secretary of State to disapply or modify the requirements to give a reminder notice in relation to traders or contracts of a specified description.

Sir Robert Buckland

212

★ Page 167, line 1, leave out Clause 252

Member's explanatory statement

See explanatory statement to Amendment 211.

Secretary Kemi Badenoch

Gov 95

☆ Clause 252, page 167, line 11, leave out from “given” to end of line 13 and insert “within the period specified by the trader for the purposes of this section in the key pre-contract information given to the consumer in relation to the contract (see paragraph 9A of Schedule 20).”

Member's explanatory statement

This amendment and Amendment 96 revise the requirement as to when a reminder notice must be given in advance of the renewal payment to which it relates. It requires the trader to give the notice during the period specified for the purposes in key pre-contract information. The period specified must be a reasonable period taking account of the factors set out.

Secretary Kemi Badenoch

Gov 96

☆ Clause 252, page 167, line 13, at end insert—

“(3A) A period specified in key pre-contract information for the purposes of this section must be a period in advance of the last cancellation date which is reasonable for the purposes of—

- (a) informing the consumer that they will soon become liable for the renewal payment to which the notice relates, and
- (b) enabling the consumer to decide whether to bring the subscription contract to an end before incurring that liability (and to take the necessary steps to do so).”

Member's explanatory statement

See the explanatory statement for Amendment 95.

Secretary Kemi Badenoch

Gov 97

☆ Clause 252, page 167, line 18, leave out from “applies,” to end of line 24 and insert “in addition to giving a reminder notice in accordance with subsection (3), an additional reminder notice must be given—

- (a) prior to the notice given in accordance with subsection (3), and
- (b) at a time which is reasonable for the purpose of providing additional notification to the consumer that they will soon become liable for the renewal payment to which the notice relates.”

Member's explanatory statement

This amendment revises the requirement as to when the additional reminder notice must be given in advance of the renewal payment to which it relates (in cases where an additional notice is required). It requires the trader to give the additional notice prior to giving the notice that is due in every case and at a time which is reasonable for providing additional notification to the consumer of the upcoming renewal payment.

Secretary Kemi Badenoch

Gov 98

☆ Clause 252, page 167, line 33, leave out subsections (8) and (9).

Member's explanatory statement

This amendment is consequential on Amendments 95 and 97.

Sir Robert Buckland

214

★ Clause 253, page 168, line 7, leave out “in a single communication” and insert “in a manner that is straightforward, timely and does not impose unreasonable cost on a consumer”

Member's explanatory statement

This amendment, together with Amendments 215 to 218, would remove from the Bill the existing detailed provisions for ending a subscription contract, intending that they should be covered by provision made in secondary legislation under the provisions of clause 270(1)(c), and instead set principles for how a contract may be ended.

Sir Robert Buckland 215

- ★ Clause 253, page 168, line 10, leave out subsection (2)

Member's explanatory statement

See explanatory statement to Amendment 214.

Sir Robert Buckland 216

- ★ Clause 253, page 168, line 15, leave out subsection (4)

Member's explanatory statement

See explanatory statement to Amendment 214.

Sir Robert Buckland 217

- ★ Clause 253, page 168, line 23, leave out subsection (6)

Member's explanatory statement

See explanatory statement to Amendment 214.

Sir Robert Buckland 218

- ★ Clause 254, page 168, line 37, leave out subsections (3) to (5)

Member's explanatory statement

See explanatory statement to Amendment 214.

Secretary Kemi Badenoch Gov 99

- ☆ Clause 255, page 169, line 29, at end insert—

“(ca) the duty set out in section 252(3A) to specify in key pre-contract information a reasonable period for the giving of a reminder notice under section 252(3) (timing for the giving of reminder notices);”

Member's explanatory statement

This amendment makes it an implied term of every subscription contract that the trader will specify in key pre-contract information a reasonable period for giving a reminder notice.

Secretary Kemi Badenoch

Gov 100

☆ Clause 256, page 169, line 36, after "(c)" insert ", (ca)"

Member's explanatory statement

This amendment enables a consumer to cancel a subscription contract where a trader fails to specify in key pre-contract information a reasonable period for the giving of a reminder notice.

Sir Robert Buckland

219

★ Page 170, line 25, leave out Clause 257

Member's explanatory statement

This amendment, together with Amendments 220 to 222, would remove the provision for a mandatory cooling-off period for a subscription contract.

Sir Robert Buckland

220

★ Page 171, line 19, leave out Clause 258

Member's explanatory statement

See explanatory statement to Amendment 219.

Sir Robert Buckland

221

★ Page 172, line 18, leave out Clause 259

Member's explanatory statement

See explanatory statement to Amendment 219.

Secretary Kemi Badenoch

Gov 101

☆ Clause 263, page 175, line 32, at end insert—

“(2A) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were an officer of the body corporate.”

Member's explanatory statement

This amendment provides for which members of a limited liability partnership may be guilty of the offence of failing to give information about cooling-off periods under clause 261, by virtue of clause 263, if the limited liability partnership is guilty of that offence.

Secretary Kemi Badenoch

Gov 102

☆ Clause 265, page 177, line 9, at end insert “in accordance with this Chapter”

Member's explanatory statement

This is a drafting amendment to clarify that it is for the consumer to prove that they have brought to an end, or cancelled, a subscription contract in accordance with the provisions of the Chapter.

Secretary Kemi Badenoch

Gov 103

☆ Clause 272, page 180, line 14, at end insert—

“(1A) In EA 2002—

(a) in Schedule 14 (provisions about disclosure of information) at the appropriate place insert—

“Chapter 2 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.”;

(b) in Schedule 15 (enactments conferring functions) at the appropriate place insert—

“Chapter 2 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.””

Member's explanatory statement

This amendment makes the same provision in relation to Chapter 2 of Part 4 as Amendment 88 makes in relation to Chapter 1.

Sir Robert Buckland

222

★ Clause 272, page 180, line 25, leave out subsection (5)

Member's explanatory statement

See explanatory statement to Amendment 219.

Secretary Kemi Badenoch

Gov 104

☆ Clause 273, page 180, line 33, before “profession” insert “trade, craft or”

Member's explanatory statement

This amendment ensures that trades and crafts will fall within the definition of “business” for the purposes of this Chapter whether or not they are carried on for gain or reward. This ensures consistency with the definition of “business” in Part 3 and Chapter 1 of Part 4.

Secretary Kemi Badenoch

Gov 105

- ☆ Clause 273, page 180, line 34, leave out “a trade, craft or” and insert “any other”

Member's explanatory statement

This amendment is consequential on Amendment 104.

Secretary Kemi Badenoch

Gov 106

- ☆ Clause 273, page 181, leave out lines 17 to 20

Member's explanatory statement

This amendment is consequential on Amendment 149.

Secretary Kemi Badenoch

Gov 107

- ☆ Clause 274, page 182, line 9, leave out “Section 273(1)” and insert “Section 312”

Member's explanatory statement

This amendment corrects a cross-referencing error.

Secretary Kemi Badenoch

Gov 108

- ☆ Clause 274, page 182, line 21, leave out “Section 273(1)” and insert “Section 312”

Member's explanatory statement

This amendment is consequential on Amendment 149.

Secretary Kemi Badenoch

Gov 109

- ☆ Clause 282, page 187, line 17, at end insert—

“(2) In EA 2002—

- (a) in Schedule 14 (provisions about disclosure of information) at the appropriate place insert—

“Chapter 3 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.”;

- (b) in Schedule 15 (enactments conferring functions) at the appropriate place insert—

“Chapter 3 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.””

Member's explanatory statement

This amendment makes the same provision in relation to Chapter 3 of Part 4 as Amendment 88 makes in relation to Chapter 1.

Secretary Kemi Badenoch

Gov 110

- ☆ Clause 283, page 187, line 22, leave out from “reward” to end of line 24.

Member's explanatory statement

This amendment would omit some superfluous words from the definition of “business”, for greater consistency with the other definitions of “business” in the Bill.

Secretary Kemi Badenoch

Gov 111

- ☆ Clause 283, page 188, leave out lines 7 to 10

Member's explanatory statement

This amendment is consequential on Amendment 149.

Secretary Kemi Badenoch

Gov 112

- ☆ Clause 288, page 192, line 33, at end insert “or 2”

Member's explanatory statement

This amendment and Amendment 113 secure that the power in subsection (2) of clause 288 can be used to amend Part 2 of Schedule 22, as contemplated by subsection (3)(b).

Secretary Kemi Badenoch

Gov 113

- ☆ Clause 288, page 192, line 34, at end insert “or 2”

Member's explanatory statement

See the explanatory statement for Amendment 112.

Secretary Kemi Badenoch

Gov 114

☆ Clause 289, page 193, line 25, at end insert “, and

- (b) pay to the Secretary of State the appropriate application fee (if any) prescribed by regulations under section (*ADR fees regulations*).”

Member's explanatory statement

This amendment (with NC13) secures that an applicant for accreditation must pay the appropriate application fee (if any) set by regulations made by the Secretary of State.

Secretary Kemi Badenoch

Gov 115

☆ Clause 289, page 193, line 29, at end insert—

“(3A) An accredited ADR provider may apply to the Secretary of State for their accreditation to be varied by the addition, variation or removal of —

- (a) any limitation affecting the descriptions of ADR or special ADR arrangements (as the case may be) covered by the accreditation, or
- (b) any condition on the accreditation.

(3B) An application under subsection (3A) must be accompanied by the appropriate application fee (if any) prescribed by regulations under section (*ADR fees regulations*).”

Member's explanatory statement

This amendment moves what was clause 289(10) to become subsection (3A). The new subsection (3A) also ensures that accredited ADR providers can apply to vary their accreditation by adding, as well as by removing or altering, limitations on its scope and also by adding, altering or removing conditions. Subsection (3B) is new and requires applicants to pay the appropriate application fee.

Secretary Kemi Badenoch

Gov 116

☆ Clause 289, page 193, line 31, at end insert “or an application for the variation of an accreditation”

Member's explanatory statement

This amendment secures that the Secretary of State’s power to determine the procedure for an application applies to applications for the variation of an accreditation as well as applications for accreditation.

Secretary Kemi Badenoch

Gov 117

☆ Clause 289, page 194, line 1, leave out paragraph (e)

Member's explanatory statement

This amendment is consequential on NC13 and Amendment 114 which provide for application fees to be set by regulations, rather than as part of the Secretary of State's powers under clause 289(4) to determine the procedure for applications.

Secretary Kemi Badenoch

Gov 118

- ☆ Clause 289, page 194, line 4, leave out subsection (7)

Member's explanatory statement

This amendment is consequential on NC13 and Amendment 114.

Secretary Kemi Badenoch

Gov 119

- ☆ Clause 289, page 194, line 11, leave out subsection (10)

Member's explanatory statement

This amendment is consequential on Amendment 115.

Secretary Kemi Badenoch

Gov 120

- ☆ Clause 290, page 194, line 15, leave out "extension" and insert "the variation"

Member's explanatory statement

This amendment is consequential on Amendment 115.

Secretary Kemi Badenoch

Gov 121

- ☆ Clause 290, page 195, line 5, leave out "extension" and insert "the variation"

Member's explanatory statement

This amendment is consequential on Amendment 115.

Secretary Kemi Badenoch

Gov 122

- ☆ Clause 290, page 195, line 10, leave out "extend" and insert "vary"

Member's explanatory statement

This amendment is consequential on Amendment 115.

Secretary Kemi Badenoch

Gov 123

- ☆ Clause 290, page 195, line 16, leave out “extended” and insert “to be varied by adding, varying or removing a limitation”

Member's explanatory statement

This amendment is consequential on Amendment 115 and will limit the operation of clause 290(9) to cases where an accreditation is varied by adding, varying or removing a limitation on its scope.

Secretary Kemi Badenoch

Gov 124

- ☆ Clause 290, page 195, line 20, leave out subsections (10) to (12) and insert—

“(10) The Secretary of State may only vary an accreditation if satisfied that the accreditation criteria will be met by or in relation to the applicant after the accreditation is varied.

(11) A variation of an accreditation is not time limited unless the Secretary of State determines that the variation is to have effect only for a limited period and the notice of the decision on the application for variation—

- (a) states that the variation is time limited (unless made permanent following a subsequent application by the ADR provider),
- (b) specifies the period for which the variation has effect, and
- (c) makes provision as to the terms of the accreditation in the event that the variation lapses at the end of that period.

(12) The notice of a decision to vary an accreditation must specify the day on which the variation takes effect.”

Member's explanatory statement

This amendment is consequential on Amendment 115 and ensures that subsections (10) to (12) apply to all kinds of variation covered by clause 289(3A).

Secretary Kemi Badenoch

Gov 125

- ☆ Clause 290, page 195, line 39, leave out “extended” and insert “varied”

Member's explanatory statement

This amendment is consequential on Amendment 115.

Secretary Kemi Badenoch

Gov 126

- ☆ Clause 291, page 196, line 22, leave out “alter” and insert “vary”

Member's explanatory statement

This amendment changes the word “alter” for consistency with other provisions which use “vary” in the context of changing the terms of an accreditation.

Secretary Kemi Badenoch

Gov 127

- ☆ Clause 291, page 196, line 23, after “limiting” insert “, or further limiting”

Member's explanatory statement

This amendment would make clear that the Secretary of State’s powers under clause 291(4) include both adding limitations to the scope of a previously unlimited accreditation and further limiting an accreditation that is already limited.

Secretary Kemi Badenoch

Gov 128

- ☆ Clause 292, page 197, leave out line 21 and insert “as may be prescribed, the appropriate prescribed fee (if any).”

Member's explanatory statement

The amendment (with NC13 and Amendment 129) secures that the fees payable at intervals by accredited ADR providers are prescribed by regulations made by the Secretary of State, rather than simply being determined by the Secretary of State from time to time.

Secretary Kemi Badenoch

Gov 129

- ☆ Clause 292, page 197, line 22, leave out subsections (2) to (4) and insert—

“(2) In subsection (1) “prescribed” means prescribed by regulations under section (ADR fees regulations).”

Member's explanatory statement

The amendment defines the word “prescribed” (in clause 292(1) as amended by Amendment 128 and deletes provisions that are redundant if fees are to be set by regulations.

Secretary Kemi Badenoch

Gov 130

- ☆ Clause 297, page 201 leave out line 15

Member's explanatory statement

The amendment omits unnecessary words in clause 297(3). Amendment 175 secures that Part 9 of the Enterprise Act 2002 applies to Chapter 4 (ADR) of Part 4 of the Bill. Part 9 provides an information gateway for disclosures relating to criminal investigations and prosecutions that makes clause 297(3)(d) redundant.

Secretary Kemi Badenoch

Gov 131

- ☆ Clause 299, page 202, line 32, leave out “extension” and insert “variation”

Member's explanatory statement

The amendment is consequential on Amendment 115.

Secretary Kemi Badenoch

Gov 132

- ☆ Clause 303, page 205, line 19, leave out sub-paragraph (ii)

Member's explanatory statement

This amendment, and Amendment 141, replace the current prohibition on a regulator providing investigative assistance to an overseas regulator under Chapter 1 of Part 5 of the Bill in relation to the investigation or prosecution of crimes with a provision that such assistance can only be provided under or in accordance with a “qualifying cooperation arrangement” (defined by Amendment 135).

Secretary Kemi Badenoch

Gov 133

- ☆ Clause 303, page 205, line 23, at beginning insert “where the request is made otherwise than under or in accordance with a qualifying cooperation arrangement,”

Member's explanatory statement

This amendment provides that the Secretary of State is only required to authorise the provision of investigative assistance under Chapter 1 of Part 5 of the Bill where the request for such assistance is made otherwise than under or in accordance with a “qualifying cooperation arrangement” (defined by Amendment 135).

Secretary Kemi Badenoch

Gov 134

- ☆ Clause 303, page 206, line 7, at end insert—

“Part 6 of EA 2002 the CMA exercising its powers under sections 193 and 194 of (cartel offence) EA 2002 as if, by assisting O’s carrying out of functions which correspond or are similar to the functions of the CMA under Part 6 of that Act, the CMA were carrying out an investigation under section 192 of that Act”

Member's explanatory statement

This amendment allows the CMA to provide investigative assistance to an overseas regulator by exercising its power under sections 193 and 194 of the Enterprise Act 2002 where the overseas regulator has functions which correspond or are similar to the functions of the CMA under Part 6 of the Enterprise Act 2002 (the cartel offence).

Secretary Kemi Badenoch

Gov 135

- ☆ Clause 303, page 207, line 9, at end insert—

““cooperation arrangement” means an arrangement or agreement relating in whole or in part to cooperation in matters relating to the subject matter of a relevant enactment;
“qualifying cooperation arrangement” means any cooperation arrangement—

- (a) to which the United Kingdom and the country or territory of O are parties, and
- (b) which provides for the provision of mutual assistance as between the United Kingdom and that country or territory, or as between R and persons or bodies in that country or territory, in relation to matters relating to—
 - (i) functions of R under a relevant enactment, or
 - (ii) functions of O which correspond or are similar to those functions.”

Member's explanatory statement

This amendment defines “cooperation arrangement” and “qualifying cooperation arrangement” for the purposes of Chapter 1 of Part 5 of the Bill.

Secretary Kemi Badenoch

Gov 136

- ☆ Clause 305, page 207, line 29, leave out from “are parties to” to end of line 31 and insert “a cooperation arrangement;”

Member's explanatory statement

This amendment is consequential on Amendment 135.

Secretary Kemi Badenoch

Gov 137

- ☆ Clause 305, page 207, line 36, at end insert—

“(3A) R must consider that it would not be appropriate to assist O where any of subsections (4), (4A), (4B) or (5) apply.”

Member's explanatory statement

In consequence of Amendment 141 (which inserts the subsection (4A) referred to in this amendment) and Amendment 142 (which inserts the subsection (4B) referred to in this amendment), this amendment inserts a new subsection into clause 305 to improve the clarity of that clause.

Secretary Kemi Badenoch

Gov 138

- ☆ Clause 305, page 207, leave out lines 37 and 38 and insert—

“(4) This subsection applies where R considers that—”

Member's explanatory statement

This amendment is consequential on Amendment 137.

Secretary Kemi Badenoch

Gov 139

- ☆ Clause 305, page 207, line 40, after “corresponding” insert “or substantially similar”

Member's explanatory statement

This amendment brings the wording of clause 305(4)(a) into line with that of new section 243C(5) of the Enterprise Act 2002, being inserted by clause 310(2) of the Bill.

Secretary Kemi Badenoch

Gov 140

☆ Clause 305, page 208, line 3, leave out paragraph (b)

Member's explanatory statement

This amendment omits clause 305(4)(b), which is being replaced by the provision made by Amendment 142.

Secretary Kemi Badenoch

Gov 141

☆ Clause 305, page 208, line 5, at end insert—

“(4A) This subsection applies where—

- (a) the matter to which the request relates concerns the investigation of crime or the bringing of criminal proceedings, and
- (b) the request is made otherwise than under or in accordance with a qualifying cooperation arrangement.”

Member's explanatory statement

See the explanatory statement for Amendment 132.

Secretary Kemi Badenoch

Gov 142

☆ Clause 305, page 208, line 5, at end insert—

“(4B) This subsection applies where R would not be able to disclose, under Part 9 of EA 2002 (information), to O any information obtained by R in the course of assisting O.”

Member's explanatory statement

This amendment replaces clause 305(4)(b) to provide that a regulator may not provide an overseas regulator with assistance where it would not (as opposed to where it considers it would not) be able to disclose information to the overseas regulator under Part 9 of the Enterprise Act 2002. See also Amendment 140.

Secretary Kemi Badenoch

Gov 143

☆ Clause 305, page 208, leave out line 6 and insert—

“(5) This subsection applies where—”

Member's explanatory statement

This amendment is consequential on Amendment 137.

Secretary Kemi Badenoch

Gov 144

- ☆ Clause 306, page 208, line 35, leave out “a convention or treaty” and insert “an arrangement or agreement (other than a qualifying cooperation arrangement)”

Member's explanatory statement

This amendment is consequential on Amendment 133.

Secretary Kemi Badenoch

Gov 145

- ☆ Clause 306, page 208, line 37, leave out “convention or treaty” and insert “arrangement or agreement”

Member's explanatory statement

This amendment is consequential on Amendment 144.

Secretary Kemi Badenoch

Gov 146

- ☆ Clause 307, page 209, line 26, at end insert—

“(1A) But subsection (1) does not apply where O’s request is made under or in accordance with a qualifying cooperation arrangement.”

Member's explanatory statement

This amendment removes the requirement for a regulator to notify the Secretary of State that it considers it would be appropriate to assist an overseas regulator, where the request from the overseas regulator is made under or in accordance with a qualifying cooperation arrangement.

Secretary Kemi Badenoch

Gov 147

- ☆ Clause 312, page 220, line 23, leave out “retained direct EU” and insert “assimilated direct”

Member's explanatory statement

This amendment is consequential on renaming changes made by section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

Secretary Kemi Badenoch

Gov 148

- ☆ Clause 312, page 220, line 26, at end insert—

““United Kingdom national” means—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who is a British subject under the British Nationality Act 1981;
- (c) a British protected person within the meaning of that Act."

Member's explanatory statement

Instead of having separate (but identical) definitions of the term "United Kingdom national" throughout the Bill, this amendment inserts a definition of that term into clause 312 which will then apply for the purposes of the whole Bill.

Secretary Kemi Badenoch

Gov 149

☆ Clause 312, page 220, line 26, at end insert—

""working day" means any day other than—

- (a) a Saturday or Sunday, or
- (b) a day that is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971."

Member's explanatory statement

This amendment inserts a single definition of "working day" that applies for the purposes of the whole Bill (and that is the same as the definition used in the amendments made by the new clause inserted by NC12).

Secretary Kemi Badenoch

Gov 150

☆ Clause 314, page 220, line 37, leave out "or under primary legislation" and insert "an enactment"

Member's explanatory statement

This amendment is a drafting clarification to ensure that the power to make consequential amendments under clause 314 extends to assimilated direct legislation.

Secretary Kemi Badenoch

Gov 151

☆ Clause 314, page 221, leave out line 10

Member's explanatory statement

This amendment removes retained direct principal EU legislation from the definition of "primary legislation" for the purposes of clause 314, with the result that the negative procedure will apply under subsection (4) of that clause to consequential amendments of assimilated direct principal legislation (as retained direct principal EU legislation will become known as under section 5 of the Retained EU Law (Revocation and Reform) Act 2023).

Secretary Kemi Badenoch

Gov 152

- ☆ Clause 317, page 221, line 35, leave out “subsection (2)” and insert “subsections (2) and (2A)”

Member's explanatory statement

See the explanatory statement for Amendment 154.

Sir Robert Buckland

223

- ★ Clause 317, page 221, line 35 leave out “subsection (2)” and insert “subsections (2) and (2A)”

Member's explanatory statement

This amendment and Amendment 224 would provide for an implementation period of two years before the provision in the Bill relating to subscription contracts comes into force.

Secretary Kemi Badenoch

Gov 153

- ☆ Clause 317, page 222, line 2, at end insert—

“(za) section (*Use of damages-based agreements in opt-out collective proceedings*);”

Member's explanatory statement

This amendment provides that the new clause inserted by NC8 comes into force on Royal Assent.

Secretary Kemi Badenoch

Gov 154

- ☆ Clause 317, page 222, line 6, at end insert—

“(2A) Section (*Mergers of energy network enterprises*) (and Schedule (*Mergers of energy network enterprises*)) come into force at the end of the period of two months beginning with the day on which this Act is passed.”

Member's explanatory statement

This amendment provides for the new clause being inserted by NC9 and the new Schedule being inserted by NS1 to come into force two months after the Bill is passed.

Sir Robert Buckland

224

- ★ Clause 317, page 222, line 6, at end insert—

“(2A) Chapter 2 of Part 4 comes into force two years after the day on which this Act is passed.”

Member's explanatory statement

See explanatory statement to Amendment 223.

Secretary Kemi Badenoch

Gov NS1

☆ To move the following Schedule—

“SCHEDULE

MERGERS OF ENERGY NETWORK ENTERPRISES

- 1 Part 3 of EA 2002 (mergers) is amended as follows.
- 2 (1) Section 22 (duty to make references in relation to completed mergers) is amended as follows.
 - (2) In subsection (3)(c) omit “or 68B or 68C”.
 - (3) In subsection (7)(a) omit “, 68B or 68C”.
- 3 In section 33(3) (circumstances in which references in relation to anticipated mergers may not be made), in paragraph (c) omit “or 68B or 68C”.
- 4 In section 68B (further duty to make references in relation to completed mergers), for subsection (3) substitute—
 - “(3) The CMA may not make a reference under this section—
 - (a) in any circumstances mentioned in section 22(3)(za) to (b) or (d), or
 - (b) if the relevant merger situation concerned is being, or has been, dealt with in connection with a reference made under section 68C.”
- 5 In section 68C (further duty to make references in relation to anticipated mergers), for subsection (3) substitute—
 - “(3) The CMA may not make a reference under this section—
 - (a) in any circumstances mentioned in section 33(3)(za) to (b) or (d), or
 - (b) if the arrangements concerned are being, or have been, dealt with in connection with a reference under section 68B.”
- 6 (1) In section 72 (initial enforcement orders: completed or anticipated mergers), subsection (6) is amended as follows.
 - (2) For the words before paragraph (a) substitute “So far as made in relation to a reference under section 22, 33, 68B or 68C, an order under this section which has not previously ceased to be in force and which has not been adopted under paragraph 2 of Schedule 7 ceases to be in force in relation to the reference concerned—”.
 - (3) In paragraph (a), in the words before sub-paragraph (i) omit “under section 22, 33, 68B or 68C”.
- 7 (1) Section 73 (undertakings in lieu of references under section 22, 33, 68B or 68C) is amended as follows.

- (2) For subsection (3B) substitute—
- “(3B) The CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing—
- (a) the prejudice to the ability of the Gas and Electricity Markets Authority described in section 68B(1) or 68C(1), or
 - (b) any adverse effect which has or may have resulted from it or may be expected to result from it,
- accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.”
- (3) In subsection (3C), after “to the prejudice” insert “and any adverse effects resulting from it”.
- 8 In section 73A (time-limits for consideration of undertakings), in subsection (2)(a), after “73(2)” insert “or (3B)”.
- 9 (1) Section 74 (effect of undertakings under section 73) is amended as follows.
- (2) In subsection (1)—
- (a) in the words before paragraph (a), for “, 45, 68B or 68C” substitute “or 45”;
 - (b) in paragraph (a), for “section 73” substitute “section 73(2)”.
- (3) After subsection (1) insert—
- “(1A) The relevant authority may not make a reference under section 45, 68B or 68C in relation to the creation of a relevant merger situation if—
- (a) the CMA has accepted an undertaking or group of undertakings under section 73(3B), and
 - (b) the relevant merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.”
- (4) In subsection (2), for “Subsection (1) does not” substitute “Subsections (1) and (1A) do not”.
- 10 (1) Section 75 (order-making power where undertakings under section 73 not fulfilled etc) is amended as follows.
- (2) In subsection (1), in paragraph (a), for “section 73” substitute “section 73(2) or (3B)”.
- (3) In subsection (2), after “73(2)” insert “or (3B) (as the case may be)”.
- (4) For subsection (3) substitute—
- “(3A) In proceeding under subsection (2) for the purposes mentioned in section 73(2) or (3B), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to—
- (a) in relation to the purpose mentioned in section 73(2), the substantial lessening of competition mentioned in that subsection and any adverse effects resulting from it;

- (b) in relation to the purpose mentioned in section 73(3B), the prejudice mentioned in that subsection and any adverse effects resulting from it.
 - (3B) In proceeding under subsection (2) for the purposes mentioned in section 73(2) or (3B), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned."
- 11 (1) Section 79 (sections 77 and 78: further interpretative provisions) is amended as follows.
 - (2) In subsection (1), for paragraphs (c) to (e) substitute—
 - “(c) the report of the CMA under that section contains the decision that—
 - (i) in relation to a reference under section 22 or 33, there is not an anti-competitive outcome, or
 - (ii) in relation to a reference under section 68B or 68C, there is not a prejudicial outcome;
 - (d) the report of the CMA under that section contains the decision that—
 - (i) in relation to a reference under section 22 or 33, there is an anti-competitive outcome, or
 - (ii) in relation to a reference under section 68B or 68C, there is a prejudicial outcome, andthe CMA has decided under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84;
 - (e) the report of the CMA under that section contains the decision that—
 - (i) in relation to a reference under section 22 or 33, there is an anti-competitive outcome, or
 - (ii) in relation to a reference under section 68B or 68C, there is a prejudicial outcome, andthe CMA has decided under section 41(2) to accept an undertaking under section 82 or to make an order under section 84.”
 - (3) After subsection (5) insert—
 - “(5A) References in subsection (1) to a prejudicial outcome are to a prejudicial outcome within the meaning of section 35 or 36 as those sections have effect by virtue of paragraphs 6 and 7 of Schedule 5A.”
- 12 (1) Schedule 5A (energy network mergers affecting comparative regulation: modifications of Chapter 1 of Part 3) is amended as follows.

- (2) After paragraph 1 insert—
- “Meaning of “the decision-making authority”*
- 1A Section 22(7)(a) (meaning of “the decision-making authority”) has effect as if after “section 33” there were inserted “, 68B or 68C”.
- (3) In paragraph 5 (time limits for decisions about references)—
- (a) for paragraph (b) substitute—
- “(b) the reference to section 22(3) were to section 68B(3);”;*
- (b) for paragraph (d) substitute—
- “(d) the reference to section 33(3) were to section 68C(3).”*
- 13 (1) Schedule 16 to the Energy Act 2023 (mergers of completed energy network enterprises) is amended as follows.
- (2) Omit paragraphs 5 and 6 (amendments to sections 22 and 33 of EA 2002).
- (3) Omit paragraph 14(2) (amendment to section 74(1) of EA 2002).”

Member's explanatory statement

See the explanatory statement for NC9.

Secretary Kemi Badenoch

Gov 155

☆ Schedule 4, page 232, line 14, at end insert—

- “5A(1) Schedule 5A (energy network mergers affecting comparative regulation: modifications of Chapter 1 of Part 3) is amended as follows.
- (2) In paragraph 2 (modifications of section 23), in paragraph (a), in the substituted text, for “£70 million” substitute “£100 million”.
- (3) In paragraph 3 (modifications of section 28), for paragraphs (b) and (c) substitute—
- “(b) in subsection (5)—
- (i) in the words before paragraph (a), for “The CMA shall” there were substituted “The CMA and the Gas and Electricity Markets Authority must each”;
- (ii) in paragraph (a), for “the sums for the time being mentioned in section 23(1)(b), (2)(c) and (4E)” there were substituted “the sum for the time being mentioned in section 23(1)(b)”;
- (iii) in paragraph (b), for “sums are” there were substituted “sum is”;
- (c) in subsection (6)—
- (i) for “section 23(1)(b), (2)(c) and (4E)” there were substituted “paragraph 2(a) of Schedule 5A”;
- (ii) for “sums” there were substituted “sum”.”

Member's explanatory statement

This amendment amends the modifications to Chapter 1 of Part 3 of the Enterprise Act 2002 made by Schedule 5A to that Act (recently inserted by Schedule 16 to the Energy Act 2023) to reflect amendments being made to that Chapter by Schedule 4 to the Bill and to correct the modification made by paragraph 3(c) of Schedule 5A to section 28(6) of the Enterprise Act 2002.

Secretary Kemi Badenoch

Gov 156

☆ Schedule 5, page 236, line 2, at end insert—

“8A(1) In Chapter 3 of Part 3 of EA 2002 (mergers: other special cases), Schedule 5A (energy network mergers affecting comparative regulation: modifications of Chapter 1 of Part 3) is amended as follows.

(2) In paragraph 1 (general modifications), in sub-paragraph (2), for the words after “include” substitute “—

- (a) a reference made under a subsection of that section;
- (b) a reference treated as made under that section.”

(3) For paragraph 5 (time limits for decisions about references) substitute—

“5 Section 34ZA (time-limits for decisions about references) has effect as if—

- (a) in subsection (1)(a)—
 - (i) the reference to section 22(2) were to section 68B(2);
 - (ii) the reference to section 22(3) were to section 68B(3);
 - (iii) the reference to section 33(2) were to section 68C(2);
 - (iv) the reference to section 33(3) were to section 68C(3);
- (b) section (1A) were omitted.

5A Chapter 1 has effect as if sections 34ZD to 34ZF (fast-track reference requests) were omitted.”

(4) After paragraph 7 insert—

“Time-limits for investigations and reports

7A Section 39 (time-limits for investigations and reports) has effect as if subsection (3A) were omitted.””

Member's explanatory statement

This amendment secures that fast-track references under Part 3 of the Enterprise Act 2002 (as amended by Schedule 5 to the Bill) are not available in respect of energy network mergers.

Secretary Kemi Badenoch

Gov 157

☆ Schedule 8, page 260, line 30, leave out “intentionally”

Member's explanatory statement

This amendment corrects a drafting error and brings the amendment being made to section 174A of the Enterprise Act 2002 by paragraph 26(3) of Schedule 8 into line with the equivalent amendment being made to section 110 of that Act at paragraph 15(3) of that Schedule.

Secretary Kemi Badenoch

Gov 158

☆ Schedule 9, page 265, leave out lines 12 to 19 and insert—

- “(1) The CMA may, in accordance with section 35B, impose a penalty on a person—
- (a) from whom the CMA has accepted commitments under section 31A (and who has not been released from those commitments), or
 - (b) to whom the CMA has given a direction under section 32, 33 or 35, where the CMA considers that the person has, without reasonable excuse, failed to adhere to the commitments or comply with the direction.”

Member's explanatory statement

This amendment improves the clarity of this provision and makes it clear that the CMA can only impose a penalty on an individual under section 35B of the Competition Act 1998 (inserted by paragraph 6 of Schedule 9 to the Bill) for failing to comply with a direction in cases where the direction was given to the person.

Secretary Kemi Badenoch

Gov 159

☆ Schedule 9, page 268, leave out lines 24 to 27 and insert—

- “(1) The appropriate authority may, in accordance with section 94AB, impose a penalty on a person—
- (a) from whom the authority has accepted an enforcement undertaking, or
 - (b) to whom an enforcement order is addressed,
- where the authority considers that the person has, without reasonable excuse, failed to comply with the undertaking or order.”

Member's explanatory statement

This amendment makes it clear that a penalty can only be imposed on an individual under section 94AB of the Enterprise Act 2002 (inserted by paragraph 11 of Schedule 9 to the Bill) for failing to comply with an enforcement undertaking or enforcement order in cases where the undertaking was accepted from, or the order was addressed to, the person.

Secretary Kemi Badenoch

Gov 160

☆ Schedule 9, page 271, leave out lines 35 to 38 and insert—

- “(1) The relevant authority may, in accordance with section 167B, impose a penalty on a person—

- (a) from whom the authority has accepted an enforcement undertaking, or
 - (b) to whom an enforcement order is addressed,
- where the authority considers that the person has, without reasonable excuse, failed to comply with the undertaking or order.”

Member's explanatory statement

This amendment makes it clear that a penalty can only be imposed on an individual under section 167B of the Enterprise Act 2002 (inserted by paragraph 17 of Schedule 9 to the Bill) for failing to comply with an enforcement undertaking or enforcement order in cases where the undertaking was accepted from, or the order was addressed to, the person.

Secretary Kemi Badenoch

Gov 161

- ☆ Schedule 11, page 283, line 13, leave out “or 62” and insert, “, 62, 62B or 68C”

Member's explanatory statement

This amendment provides that notices given under section 109(2) and (3) of the Enterprise Act 2002 (production of documents etc) in relation to references under sections 68B or 68C of that Act (mergers of energy network enterprises) can be given to a person outside the United Kingdom.

Secretary Kemi Badenoch

Gov 162

- ☆ Schedule 15, page 326, line 18, at end insert—

“Power to amend amounts

16HA(1)The Secretary of State may by regulations amend the following provisions of this Schedule for the purpose of substituting a different monetary amount for an amount of fixed or daily penalty for the time being specified—

- (a) paragraph 16A(5)(a) and (b);
 - (b) paragraph 16C(5)(a) and (b).
- (2) Before making regulations under this paragraph the Secretary of State must consult such persons as the Secretary of State considers appropriate.
 - (3) Regulations under this paragraph are to be made by statutory instrument.
 - (4) Regulations under this paragraph may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.”

Member's explanatory statement

This amendment confers power on the Secretary of State to amend by affirmative procedure the amount of monetary penalties that can be imposed under paragraphs 16A or 16C of Schedule 5 to the Consumer Rights Act 2015 (those paragraphs are inserted by Schedule 15 to the Bill). A similar power is contained in clause 198 of the Bill.

Secretary Kemi Badenoch

Gov 163

☆ Schedule 16, page 330, line 24, at end insert—

“6A In Schedule 15 (enactments conferring functions) at the appropriate place insert—

“Chapters 3 and 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2024.””

Member's explanatory statement

This amendment ensures that information to which section 237 of the Enterprise Act 2002 applies (which imposes a general restriction on disclosure of certain kinds of information unless permitted under Part 9 of that Act) can be disclosed to an enforcer for the purposes of enabling that enforcer to carry out functions under Chapter 3 or 4 of Part 3 of the Bill.

Alex Davies-Jones

225

★ Schedule 18, page 343, line 42, 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.

Neil Coyle

227

★ Schedule 18, page 343, line 42, at end insert—

“32 Marketing online products that are either—
(a) counterfeit; or
(b) dangerous.”

Member's explanatory statement

This amendment would add marketing counterfeit and dangerous online products to the list of banned practices.

Secretary Kemi Badenoch

Gov 164

☆ Schedule 19, page 345, line 40, omit “or Wales”.

Member's explanatory statement

This amendment is consequential on Amendment 165.

Secretary Kemi Badenoch

Gov 165

☆ Schedule 19, page 346, line 2, at end insert—

“(aa) in relation to a prescription or directions given, or a medicinal product administered, in Wales, has the meaning given by regulation 2 of the National Health Service (Pharmaceutical Services) (Wales) Regulations 2020 (S.I 2020/1073 (W. 241);”

Member's explanatory statement

This amendment provides a separate definition for Wales of a “prescriber” for the purposes of excluding from the subscription contract regime a contract for the supply of goods, services or digital content where that supply is made under, or in connection with, directions given by a prescriber.

Secretary Kemi Badenoch

Gov 166

☆ Schedule 19, page 346, line 7, at end insert “but as if that definition included “a dentist””

Member's explanatory statement

This amendment adds dentists to the definition of “prescribers” for the purposes of excluding from the subscription contracts regime a contract which is given under, or in connection with, a prescription or directions given by a prescriber in Scotland.

Secretary Kemi Badenoch

Gov 167

☆ Schedule 19, page 346, line 40, omit “and Wales”

Member's explanatory statement

This amendment is consequential on Amendment 168.

Secretary Kemi Badenoch

Gov 168

☆ Schedule 19, page 346, line 45, at end insert—

“(aa) in relation to arrangements which are part of the health service in Wales—
(i) a relevant list for the purposes of the National Health Service (Pharmaceutical Services) (Wales) Regulations 2020 (S.I 2020/1073 (W. 241);
(ii) a list maintained under those Regulations;”

Member's explanatory statement

This amendment provides a separate definition for Wales of a “relevant list” for the purposes of excluding from the subscription contracts regime a contract where the trader is a health care professional or a person on a relevant list.

Secretary Kemi Badenoch

Gov 169

☆ Schedule 19, page 347, line 4, at end insert—

- “(ii) the provisional pharmaceutical list prepared under regulation 8 of those Regulations;
- (iii) the primary medical services performers list prepared under regulation 4 of the National Health Service (Primary Medical Services List) (Scotland) Regulations 2004 (S.S.I. 2004/114);
- (iv) the dental list prepared under regulation 4 of the National Health Service (General Dental Services) (Scotland) Regulations (S.S.I 2010/208);”

Member's explanatory statement

This amendment adds to the definition of a “relevant list” in Scotland for the purposes of excluding from the subscription contracts regime a contract where the trader is a health care professional or a person on a relevant list. The existing text after “Scotland” will become sub-paragraph (i).

Secretary Kemi Badenoch

Gov 170

☆ Schedule 19, page 350, line 30, at end insert—

“Gambling contracts

- 13 (1) In England and Wales and Scotland, a contract for—
- (a) gambling, within the meaning of the Gambling Act 2005;
 - (b) participating in the National Lottery, within the meaning of the National Lottery etc. Act 1993.
- (2) In Northern Ireland, a contract for betting, gaming or participating in a lawful lottery within the meaning of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)).”

Member's explanatory statement

This amendment excludes contracts for gambling (that are regulated by other legislation) from the new regime for subscription contracts in Chapter 2 of Part 4 of the Bill.

Richard Thomson

228

★ Schedule 19, page 350, line 30, 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.

Secretary Kemi Badenoch**Gov 171**

☆ Schedule 20, page 351, line 31, at end insert—

“9A The period within which reminder notices in relation to the contract will be given in accordance with section 252(3).”

Member's explanatory statement

This amendment is consequential on Amendment 95.

Sir Robert Buckland**213**

Sir Jacob Rees-Mogg
Sir Robert Neill
Stephen Hammond
Sir Brandon Lewis
Damian Green

★ Schedule 20, page 354, line 19, leave out paragraphs 28 to 38

Member's explanatory statement

See explanatory statement to Amendment 211.

Secretary Kemi Badenoch**Gov 172**

☆ Schedule 21, page 357, line 2, at end insert—

“Contracts regulated by OFCOM

2A (1) A contract for the supply of goods, services or digital content by a person who is bound, in relation to that supply, by a general condition set by OFCOM under section 45 of the Communications Act 2003.

(2) In sub-paragraph (1), “OFCOM” means the Office of Communications.”

Member's explanatory statement

This amendment would add contracts regulated by OFCOM to the list of excluded arrangements in Schedule 21. This would mean that certain contracts, including pre-paid pay-as-you-go mobile phone contracts, would not be subject to the requirements in Chapter 3 of Part 4 on consumer savings schemes.

Secretary Kemi Badenoch

Gov 173

☆ Schedule 21, page 357, line 2, at end insert—

“Contracts for prepaid passenger transport services

2B A contract for prepaid passenger transport services.”

Member's explanatory statement

This amendment would add contracts for prepaid passenger transport services to the list of excluded arrangements in Schedule 21. This would mean that those types of contracts would not be subject to the requirements in Chapter 3 of Part 4 on consumer savings schemes.

Secretary Kemi Badenoch

Gov 174

☆ Schedule 23, page 359, line 33, leave out from “has” to end of line 35 and insert “appropriate knowledge and skills—

- (a) for carrying out the ADR that it carries out, in relation to the disputes it deals with, or
- (b) for making the special ADR arrangements that it makes.”

Member's explanatory statement

The amendment clarifies the third accreditation criterion, which relates to the expertise expected of an ADR provider. The provider should have the knowledge and skills that are appropriate for the activities it carries out by virtue of an accreditation or exemption.

Secretary Kemi Badenoch

Gov 175

☆ Schedule 24, page 361, line 25, at end insert—

“Enterprise Act 2002

1A In EA 2002—

- (a) in Schedule 14 (provisions about disclosure of information) at the appropriate place insert—
 - “Chapter 4 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.”;
- (b) in Schedule 15 (enactments conferring functions) at the appropriate place insert—
 - “Chapter 4 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.””

Member's explanatory statement

See the explanatory statements for Amendment 88. This amendment makes the same provision in relation to Chapter 4 of Part 4 as Amendment 88 makes in relation to Chapter 1.

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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Withdrawn Amendments

The following amendments were withdrawn on 15 November 2023:

Amendment 1