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Digital Markets, Competition and Consumers Bill 2022-23: Consumers: Progress of the Bill

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Summary

The Digital Markets, Competition and Consumers Bill (Bill 003 of 2023-24) is a Government Bill. It was first introduced during the 2022-23 session, on 25 April 2023, as Bill 294 of 2022-23. The Bill was carried over under Standing Order No. 80A. it was re-introduced during the 2023-24 session on 8 November 2023.

This briefing was published in the last session and refers to the Bill under its 2022-23 title. The remaining stages of the Bill are scheduled for 20 November 2023.

The Bill is large, consisting of six parts and 26 Schedules. The Government has described it as using the "opportunity presented by Brexit" to enhance competition and consumer regulations so they "work better" for the UK and move "in a more agile way" to deliver growth and innovation and protect consumers.

The Bill had its second reading in the House of Commons on 17 May 2023. It was considered by a Public Bill Committee over fourteen sittings between 13 June and 11 July 2023.

Two separate briefings have been published outlining changes made in Committee, one focusing on digital markets and competition law (Parts 1 and 2 of the Bill) and this briefing which focuses on the Bill's consumer provisions (Parts 3, 4 and 5).

What do the Bill's consumer provisions aim to do?

If enacted, **Part 3** (and Schedules 3-17) would create two separate regimes for the civil enforcement of consumer law to protect the "collective interests" of consumers:

- A court-based regime which would simplify and enhance the court enforcement procedure currently provided by Part 8 of the Enterprise Act 2002 (EA 2022). It would empower the courts to impose monetary penalties on traders who breach consumer laws or do not comply with undertakings.

- A direct enforcement regime administered by the CMA. The CMA would be given significant new powers to investigate and take enforcement action, including imposing monetary penalties, in respect of infringements of certain consumer protection laws, breach of undertakings and non-compliance with CMA directions.

Together, the two legal procedures are referred to in the Bill as "the Part 3 enforcement regimes".

Part 4 of the Bill (and Schedules 18-24) would:

- Revoke the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) (retained EU law) and recreate their effect, with minor amendments, prohibiting unfair commercial practices in business to consumer relationships. The CPR contain a list of specific banned practices, which are automatically considered unfair. The Bill would largely replicate this list and, importantly, create a power to make regulations that could add to it. The Government has said that it would use this power to prohibit fake reviews online and plans to consult on this during the passage of the Bill.

- Tackle "subscription traps" by imposing new duties on traders. In particular, to give specific pre-contract information to consumers, send reminders to consumers before a contract rolls over or auto-renews into a new term, provide rights for consumers to cancel subscription contracts during cooling-off periods, and ensure that consumers have a straight-forward mechanism to terminate the subscription contract. Consumers would have new rights under Part 4 if traders breached these requirements.

- Give new protections to consumers who make advance payments to consumer saving scheme contracts (eg Christmas saving clubs). The Bill would require these businesses to protect payments via a trust arrangement or insurance and give prescribed information to consumers about how their payments are protected.

- Prohibit alternative dispute resolution (ADR) procedures for consumer contracts where the provider is not accredited nor exempt. The Bill makes provision for accreditation and exception, related requirements, and enforcement.

Part 5 of the Bill contains provisions which deal with investigative assistance to overseas regulators, disclosing information overseas, and a duty of expedition on the CMA and sectoral regulators. **Part 6** sets out general provisions (eg interpretation, power to make consequential provision, extent and commencement).

The Bill's consumer provisions would extend to the whole of the UK.

Policy background to Parts 3 to 6 of the Bill, as they were originally introduced, is set out in the Library briefing, Digital Markets, Competition and Consumers Bill 2022-23: Consumer provisions (PDF) (17 May 2023).

1 Progress of the Bill through Parliament

1.1 Second reading

During second reading on 17 May 2023, there was broad cross-party agreement for the Bill's consumer protection and enforcement provisions. However, some questioned if they went far enough.

Kevin Hollinrake, Parliamentary Under-Secretary of State for Business and Trade, said the consumer measures would deliver on a manifesto commitment to tackle consumer rip-offs and bad business practices.[1] However, Seema Malhotra, Shadow Secretary of State (Business, Energy and Industrial Strategy), argued that the delay, "a year since this Bill was promised and five years since the Government established their digital competition and expert panel", had caused the UK to fall behind Europe in this vital policy area:

> The Bill's impacts are expected to begin in 2025 once the package of Bill measures has been implemented. That is the earliest it could be, but action is needed now. We are prepared to work with the Government not only to ensure effective scrutiny of the Bill, but to get it on to the statute book as soon as possible. That includes ensuring speed on guidance and codes of practice, and sufficiency of resources. There should be no more delays.[2]

Key consumer protection issues raised during the debate are outlined below. Most of these issues were revisited in Committee.

Subscription traps and fake reviews

Regarding subscription traps, Seema Malhotra said measures should be strengthened to make subscription auto-renewals opt-in, rather than opt-out.[3] She also asked why an outright ban on fake online reviews was not on the face of the Bill:

> What has been lauded as a huge step in banning fake reviews appears to be a clause allowing the Secretary of State to add to the list of unfair trading practices in Schedule 18. This is quite vague and so it could be very weak.[4]

Richard Thomson, SNP spokesperson, said his party welcomed the Government's commitment to tackle fake reviews, but was also unclear how

1 HC Deb 17 May 2023 cc882-883
2 HC Deb 17 May 2023 cc885-888
3 HC Deb 17 May 2023 c887
4 HC Deb 17 May 2023 cc887

exactly the Bill would seek to deter them.[5] In response, Kevin Hollinrake said the Government intended to "consult in parallel with the passage of the Bill" about drip pricing and fake reviews." [6]

Sarah Olney, Liberal Democrat Spokesperson (Business, Energy and Industrial Strategy) said her party was pleased to see measures designed to increase transparency, "making it easier for consumers to end subscription contracts and for enforcers to clamp down on fake reviews".[7]

On the issue of subscription contracts, Paul Scully, Parliamentary Under-Secretary of State for Science, Innovation and Technology, argued that the Government had struck the right balance in its approach:

> The Government analysed consultation responses from last year, and we believe we are implementing measures that best balance the benefits to consumers and the associated cost to businesses. We have drawn the delegated powers as tightly as possible, and any broad or major change to the law will be subject to the draft affirmative procedure and must be laid before Parliament and approved by both Houses—we have been careful about that.[8]

Charity lotteries

Craig Whittaker MP raised the issue of subscription-based charity lotteries. He asked if they could be added to the list in Schedule 19 and excluded from the Bill's subscription provisions, since they were already regulated by the Gambling Commission.[9]

Paul Scully said there was no need for such an amendment as this type of lottery would not be caught by the Bill:

> In that instance, because a consumer donates regularly to a charity but does not have a good, a product or digital content in return, that will not meet the definition of a subscription contract. Therefore, those charitable donations do not need to be included in the exclusions set out in Schedule 19, as they are not in scope in the first place.[10]

Drip pricing and greenwashing

Seema Malhotra argued that the Bill was a lost opportunity to tackle broader consumer harms in the digital economy, including drip pricing[11] and

5 HC Deb 17 May 2023 c894
6 HC Deb 17 May 2023 c895
7 HC Deb 17 May 2023 cc913-914
8 HC Deb 17 May 2023 c923
9 HC Deb 17 May 2023 c882
10 HC Deb 17 May 2023 cc923-924
11 "**Drip pricing**", a pricing technique where online retailers advertise only part of a product's price and reveal other charges later as the consumer goes through the buying process

misleading environmental claims ("greenwashing"[12]).[13] Richard Thomson also argued that the Bill needed to go further. Focusing on greenwashing, he said the Bill could have set new standards:

> Ensuring that labels and claims can be treated as credible and trustworthy would allow consumers to make better-informed purchasing decisions and boost the competitiveness of businesses that want to play a responsible role in the marketplace in terms of driving up standards to meet consumer demand.[14]

He was also disappointed that the Bill failed to tackle drip-pricing. Making a comparison to the USA, he said:

> The US is planning a crackdown on that through the Junk Fee Prevention Act. It would be a missed opportunity if the UK Government did not follow suit in the legislation before us.[15]

In response, Paul Scully said that under current legislation the CMA was already able to tackle those harms, and was committed to doing so:

> For example, it has issued guidance to help businesses comply with their existing obligations under consumer protection law when making environmental claims, and in recent years it has acted on drip pricing, particularly in the holiday and travel sectors. The Government are undertaking research to understand the prevalence of drip pricing and its impact on UK consumers. The power to add to the list of banned commercial practices in the Bill will allow us to act swiftly to tackle specific online harms should there be sufficient evidence to warrant further action on specific practices in future.[16]

Secondary ticketing

Sharon Hodgson (Lab), co-chair of the All-Party Parliamentary Group on ticket abuse, was disappointed that the Bill did not contain specific provisions on secondary ticketing. She described the secondary ticketing market as "rife with fraud and scamming":

> This is genuine consumer detriment—exactly what this Bill is supposed to try and fix. It is detriment and harm that this Bill will not help or bring to an end in its current form, as the Government have refused to implement the small, but much-needed proposals requested by the CMA in this area.[17]

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12 "**Green washing**" involves making an unsubstantiated claim to deceive consumers into believing that a company's products are environmentally friendly or have a greater positive environmental impact than they actually do

13 HC Deb 17 May 2023 c887

14 HC Deb 17 May 2023 cc893-894

15 HC Deb 17 May 2023 c894

16 HC Deb 17 May 2023 cc923-924

17 HC Deb 17 May 2023 cc904-905

Paul Scully confirmed that the CMA was continuing to monitor the online secondary ticketing market. On the specific issue of the CMA Secondary ticketing report (PDF),[18] he said:

> The Government welcomes the CMA's report, but we believe that we have the measures in place to ensure that consumers have the information that they need to make informed decisions on ticket resales. The Bill will give the CMA significant new civil powers to tackle bad businesses ripping off consumers, so we do not see the need for additional regulatory powers. [...] enforcing the existing regulations is key.[19]

Consumers' redress rights

Richard Thomson suggested that many provisions in the Bill regarding firms with strategic market status were broadly similar to those in the EU's Digital Markets Act.[20] However, he said the Bill falls short in that it does not explicitly include a provision equivalent to the EU's right to redress, which would allow consumers to be paid damages where they are misled by traders:

> Although the Bill gives the Secretary of State the power to do that in future through secondary legislation, it leaves a gap now, and there is the risk that that right will, over time, be watered down or removed entirely because there is no commitment to introducing it.[21]

Paul Scully explained that a range of consumer-related measures come under the scope of the Retained EU Law (Revocation and Reform) Bill, but the core protections in the Consumer Rights Act 2015 (CRA 2015) would continue to apply. He said the Government had been "careful and clear" to maintain measures "that are necessary to fulfil our international commitments", including consumer protection.[22] He stressed that the Government always set the highest standards for consumer protection.[23]

1.2 Public Bill Committee

The Bill as a whole was considered by a Public Bill Committee over fourteen sittings between 13 June and 11 July 2023. Oral evidence was taken from

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18 Competition and Markets Authority, Secondary ticketing – Recommendations to Government for improving consumer protection, (PDF), August 2021, see also Department for Business & Trade, CMA recommendations on secondary ticketing – Government response (PDF), 10 May 2023, (both accessed 12 July 2023)

19 HC Deb 17 May 2023 cc925-925

20 The main legislative texts for the Digital Markets Act are Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and the Implementing Regulation

21 HC Deb 17 May 2023 c886

22 HC Deb 17 May 2023 c923

23 HC Deb 17 May 2023 c923

expert witnesses during the first four sittings. Line by line examination of the Bill took place over ten sittings in June and July 2023.

Written evidence submitted to the Committee is available from the Parliament website.

The consumer protection provisions of the Bill (Parts 3, 4 and 5) were considered between 27 June and 11 July 2023 (tenth to fourteenth sittings). The following sections looks at the consumer clauses on which the Committee divided or where Government amendments were made. Further detail on the clauses discussed below can be found in the Library briefing, Digital Markets, Competition and Consumers Bill 2022-23: Consumer provisions (PDF) (17 May 2023) and the Explanatory Notes to the Bill (PDF).

2 Part 3 of the Bill: enforcement of consumer protection law

2.1 Overview

Part 3 of the Bill consists of eight chapters and is primarily concerned with the enforcement of consumer protection law. **Part 3 enforcement regimes** consist of two legal procedures:

- A court-based regime (court protection orders and undertakings) which consumer enforcers can use it (**chapter 3**).
- A CMA direct enforcement regime (**chapter 4**).

Chapter 2 provides for a single category of infringement to which the Part 3 enforcement regimes would apply (instead of the two categories of infringement which currently feature in Part 8 of the EA 2002, namely domestic infringements and Schedule 13 infringements). **Chapter 5** contains general provisions about the monetary penalties that could be imposed under both enforcement regimes. While **chapter 6** deals with consumer enforcers' investigatory powers.

Part 3 was considered in Committee during the tenth and eleventh sittings (on 26 and 29 June 2023), there was broad cross-party support. The Shadow Minister Seema Malhotra said she supported the aim of "swifter enforcement of consumer protection law and more effective redress for consumers".[24] She stressed that the Opposition did not want to see "the watering down of any measures currently drafted". [25]

2.2 Court-based enforcement regime

Chapter 3 provides for a court-based enforcement regime, enabling enforcers to apply for, and the courts to make, the following types of orders:

- Enforcement orders
- Interim enforcement orders

[24] Public Bill Committee 27 June 2023 c239
[25] Public Bill Committee 27 June 2023 c239

- Online interface orders (only the CMA may apply), or
- Interim online interface orders (only the CMA may apply)

An enforcer or the court would be able to accept an undertaking from the enforcement subject instead of making an application for, or making, an enforcement order or interim enforcement order.

In addition, chapter 3 provides for certain enforcers and the court to attach remedies, "enhanced consumer measures" (ECMs), to enforcement orders and undertakings. Crucially, the court would be empowered to impose civil monetary penalties on enforcement subjects who have infringed the consumer protection laws within scope of Part 3. Finally, it would provide new powers for the courts to impose civil monetary penalties for non-compliance with an undertaking.

In Committee, consideration of chapters 1 to 3 resulted in only one government amendment which was accepted without division. No other amendments were moved in respect of the three chapters, and there were no new clauses. However, as outlined below, there was extensive debate on how the Government intended the court-based regime to work in practice.

Government amendment 59: commercial practices

During the Committee's tenth sitting, Paul Scully, moved **government amendment 59** to **clause 140**.

Under **clause 140** a "commercial practice" means an act or omission by a trader relating to the promotion or supply of goods, services or digital content. Under subsection (1), a commercial practice would be a relevant infringement to which the Part 3 enforcement regimes would apply if it:

- harms the collective interests of consumers,[26]
- meets the UK connection condition,[27]
- and meets the specified prohibition condition.[28]

Speaking to the amendment, Paul Scully said it would ensure that the definition of "commercial practice" for the purposes of Part 3 would include "an act or omission by a trader relating to the promotion or supply of a

[26] The Bill makes it clear that the "collective interests of consumers" could be harmed by a single act or omission or a continued or repeating act or omission

[27] To meet the "UK connection condition", the commercial practice must be done by a trader with a place of business in the UK (whether incorporated in the UK or abroad), carrying on business in the UK or directing its activities to UK consumers by any means

[28] To meet the "specified prohibition condition" the commercial practice must breach one of the laws in Part 1 of Schedule 13 (for the court-based enforcement regime) or breach one of the laws in Part 2 Schedule 14 (for the CMA direct enforcement regime)

consumer's product to another consumer".[29] In other words, it would ensure the Bill reflects existing law, namely the CPRs 2008.[30]

Considering the amendment, Seema Malhotra asked about the definition of "consumer" and whether it would include a micro business being run from home.[31] Paul Scully confirmed that the definition used in Part 3 would exclude micro and small businesses. He suggested that such businesses could seek redress via the existing Business Protection from Misleading Marketing Regulations 2008.[32]

Government amendment 59 was accepted without division.

Public and private designated enforcers

There was some debate on the scope of **clause 143**, which sets out two categories of enforcer that would have enforcement powers under the court-based regime:

- public designated enforcers (eg the CMA, trading standards, Financial Conduct Authority, Ofcom),
- and private designated enforcers (currently, only the Consumers' Association).

Seema Malhotra asked the Minister to explain the nature of private designated enforcers and their appointment.[33] She also asked on what basis the Secretary of State would be able to add, remove or vary the entry of a public or private designated enforcer.[34]

Paul Scully explained that the Secretary of State could, by regulations (subject to the affirmative procedure), add applicants as private designated enforcers able to use the court-based enforcement regime. He said government guidance would be issued on the evidence applicant organisations should provide when seeking designation:

> The Government clearly want to guarantee that those designated are able to protect the collective interests of consumers but are prevented from using that privileged position to seek any commercial gain or competitive advantage. They therefore intend that any private designated enforcer that fails to meet the criteria would have its designation altered or withdrawn by the Secretary of State.[35]

29 Public Bill Committee 27 June 2023 c238
30 SI 2008 No. 1277
31 Public Bill Committee 27 June 2023 cc239-240
32 Public Bill Committee 27 June 2023 c242
33 Public Bill Committee 27 June 2023 c241
34 Public Bill Committee 27 June 2023 c241
35 Public Bill Committee 27 June 2023 c242

Applications for court orders

The Opposition asked detailed questions about how the court-based enforcement regime would work in practice.

Seema Malhotra questioned the wording of **clause 145**, specifically that "an enforcer may make an application" for a court order in respect of a relevant infringement. She asked if the Government had considered changing the word "may" to "must" or was it confident that enforcers would always apply for an order in cases of infringement.[36]

To maintain its leadership role, the CMA would be empowered under **clause 146** to give directions to other consumer law enforcers. Seema Malhotra asked if this could result in the CMA directing that applications for court orders could only be made by the CMA. Paul Scully said that the intention was to require other enforcers to notify the CMA about enforcement action so it could ensure a coordinated approach.[37]

When making an enforcement order or accepting an undertaking under **clause 145**, Seema Malhotra asked if the court would always require the publication of the order or undertaking and a corrective statement.[38] It was the Opposition's view that this would increase consumer confidence. However, the Minister said that the requirement to publish would be discretionary.[39]

The Opposition also focused on **clause 150**. This clause would empower the court to impose a monetary penalty of up to £300,000 or 10% of the recipient's global turnover—whichever is higher— for past or continuing infringing practices. The trader (or an accessory) would have the right to appeal the penalty, or its amount, the appeal to be heard on the merits.

Seema Malhotra asked if £300,000 was "an arbitrary figure" or one that had been consulted on and calculated to ensure "the maximum deterrent so that companies do not infringe the legislation".[40] She also asked why the appeals threshold was lower for consumer protection infringements then the judicial review threshold for companies with strategic market status.[41] Finally, she asked whether the merits-based approach to appeals could lead to large companies with significant legal capacity, "drawing out the process" by pursuing lengthy court appeals.[42]

In response, Paul Scully explained that the threshold of £300,000 "basically sits in the middle of the pack internationally":

36 Public Bill Committee 27 June 2023 cc241-242
37 Public Bill Committee 27 June 2023 c249
38 Public Bill Committee 27 June 2023 c247
39 Public Bill Committee 27 June 2023 c249
40 Public Bill Committee 27 June 2023 c247-248
41 Public Bill Committee 27 June 2023 c248
42 Public Bill Committee 27 June 2023 c248

> If we look at the regimes around the world, where penalties are imposed on individuals, New Zealand's consumer protection system has £100,000 and Canada's consumer regime has £450,000. We sit within that, looking at the international comparators.
>
> [...] It was a fair balance after looking at international regimes – a air comparison with similar regimes around the world. Similarly, the 10% penalty is reflected in penalties across other regimes.[43]

CMA co-ordination function

There was an exchange between Seema Malhotra and Paul Scully on **clause 164**. This clause would empower UK courts to notify the CMA of relevant convictions and judgments, so it might consider whether to exercise its enforcement power under Part 3 of the Bill.

Given the "strain and pressures that the court system is under", Seema Malhotra asked why the provision would introduce a "power" on the court as opposed to a "duty":

> If the CMA is to have, as is intended, a co-ordinating role where it is in the picture on all the relevant information related to those enforcement subjects, are there any circumstances in which the Government believe the courts may not need to inform the CMA? [44]

The Minister explained that the reporting requirement in clause 164 was not new, it was simply copied across from Part 8 of the EA 2002.[45] However, Seema Malhotra argued that with "the massive backlog" in the courts, the court's "best intentions may not be a reality" and this may have consequences for the enforcement regime. [46]

Appropriate court and procedure

During the Committee's consideration of technical **clauses 165** to **169**, which set out the detail of the court-based enforcement procedure, there was a lengthy debate about the prevalence of counterfeit and dangerous products online and the Government's approach to the problem.

Neil Coyle pressed the Minister on why the Government had chosen "a costly" and "time-consuming" court process, rather than a "takedown power" - as suggested by trading standards - that would enable enforcers to remove online marketing information:

> Fundamentally, customers want quick redress, and businesses want justice and the removal of counterfeit or fake products that undermine their licences

43 Public Bill Committee 27 June 2023 c249
44 Public Bill Committee 27 June 2023 cc254-255
45 Public Bill Committee 27 June 2023 c255
46 Public Bill Committee 27 June 2023 c255-256

> and appropriate trading. The Government's approach—specifically in these clauses, heading for the courts—ignores the backlog [...].[47]

On the basis that securing a court judgment could take the enforcer months, he asked what would prevent sellers continuing to retail dangerous or counterfeit products using online marketplaces.[48]

Seema Malhotra also questioned the Minister about court capacity. She warned that the effective implementation of this new court-based regime, or confidence in it, might be undermined because "the courts cannot take on cases at speed when they might need to do so".[49]

Kevin Hollinrake agreed there was a backlog in the courts but suggested that the CMA direct enforcement regime, if enacted, could ease court pressure.[50] He said the Office of Product Safety and Standards (OPSS) had recently met with Amazon, eBay, Wish and other platforms to point out their responsibilities, as distributors, to proactively remove unsafe content.[51] He said the Product Safety Review (PDF)[52] should further clarify those responsibilities and ensure unsafe products do not hit the marketplace in the first place.[53] Finally, he said the Government was still considering the case for takedown powers:

> We are keen to look at that matter and, again, it might involve another layer of enforcement so that we can then try to prevent those unsafe products from hitting marketplaces across the UK. Trading standards has the capacity to do that for individual websites, but I understand that there are wider concerns regarding other areas of online activity that we are keen to address.[54]

There was also an extensive debate on **clause 170**, which would empower the court to compel traders to "substantiate" any factual claim made as part of their commercial practices. Seema Malhotra raised the issue of "greenwashing" and said it was crucial to know how misleading claims were being directed at consumers.[55]

Kevin Hollinrake said that providing misleading information was already a breach of consumer law. He stressed that the purpose of the CMA's Green Claims Code[56] was to ensure standards are in place.[57] Pressed further on

47 Public Bill Committee 29 June 2023 c265
48 Public Bill Committee 29 June 2023 cc265-266
49 Public Bill Committee 29 June 2023 cc262-263
50 Public Bill Committee 29 June 2023 c266
51 Public Bill Committee 29 June 2023 cc266-267
52 Office for Product Standards and Safety, UK Product Safety Review: call for evidence response (PDF), November 2021, (accessed 4 August 2023)
53 Public Bill Committee 29 June 2023 c267
54 Public Bill Committee 29 June 2023 c267
55 Public Bill Committee 29 June 2023 c264
56 Competition and Markets Authority, Green claims code: making environmental claims, 20 September 2021 (accessed 22 July 2023)
57 Public Bill Committee 29 June 2023 c266

whether the Government had a strategy to tackle greenwashing, Kevin Hollinrake said it took the issue seriously:

> [...] there are two ways to deal with it. We can do ex ante regulation, which involves building a huge bureaucracy around a certain system and people checking everything, or we can put in an ex-post regulation deterrent regime, which involves a code or set of standards that companies should adhere to, and then an enforcement regime that takes breaches of the code very seriously and applies penalties to organisations that do not meet the standards. The latter is a more efficient and effective way to regulate, and that is the approach we are taking. That should prove a deterrent and prevent people from doing the wrong thing in the first place.[58]

2.3 CMA direct enforcement regime

Chapter 4 provides for a new direct enforcement regime for the CMA in respect of the consumer laws listed in **Schedule 14**. It would give the CMA a new express power to investigate suspected infringements and issue:

- Provisional and final infringement enforcement notices
- Breach of undertakings enforcement notices, and
- Breach of directions enforcement notices.

These notices could include compliance directions, impose monetary penalties and for infringement notices only, attach enhanced consumer measures. The CMA would also be empowered to issue online interface notices.

The CMA would be able to accept an undertaking instead of giving a final infringement notice or online interface notice. The CMA would also be able to make an application to the court where a direction included in a final notice had not been complied with. Finally, the CMA would be empowered to give provisional and final false information notices to any person who provides the CMA with materially false or misleading information in connection with the exercise of its functions under chapter 4.

Chapters 4 to **8** were considered in Committee on 29 June 2023 (eleventh sitting). There was broad cross-party support for the introduction of a new CMA direct enforcement regime. As outlined below, the Government moved a series of technical amendments (**numbered 60 to 65**), which were all accepted without division. The Opposition moved **new clause 11**, which was withdrawn without a division. No other amendments were moved in respect of the four chapters. However, there was debate on how the new regime would work in practice.

[58] Public Bill Committee 29 June 2023 c267

Power of CMA to issue infringement notices

Clauses 173 and **174** would give the CMA a discretionary power to issue a provisional or final infringement notice following an investigation under **clause 172.** Seema Malhotra asked about the timeline for recipients of interim infringement notices to make representations to the CMA before a notice is made final. Kevin Hollinrake said the CMA would set out its approach in forthcoming guidance, preceded by public consultation.[59]

When pressed by Seema Malhotra on when infringement notices would be published, the Minister said this would be for the CMA to judge:

> There may be public interest in making a notice public – for example, to inform traders or consumers about practices of concern. Why would it not publish a notice? Well, it might be, for example, that that might prejudice the CMA's investigation, which is clearly not something that we would want to happen.[60]

The Opposition supported the CMA being able to accept and enforce undertakings (**clauses 177** to **182**). However, Seema Malhotra warned that the provisions might be used to delay enforcement by those who have "no genuine intention to reach a commitment with the CMA".[61]

Power of CMA to issue online interface notices

The Opposition also focused on **clause 176**, which would empower the CMA to issue an online interface notice, requiring a third party to remove, modify or restrict access to content that can be found online. The notice may also be issued to an overseas third party if it satisfies the "UK connection test".

Seema Malhotra asked what was meant by an online interface notice being issued as a "last resort", she asked if this meant it could only be issued after infringement notices had been issued and ignored.[62] She also asked if there was a timeline for using these powers, "If a business was not responsive, would the Minister expect relatively quick use of the powers" to issue an online interface notice to "deter any further consumer detriment".[63] Finally, she asked why only the CMA would have the power to issue interface notices.[64]

Responding in general, Kevin Hollinrake said the rational for giving these new powers to the CMA was because of its "leading and co-ordinating role in both the public enforcement of consumer law and in tackling market-wide practices that hinder consumer choice".[65]

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59 Public Bill Committee 29 June 2023 c275
60 Public Bill Committee 29 June 2023 c270
61 Public Bill Committee 29 June 2023 cc273-274
62 Public Bill Committee 29 June 2023 c270
63 Public Bill Committee 29 June 2023 c270
64 Public Bill Committee 29 June 2023 c270
65 Public Bill Committee 29 June 2023 c271

Government amendment 60: undertakings & enhanced consumer measures

Government amendment 60 sought to add a provision to **clause 177** empowering the CMA to include enhanced consumer measures (ECMs) in undertakings that it accepts under its direct enforcement powers.

Speaking to this amendment, Kevin Hollinrake explained that the power to add ECMs to undertakings would be available to enforcers under the court-based regime[66]. Amendment 60 would make it expressly clear that the power would also be available to the CMA under its direct enforcement regime.

The Opposition supported this amendment on the basis it would bring consistency across the two enforcement regimes.[67]

Government amendment 61: rights to appeal

Government amendment 61 sought to add a provision to **clause 181** to require that the CMA must specify in a final breach of undertakings enforcement notice the main details of the appeal rights available to the enforcement subject.

In considering this amendment, Seema Malhotra raised concerns about the phrasing of **clause 181(4)**, that a monetary penalty "may be imposed only if the CMA is satisfied that the failure in question is without reasonable excuse".[68] She suggested that the "vagueness" of the words might enable companies in breach of their undertaking to escape monetary penalties.[69]

In response, Kevin Hollinrake said that "a closed list on the face of the Bill would bind the CMA's hands and make the measure less effective".[70] Instead, **clause 205** would require the CMA to issue guidance on exercising its direct enforcement functions.[71]

Neil Coyle suggested that **clause 181** would enable someone selling rogue or dangerous products in breach of an undertaking, to argue that they had a "reasonable excuse". He pressed the Minister to define what a "reasonable excuse" might be.[72]

Kevin Hollinrake suggested that a reasonable excuse might be that the trader was unaware of the difficulties surrounding the product.[73] The CMA could apply discretion in circumstances where an honest mistake had occurred".[74]

66 Clauses 155(3) and 156
67 Public Bill Committee 29 June 2023 c274
68 Public Bill Committee 29 June 2023 c275
69 Public Bill Committee 29 June 2023 cc274-275
70 Public Bill Committee 29 June 2023 c275
71 Public Bill Committee 29 June 2023 c275
72 Public Bill Committee 29 June 2023 c272
73 Public Bill Committee 29 June 2023 c272
74 Public Bill Committee 29 June 2023 c272

He reiterated that it was the responsibility of online marketplaces, as distributors, to ensure that products offered for sale are safe:

> We want to get to the position where products are verified before they enter the marketplace, through checks and balances. Rather than working reactively, platforms should work proactively in such instances, but part of that crosses over into work that we are doing in the product safety review.
>
> [...]
>
> If the CMA is satisfied that a breach occurred without a reasonable excuse it can impose a penalty. That ensures that there are meaningful consequences to breaching an undertaking, to deter unscrupulous traders.[75]

Government amendment 61 was agreed. However, Seema Malhotra said the Opposition may return to the issue of "reasonable excuse".[76]

Government amendments 62, 63, 64 and 65: consequential amendments

Government amendments 62, 63, 64 and **65** were all technical amendments 3 to ensure legislative consistency. They were all agreed without any substantive debate.

Opposition new clause 11: CMA reporting requirement

During the Committee's final sitting, the Opposition moved **new clause 11**. This sought to impose an annual reporting requirement on the CMA to report to Parliament on the effectiveness and impact of the operation of their functions under Parts 2 and 3 of the Bill. The report to be laid before both Houses of Parliament.

Speaking to new clause 11, Seema Malhotra said if enacted, the Bill would confer significant powers on the CMA and other regulatory bodies. She said Parliament must be able to fully scrutinise their use and effectiveness:[77]

> While an average of one Select Committee appearance a year is appreciated, with the new functions granted by the Bill, one cannot help but feel that the oversight and scrutiny needs to become more frequent and detailed to ensure parliamentarians and the public are as informed of the CMA's work as possible.[78]

The Shadow Minister said new clause 11 was inspired by a clause with a similar purpose in the United Kingdom Internal Market Act 2020.[79]

In response, Kevin Hollinrake said the CMA was already accountable to Parliament across its competition and consumer functions.[80] The CMA was required to present an annual report to Parliament, including a survey of

75 Public Bill Committee 29 June 2023 c273
76 Public Bill Committee 29 June 2023 c275
77 Public Bill Committee 11 July 2023 c404
78 Public Bill Committee 11 July 2023 c405
79 Public Bill Committee 11 July 2023 c406
80 Public Bill Committee 11 July 2023 cc405-406

developments relating to its functions, assessments of its performance against its objectives and enforcement activity, and a summary of key decisions and financial expenditure.[81] In addition, he said the CEO and chair of the CMA regularly appears before Select Committees and meets with ministers on a regular basis, the Government also provides an annual strategic steer.[82]

Regarding the CMA's direct enforcement functions under Part 3 of the Bill, Kevin Hollinrake said **clause 193** would give the Secretary of State the power to request a report from the CMA from time to time on the effectiveness of its interventions. The CMA must also publish this report, making it available to Parliament and the public.[83]

Seema Malhotra did not press new clause 11 to a vote, but she said the Opposition would keep the matter under review.[84]

81 Public Bill Committee 11 July 2023 cc405-406

82 Department for Business and Trade, Strategic steer to the Competition and Markets Authority: proposed draft, 12 May 2023, (accessed 28 July 2023)

83 Public Bill Committee 11 July 2023 c406

84 Public Bill Committee 11 July 2023 c406

3 Part 4 of the Bill: consumer rights and disputes

3.1 Overview

Part 4 of the Bill is concerned with consumer rights and disputes. It consists of four distinct chapters:

- Chapter 1, which would introduce new unfair trading provisions, including a power that could be used to tackle emerging harms such as fake reviews online.
- Chapter 2, which would introduce new measures to give consumers more control over their spending by dealing with unfair 'subscription traps'.
- Chapter 3, which would protect those that pay into consumer savings schemes.
- Chapter 4, which deals with alternative dispute resolution (ADR) for consumer contract disputes.

Part 4 was considered in Committee between 4 July and 11 July 2023 (twelfth and fourteenth sittings). Amendments moved in Committee in respect of each chapter is set out below.

3.2 Chapter 1: Protection from unfair trading

The unfair trading provisions in the Bill would replace the CPRs 2008[85], which are retained EU law and were made to implement the Unfair Commercial Practices Directive.[86] The Bill would revoke the CPRs and recreate their effect, with minor amendments, prohibiting unfair commercial practices in business to consumer relationships.[87] Broadly, this would encompass misleading actions, omissions or aggressive practices relating to the marketing and sale of products to consumers.[88]

85 SI 2008/1277, as amended by Consumer Protection (Amendment) Regulations 2014 (SI 2014/870)

86 2005/29/EC 238

87 For a discussion of the Regulations, see Library research briefing Consumer protection: Unfair Trading Regulations 2008, CBP 4678

88 Specified enforcers can enforce the CPRs through the mechanism provided by Part 8 of the EA 2002 in order to prevent harm to the "collective interests of consumers"

Alongside its general prohibition of unfair commercial practices, the CPRs contain a list of specific, banned practices, that are automatically considered unfair.[89] The Bill would largely replicate this list and, importantly, create a power to make regulations that could add to it. The Government has said that it would use this power to prohibit fake reviews online and plans to consult on this during the passage of the Bill.[90]

Chapter 1 of **Part 4** of the Bill was considered in Committee during the twelfth and thirteenth sittings (both on 4 July 2023). There was considerable debate on almost every clause and a series of amendments were moved. In summary:

- All government amendments (**numbered 71** to **78**) were accepted without division.
- **Opposition amendments 116** and **125** to **Schedule 18** were pressed to a vote (divisions 7 and 8). Both amendments were defeated by 6 votes to 5.
- **SNP amendment 68** to **Schedule 18** and **67** to **clause 225** were pressed to a vote (divisions 6 and 9). Both were defeated by 6 votes to 5.

All the amendments are considered in detail below.

Government amendment 71: commercial practices

Kevin Hollinrake moved **government amendment 71** to **clause 217**.

Clause 217 sets out a general prohibition on unfair commercial practices. It defines a "commercial practice" as any act or omission by a trader relating to the promotion or supply of:

- any trader's product to a consumer, or
- another trader's product to a consumer, or
- a consumer's product to the trader or another trader".

As such, a business providing a platform on which products are promoted or supplied would fall within the scope of Chapter 1.

Speaking to the amendment, the Minister said its purpose was to replace the word "trader" with "person". This would ensure that the definition of "commercial practice" for the purposes of chapter 1 would include acts or omissions by traders that are currently covered by the CPRs.[91] The amendment would ensure that traders that enable private individuals to sell products to each other are within the scope of this chapter.

89 Schedule 1

90 Department for Business and Trade and Department for Science Innovation and Technology, Enhancing consumer rights: policy summary briefing, 25 April 2023, p7

91 SI 2008 No.1277

The amendment was agreed on the basis it would ensure that the actions of all rogue traders would "fall under the definition of commercial practice".[92]

Opposition amendment 124: takedown requirement

Neil Coyle moved the following amendments, but he spoke predominantly to amendment 124 to clause 223:

- **Amendment 118** to **clause 217**, which sought to make a person marketing goods online a "trader" for the purposes of Chapter 1.
- **Amendment 119** to **clause 217**, which sought to make it an unfair commercial practice to sell goods online unless the specified safety requirements have been complied with.
- **Amendment 123** to **Schedule 18**, a technical amendment.
- **Amendment 120** to **clause 218**, which sought to make it a misleading action to sell goods online without taking reasonable steps to ensure that those goods have not been subject to a recall.
- **Amendment 124** to **clause 223** which would provide for a takedown power. Specifically, where a commercial practice has been found to be unfair under Schedule 18, the authorities would have the power to require the removal of online marketing from the internet.
- **Amendment 121** to **clause 234**, which would require the Secretary of State to make regulations to define "reasonable steps" for the purposes of **clauses 217** and **218** of the Bill.
- **Amendment 122** to **clause 241**, which would define an "online marketplace" and "safety requirements".

In moving these amendments, Neil Coyle acknowledged contributions from the British Toy and Hobby Association (BTHA), Electrical Safety First, the consumer body Which? and trading standards bodies.[93]

There was considerable debate on **amendment 124**, which would give powers to the CMA and trading standards to require the removal of marketing material for counterfeit and dangerous products online. Drawing on a survey by the BTHA, Don't Toy with Children's Safety (PDF),[94] and information provided by Make UK, (the Manufacturers' Organisation) Neil Coyle described online marketplaces as the "wild west".[95] He said some goods sold online were illegal because they were counterfeit, others because they did not meet labelling standards or were unsafe. The concern was that the Bill did not go

92 Public Bill Committee 4 July 2023 cc299-300
93 Public Bill Committee 4 July 2023 c302
94 Don't Toy with Children's Safety (PDF) (online), British Toy and Hobby Association, 2020, (accessed 24 July 2024)
95 Public Bill Committee 4 July 2023 c304

far enough to tackle these issues and would not come into force quickly enough. [96]

Neil Coyle said there was broad support for the view that regulators must be given sufficient powers, including a takedown power, to tackle rogue traders online:

> It is not just me saying that the Government have not done enough. In November, the OPSS chief exec said that there is "too much evidence of non-compliant products being sold by third party sellers" on online marketplaces. The National Audit Office and the Public Accounts Committee have said the same. It is time to close the loopholes and act.[97]

He said the wording of the takedown provision in amendment 24 was crucial, it would not be a request but a legal requirement to remove a product from sale online, enforceable by all the public enforcers in **clause 143**. There would be an expectation that online platforms would act in a "timely way" to prevent a fatality, and the threat of penalties if the takedown is not done quickly enough.[98]

Neil Coyle argued that a takedown power was needed because "the Bill presents a convoluted route of multiple agencies and potential court action that people simply will not want to take". [99] He questioned the Minister about the resourcing of Citizens Advice:

> The Government are saying that in order to get redress from this legislation, Citizens Advice will be able to provide consumer advocacy. There is no resource attached to supporting Citizens Advice to do that, although Citizens Advice has said that it is under the biggest pressure it has experienced in its 80-year history. It simply does not have the capacity to take on an additional task that the Government say it can and will do without resourcing any impact assessment. [100]

Seema Malhotra spoke in support of the amendments, and criticised the Government's delay in publishing its product safety review, which was first promised for publication in spring 2022:

> The Minister will know that, as long as Ministers delay action on product safety in online marketplaces, and delay assistance to all stakeholders involved in keeping our consumers safe, their work is made harder. They need the strategy, and the direction that it will bring. The amendments, while not expediting the necessary Government action, would nevertheless provide extra safeguards in the meantime against unsafe products being sold on online marketplaces.[101]

Responding to amendment 124, Kevin Hollinrake said existing UK product law was clear: all products offered for sale must be safe, including those sold

96 Public Bill Committee 4 July 2023 c305
97 Public Bill Committee 4 July 2023 cc305-306
98 Public Bill Committee 4 July 2023 cc306-307
99 Public Bill Committee 4 July 2023 c306
100 Public Bill Committee 4 July 2023 c306
101 Public Bill Committee 4 July 2023 c308

online. He said that during a roundtable meeting with major online marketplaces in April 2023, he had made it clear that as "distributors" they must do more to keep unsafe products off their sites, including removing third-party sellers who supply unsafe goods.[102] He confirmed that the OPSS would be following up with a programme of test purchases.[103] He argued that the product safety route was the right way to deal with the issue:

> The whole product safety framework will be reformed, including online sales, and that holistic review of product safety, taking existing obligations into account—we believe there are distributor obligations—is the most appropriate vehicle for meeting concerns about unsafe goods sold online.[104]

When pressed by Neil Coyle on when the product safety review would take place, the Minister replied that the Government wanted it to happen very soon.[105]

The Minister argued that under Part 3 of the Bill, the CMA would be empowered to impose an online interface order against the infringer or a third party requiring the removal or alteration of online content that gives access to or promotes offending goods.[106] When pressed, the Minister said he would consider whether similar powers should be given to other enforcement bodies, such as trading standards.[107] The Minister also agreed to look again at the possibility of a takedown measure and "come back to the House" to report "what we will do in this space". [108]

With this assurance, Neil Coyle withdraw amendment 124.[109]

SNP amendments 68 & 69: green washing

Richard Thomson (SNP) moved **amendments 68** and **69**:

- **Amendment 68** to **Schedule 18** would ban the practice of "greenwashing": making unsubstantiated claims about the sustainability of products and services would be an unfair commercial practice.

- **Amendment 69** to **clause 234**, consequential on amendment 68, would require the Government to define which products and services could be labelled "sustainable" and would require that definition to comply with international standards.

Speaking to both amendments, Richard Thomson said they would compel the Secretary of State to consult on a definition of sustainability (in line with international standards) and include that definition in the Bill, and then add

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102 Public Bill Committee 4 July 2023 c308
103 Public Bill Committee 4 July 2023 c308
104 Public Bill Committee 4 July 2023 c309
105 Public Bill Committee 4 July 2023 c309
106 Public Bill Committee 4 July 2023 c310
107 Public Bill Committee 4 July 2023 c310
108 Public Bill Committee 4 July 2023 c310
109 Public Bill Committee 4 July 2023 c310

greenwashing to the Schedule 18 list of practices which would be considered unfair in all circumstances.

In explaining why the amendments were needed, Richard Thomson said green washing influenced consumer choice, led to adverse outcomes and, potentially, penalised those companies that deal in a more honest fashion with how their products are disposed of at the end of their life.[110] He made a comparison with the approach being taken by the EU:

> The European Union proposals to target the problem have in their sights explicit claims that are made in the promotion of products. Claims will need to be independently verified on environmental grounds, to be proven with scientific evidence, to cover environmental impacts that are actually relevant to the product, and to identify any possible trade-offs in its manufacture, production or use, to give a full and accurate picture that will allow consumers to make an informed choice.[111]

Seema Malhotra supported the amendments.[112] Since greenwashing had been raised by consumer groups in the Committee's evidence session, she asked if the Government intended to introduce its own amendments on this issue. She also asked if the Government intended to put the CMA's Green claims code[113] on a statutory footing.

Responding to the amendments, Kevin Hollinrake said that making false or misleading claims was already against the law.[114] In addition, **clause 187** would empower the CMA to issue a provisional infringement notice requiring the enforcement subject to provide evidence to substantiate marketing claims. Finally, he suggested that draft CMA guidance on sustainability agreements between businesses might also help clarify issues.[115]

Richard Thomson pushed amendment 68 to a vote, but it was defeated by 6 votes to 5 (division 6). [116]

Opposition amendment 115: drip pricing

The Shadow Minister, Seema Malhotra, moved **amendment 115** in **Schedule 18**. This amendment sought to add the practice of "drip pricing" to the list of unfair practices in **Schedule 18** of chapter 1.[117]

Speaking to this amendment, Seema Malhotra said it was supported by consumer groups and the CMA:

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110 Public Bill Committee 4 July 2023 c313

111 Public Bill Committee 4 July 2023 cc312-313

112 Public Bill Committee 4 July 2023 c314

113 Competition and Markets Authority, Green claims code: making environmental claims in the UK, 20 September 2021 (accessed 1 August 2023)

114 Public Bill Committee 4 July 2023 c314

115 Public Bill Committee 4 July 2023 c314

116 Public Bill Committee 4 July 2023 c315

117 "Drip pricing" is a technique in which traders advertise only part of a product's price and reveal other obligatory charges later as the consumer goes through the buying process

> That sentiment was reflected in Committee by Citizens Advice, the National Consumers Federation and Consumer Scotland, all of which argued that schedule 18 could be improved by adding the practice of drip pricing.
>
> [...] while the use of these practices is common, the CMA has found its enforcement against drip pricing has been inhibited by the absence of an explicit ban." [118]

In describing the consumer detriment caused by drip pricing, Seema Malhotra also quoted from the Government's Reforming competition and consumer policy consultation paper.[119]

Responding to the amendment, Kevin Hollinrake said the Government had commissioned research on drip pricing which it would publish shortly.[120] In asking the Opposition to withdraw amendment 115, the Minister said there would be a consultation on drip pricing during the passage of the Bill. He argued that it was important to conduct that consultation first, "so that we have a proper, evidence-driven policy".[121]

When pressed further on whether the Government intended to address the issue of drip pricing in the Bill through a government amendment, the Minister declined to make any commitment.[122] However, he said that the Government was "committed to delivering on drip pricing" and since the Prime Minister had spoken on it, he "could not imagine that there would be any undue delay".[123] Seema Malhotra withdrew her amendment.

Opposition amendment 116: fake online reviews

Seema Malhotra moved **amendment 116** in **Schedule 18**. This amendment sought to add the practice of commissioning fake reviews, offering services to write fake reviews, and displaying consumer reviews without taking reasonable steps to verify their accuracy, to the list of unfair commercial practices in Schedule 18.

Speaking to the amendment, Seema Malhotra said despite the Government announcing it would tackle the issue, there were no measures in the Bill to ban fake reviews. Although **clause 234** would give the Secretary of State the power to add to the list of banned practices, so far there was only a government promise that at some point in the future – beyond 2025 - fake reviews might be banned.[124] She asked why a ban was not explicitly stated in the Bill:

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118 Public Bill Committee 4 July 2023 cc315-316

119 Department for Business, Energy & Industrial Strategy, Reforming competition and consumer policy: government response, CP 656, 20 April 2022

120 Public Bill Committee 4 July 2023 c316

121 Public Bill Committee 4 July 2023 c316

122 Public Bill Committee 4 July 2023 c316

123 Public Bill Committee 4 July 2023 c317

124 Public Bill Committee 4 July 2023 c318

> One view is that the Government intended to include a ban but ran out of time. Well, we have time to catch up during the passage of the Bill. Retail and consumer groups consider this measure very much noticeable by its absence, and it is important and significant that we address it during the passage of the Bill. [125]

In supporting the amendment, Richard Thomson (SNP) said a market could only work effectively, if people had access to timely and accurate information, "fake reviews subvert that goal". [126]

Neil Coyle spoke to **amendment 125**, which similarly sought to add fake reviews to the list of banned practices in **Schedule 18**. Referring to research by Electrical Safety First - that 93% of products bought from online marketplaces were unsafe – he argued that a combination of a new takedown power and a ban of fake reviews would be "a significant step forward" in protecting consumers.[127]

Responding to both Opposition amendments, Kevin Hollinrake said that the Government anticipated adding fake reviews to the list of banned practices in Schedule 18, but there would first be a consultation in the autumn:

> That includes defining what we mean by fake reviews and how "reasonable and proportionate" steps will be understood. Similarly, we want those rules to encompass the manipulation of reviews that may harm consumers, which also needs detailed work with stakeholders to define.[128]

Seema Malhotra was disappointed with the Minister's response:

> Having another consultation in the autumn is like long grass: it is designed to spin things out until we reach 2025 and then there is something to add to the Schedule.[129]

Both amendments were pushed to a vote. On division, amendment 116 and 125 (divisions 7 and 8) were defeated by 6 votes to 5.[130] Seema Malhotra said the Opposition remained concerned that there were significant omissions in the list of banned commercial practices in Schedule 18 and would "continue to pursue additions".[131]

Opposition amendments 127 & 126: "invitation to purchase"

Both Opposition **amendments 127** and **126** to **clause 222** were technical.

In speaking to amendment 127, Seema Malhotra said it would require that information on whether a third-party seller or online marketplace is a trader

125 Public Bill Committee 4 July 2023 c318
126 Public Bill Committee 4 July 2023 c319
127 Public Bill Committee 4 July 2023 c320
128 Public Bill Committee 4 July 2023 c321
129 Public Bill Committee 4 July 2023 c321
130 Public Bill Committee 4 July 2023 cc321-322
131 Public Bill Committee 4 July 2023 c322

or a consumer, be added to the list of material information in an invitation to purchase. She said this information was particularly important in the digital economy where anyone can sell but consumers are unaware that they have different rights and forms of redress depending on the status of the seller.[132] The amendment would, she argued, go some way towards providing consumers with more power in online marketplaces.[133]

Kevin Hollinrake said that **clause 222(2)(c)** of the Bill would already require "the identity of the trader and the identity of any other person on whose behalf the trader is acting" to be disclosed. Moreover, **subsections (2)(d)** and **(e)** would require a range of contact details to be provided to consumers about the seller.[134] Seema Malhotra did not press amendment 127 to a vote but said she might come back to it at a future stage of the Bill.[135]

Seema Malhotra also spoke briefly to **amendment 126** to **clause 222** tabled by Neil Coyle. This amendment would expand the definition of an "invitation to purchase" to cases where information about a product is provided to the consumer without a price shown.

In explaining why amendment 126 was needed, the Shadow Minister said the Chartered Trading Standards Institute (CTSI) had pointed out that many rogue traders who target vulnerable consumers do not give a price when offering to do work. This meant that it would automatically not be considered an "invitation to purchase" and the regulations in **clause 222** would not apply. By removing the reference to "price" in the definition of an "invitation to purchase", the amendment would ensure that more rogue traders fall under the definition and could be caught by the Bill.[136]

Elaborating further, Neil Coyle said the existing wording of **clause 222**, specifically the reference to "price", could prohibit action being taken against a rogue trader, which was counter to the aims of the Bill:

> By making a slight change to the wording of the Bill to remove the words "and its price" on page 150, amendment 126 would deal with that kind of rogue practice, which is out there, and which has been raised by trading standards. The fear among the bodies that are trying to secure greater action against rogue traders is that the existing wording of the Bill allows wiggle room and will let the dodgy practices continue.[137]

Kevin Hollinrake said the Government had already strengthened the existing provisions in the CPRs 2008 in relation to "invitations to purchase" by removing the need for enforcers to prove that the "transactional decision test" had been met. In his view, this would significantly increase the criminal liability of unscrupulous traders.[138] The Minister argued that amendment 126

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132 Public Bill Committee 4 July 2023 c323
133 Public Bill Committee 4 July 2023 c323
134 Public Bill Committee 4 July 2023 cc324-325
135 Public Bill Committee 4 July 2023 c325
136 Public Bill Committee 4 July 2023 cc323-324
137 Public Bill Committee 4 July 2023 c324
138 Public Bill Committee 4 July 2023 c324

would expand the definition too far.[139] He also suggested that other provisions in the Bill would achieve a similar aim, by prohibiting traders from making misleading statements or omissions in respect of all commercial practices. Neil Coyle withdrew his amendment on the basis that the Minister said he would look again at the evidence.[140]

SNP amendment 67: consumers' rights to redress

Two amendments were tabled on **clause 225**. **Amendment 67** was moved by Richard Thomson (SNP) and amendment **114** by the Shadow Minister Seema Malhotra. Both were concerned with consumers' private rights to redress.

Clause 225 would confer a power on the Secretary of State to make regulations providing rights of redress to consumers, including a right to unwind relevant contracts, a right to a discount, and a right to damages in respect of financial loss, distress or physical inconvenience, or discomfort. The first set of regulations made under clause 225 would be subject to the affirmative procedure, with any subsequent regulations subject to the negative procedure.[141] Until these regulations are made, the existing private redress provisions set out in the CPRs 2008 would continue to apply.

Speaking to **amendment 67**, Richard Thomson said its purpose was to ensure that any future regulations could not offer less protection than the current CPRs 2008.[142] The amendment would, he said, "capture the baseline level of protection through future secondary legislation".[143]

Kevin Hollinrake argued that the amendment would limit future regulations on consumers' redress rights, to equivalent remedies in the CPRs. In contrast, the Bill included new powers that would enable rights of redress to be improved:

> That could include how such rights are exercised; the powers could also be used to make those rights clearer and simpler. Those would be positive changes for consumers that might not meet the test of equivalence to the current regulations that the amendment would impose. We would like to retain the ability to exceed the existing private redress provisions, if appropriate, which may encourage more consumers to make use of these rights.[144]

Richard Thomson pushed his amendment to a vote. He argued that he could not see anything in the amendment that would prevent the Government from going beyond existing levels of consumer protection since, "the key element in the amendment is to capture a baseline level of protection" equivalent to

139 Public Bill Committee 4 July 2023 c324-325
140 Public Bill Committee 4 July 2023 c325
141 Clause 225(5) and (6)
142 The 2008 Regulations implemented in the UK the Unfair Commercial Practices Directive (2005/29/EC) as part of a common set of European minimum standards for consumer protection
143 Public Bill Committee 4 July 2023 c327
144 Public Bill Committee 4 July 2023 c328

what is currently in the CPRs.[145] On division 9, amendment 67 was defeated by 5 votes to 6.[146]

In speaking to **amendment 114**, Seema Malhotra referred to the wording of **clause 225**, which states that "consumer rights to redress" may be provided for in future secondary legislation, giving the Secretary of State powers to amend these rights. She also referred to the concerns raised by Which? in written evidence:

> These rights are fundamentally important, as they include payment of damages when a trader misleads a consumer. We want assurances that they will not be downgraded as a result of this process, and a commitment from the Government to strengthen redress procedures when these new regulations are drafted. [147]

She said amendment 114 would require the Secretary of State to prepare and lay before Parliament a report on the merits of introducing, through secondary legislation, a new consumer right to individual and collective redress.[148]

Kevin Hollinrake said that under Part 3 of the Bill, both the court-based and the CMA direct enforcement regimes provided for enhanced consumer measures. In addition, consumers have "individual" private rights of redress. Referencing the Reforming competition and consumer policy consultation,[149] Kevin Hollinrake said that responses to government proposals to introduce a right for consumers to bring "collective" redress were mixed, "with concerns raised about unintended consequences such as the creation of a claims culture" and "inadvertently disincentivising the bringing of proceedings by consumer groups".[150]

The Minister said the position in the UK, as provided for in the Bill, would be broadly similar to the situation under the EU's Directive on collective redress:

> The EU's directive on collective redress [...] requires member states to designate entities, such as consumer organisations, that can bring actions for collective redress on consumers' behalf. The EU does not mandate that member states introduce direct rights for individual consumers to bring an action for collective redress.[151]

145 Public Bill Committee 4 July 2023 cc329-330
146 Public Bill Committee 4 July 2023 c330
147 Public Bill Committee 4 July 2023 cc327-328
148 Public Bill Committee 4 July 2023 c328
149 Department for Business, Energy & Industrial Strategy, Reforming competition and consumer policy: government response, CP 656, 20 April 2022
150 Public Bill Committee 4 July 2023 cc328-329
151 Public Bill Committee 4 July 2023 c329

He said the Government would keep the evidence under review, but its priority was to embed the CMA direct enforcement regime and understand the impact that it makes.[152]

Amendment 114 was withdrawn.

Government amendments 72 & 73: defence of due diligence

Government amendments 72 and **73** to **clause 230** were technical in nature. Clause 229 sets out the conditions under which unfair commercial practices amount to criminal offences. Clause 230 describes the defences that may be available to defendants charged with offences under clause 229, namely the defence of due diligence and innocent publication.

In speaking to **government amendment 72**, Kevin Hollinrake said it would ensure that the defence of due diligence provided for in clause 230(1) would not apply in relation to an offence under clause 229(4). This is the offence of engaging in an unfair commercial practice which involves a contravention of the requirements of due diligence. He explained that this would replicate the current position under the CPRs.

Speaking to **government amendment 73**, Kevin Hollinrake said it would ensure that the defence of innocent publication provided for in clause 230(3) would not apply in relation to an offence under clause 229(4). This is the offence of engaging in an unfair commercial practice which involves a contravention of the requirements of professional diligence. He explained that this would, again, replicate the current position under the CPRs.

The Opposition supported both government amendments.

Government amendments 74-77: liability of trader

Clause 231 of the Bill sets out the rules on liability when a trader commits an offence as a result of an act or omission by another person, and when a body corporate commits an offence.

Speaking generally to **government amendments 74** to **77** to **clause 231**, Kevin Hollinrake said they would preserve the current effect of the CPRs, meaning that contraventions of professional diligence would be excluded from the offences to which the criminal liability of others applies.

Both government amendments were agreed.[153]

[152] Public Bill Committee 4 July 2023 cc299-300

[153] Public Bill Committee 4 July 2023 c336

Opposition amendment 129: criminal & civil breaches

Clause 234 of the Bill would give powers to the Secretary of State to amend chapter 1 of Part 4. However, new regulations could only be made after consultation and would be subject to the affirmative procedure. The Minister said it was critical to "future-proof" the Bill through these provisions, "given the constantly evolving environment in which traders operate".[154]

Seema Malhotra moved **amendment 129** to **clause 234**, which sought to ensure that future "banned practices" are both criminal and civil breaches, reflecting their potential seriousness and putting them in line with all but two of the current banned practices. This was a probing amendment. Given that **clause 234** is the means by which the Government intends to tackle fake reviews online, Seema Malhotra asked the Minister to clarify the position on penalties.[155]

Kevin Hollinrake said there was nothing to prevent Parliament from introducing primary legislation to criminalise specific practices in the future. In the meantime, any new practices added to Schedule 18 would be subject to the relevant civil penalties.[156] On the penalties themselves, he said:

> [...] we will go much further than any UK Government have ever done before; we are empowering the courts and the CMA to impose fines of up to the higher of £300,000 or 10% of worldwide turnover for infringements of consumer protection law.[157]

Government amendment 78: consequential amendment

Speaking to **government amendment 78** to **clause 243**, Kevin Hollinrake explained that it would make a minor consequential amendment to section 393 of the Communications Act 2003 to include Part 4 of the Bill. That would enable Ofcom and the CMA to collaborate in relation to matters covered by Part 4, in the same manner that they do for the CPRs. The amendment was agreed.

Opposition new clauses 8, 9 & 10: secondary ticketing

During the Committee's final sitting on 11 July 2023, Seema Malhotra moved **new clauses 8, 9** and **10** to further regulate the secondary ticketing market in order to protect consumers. The new clauses reflected recommendations made by the CMA in its August 2021 Secondary ticketing report.[158]

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154 Public Bill Committee 4 July 2023 c339

155 Public Bill Committee 4 July 2023 c338

156 Public Bill Committee 4 July 2023 c338

157 Public Bill Committee 4 July 2023 c338

158 Competition and Markets Authority, Secondary ticketing websites, 16 August 2021, see also Department for Business and Trade and Department for Culture, Media and Sport, CMA recommendations on secondary ticketing: government response, 10 May 2023, (both accessed 28 July 2023)

New clause 8 would amend the CRA 2015 and would make platforms liable where the number of tickets resold on a platform by an individual seller exceeded the maximum set by the event organiser in the primary market. In introducing this new clause, Seema Malhotra said its purpose was to filter out sellers who "harvest" tickets through the use of illegal bots to sell them on at a significantly inflated price, it would also reduce the risk of consumers being sold fake tickets.[159]

New clause 9 would also amend the CRA 2015 to impose a duty on secondary ticketing platforms to verify details from the sellers who use them. Introducing this new clause, Seema Malhotra said this it would make it harder for "bad actors" who intend to scam or rip off consumers to use secondary ticketing platforms, as it would be far easier to track their details.[160]

New clause 10 would introduce a requirement on the Secretary of State to produce a report on the introduction of a new regulatory function for the secondary ticketing market, to be prepared within 12 months of the Bill receiving Royal Assent.

In explaining why the new clauses were needed, Seema Malhotra said that where scams occur, there is little in the way of enforcement action against either the seller or the platform. She read extracts from the CMA's 2021 report[161] on consumer detriment in the secondary ticketing market, which raised concerns that some approaches used by professional resellers to buy up tickets may be illegal, "Involving committing fraud and/or breaching legislation introduced to prevent the bulk purchase of tickets using computer bots".[162] The CMA report also outlined fears that some professional resellers may be "speculatively advertising tickets that they do not own and advertising tickets with inaccurate information about the ticket or the seller's identity".[163]

Seema Malhotra pointed out that shortly before the Bill was introduced, the Minister had written to the CMA stating that the Government would not adopt its recommendations.[164] She accused the Government of "failing to act in the interests of consumers", and urged the Government to accept the new clauses:

> The new clauses are cost free and would significantly increase the protections available to consumers using the secondary ticketing market in the UK—they would dramatically increase protections for all consumers.[165]

159 Public Bill Committee 11 July 2023 c401
160 Public Bill Committee 11 July 2023 c401
161 Competition and Markets Authority, Secondary ticketing websites, 16 August 2021, (accessed 4 August 2023)
162 Public Bill Committee 11 July 2023 c401-402
163 Public Bill Committee 11 July 2023 c401-402
164 Public Bill Committee 11 July 2023 c402
165 Public Bill Committee 11 July 2023 c402

In response, Kevin Hollinrake said Part 3 of the Bill would give more powers to the CMA and others to enforce existing consumer protection law, including legislation applicable to the secondary tickets sector. He drew attention to the National Trading Standards eCrime Team, which had "successfully prosecuted two ticket touts for fraud and consumer law breaches".[166]

Addressing **new clause 8**, the Minister said it was already an offence to use automated software to buy more tickets for events than permitted, with a view to financial gain. He argued that "if the rules are applied", there should be no need for new clause 8. However, he made a commitment that the Government would continue to work with the CMA to monitor the market and technological developments.[167]

On **new clause 9**, the Minister argued that the CMA itself had acknowledged that placing a strict liability on platforms to verify certain information provided to it by a seller would be "an unprecedented step".[168] Owing to the success of CMA enforcement work in the secondary ticketing, he said "choices and associated costs" were now more transparent than they were five years ago, he questioned whether the Opposition's proposal "would amount to proportionate regulation".[169]

The Minister said that **new clause 10** would involve producing a report on creating a single regulator for ticketing, able to utilise police powers and powers under the Breaching of Limits on Ticket Sales Regulations 2018 and to enforce relevant consumer measures. He argued that the "proposed combination of powers" would be substantial for consumer protection purposes:[170]

> The Government have considered the proposal to create a super regulator for ticketing, but ultimately it has been rejected because we believe it would be disproportionate. We will continue to keep this position under review, and there is nothing to prevent us reaching a different conclusion should new evidence suggest it is appropriate. [171]

Referring to the CMA's recommendations, the Minister said it was too early to bring forward further regulation on secondary ticketing.

Seema Malhotra did not press new clauses 8, 9 and 10 to a vote, but she said the Opposition may return to the issue on Report. [172]

166 Public Bill Committee 11 July 2023 c403
167 Public Bill Committee 11 July 2023 c403
168 Public Bill Committee 11 July 2023 c403
169 Public Bill Committee 11 July 2023 c403
170 Public Bill Committee 11 July 2023 c403
171 Public Bill Committee 11 July 2023 c403

172 Public Bill Committee 11 July 2023 c404

3.3 Chapter 2: subscription contracts

Overview

For the purposes of chapter 2 of Part 4 of the Bill, a subscription contract is a fixed term contract with auto-renewing or early cancellation features between a consumer and trader for the supply of goods, digital content or services. Such contracts are often used in relation to utilities, healthcare, and banking contracts.

Chapter 2 would impose the following new duties on businesses making it easier for consumers to provide informed consent and opt-out of contracts:

> **Before a consumer enters a contract and subscribes**
>
> Traders would be under a duty to provide prescribed pre-contract information, prominently and clearly to consumers (eg information about price, automatic renewals and cancellation methods and consumer rights).
>
> **During the subscription**
>
> Traders would be under a duty to send clear reminders in prescribed form to consumers, alerting them that a free or discounted trial period is coming to an end, or that a contract is shortly due to renew, with information on how they can exit the contract if they wish.
>
> **Cancelling subscriptions**
>
> Traders would be under a duty to make available to consumers a process to exit the contract in a straightforward and timely way via a single communication. Traders would be prohibited from imposing any steps which are not reasonably necessary.
>
> Importantly, Chapter 2 would make provision for the offence of failing to provide information about cooling-off periods. The Bill would a power on the Secretary of State to make further provision about the cancellation of subscription contracts.

In Committee, Kevin Hollinrake described the measures in chapter 2 as being an important part of the Government's commitment to "help consumers have more control over their spending", while ensuring that "businesses were not overburdened by regulations".[173] He said that together, the measures would "deliver £400 million in consumer benefits per year".[174]

Seema Malhotra said the Opposition welcomed the action on subscription traps taken by the Government:

> [...] Citizens Advice estimates that £306 million a year is spent on unwanted subscriptions in the UK, so we need to act and, in that spirit, to work

173 Public Bill Committee 4 July 2023 c342

174 Public Bill Committee 4 July 2023 c342

> constructively with Ministers to ensure that the measures are as robust as possible.[175]

Chapter 2 was considered in Committee during its thirteenth sitting on 4 July 2023. In summary:

- The Government moved **amendments 79** to **82** which were all agreed.
- Giles Watling (Con) moved **amendment 113** to **clause 256** but this was withdrawn.
- The Opposition moved **amendment 136** to **clause 316**, **amendment 128** to **clause 263**, and **new clauses 5** and **6**, all of which were withdrawn without division.
- The SNP moved **amendment 117** in **Schedule 19**, which was withdrawn without division.

All amendments are considered below.

SNP amendment 117: lottery tickets

Richard Thomson moved **amendment 117** in **Schedule 19**. This amendment sought to exclude lottery tickets purchased for non-commercial society lotteries from the scope of the provisions on subscription contracts.

Speaking to this amendment, Richard Thomson said charity lotteries should be excluded from the scope of the Bill's provisions on subscription contracts because they were already regulated by the Gambling Commission.[176] Although Paul Scully confirmed during Second Reading that that such lotteries would fall outside the scope of the Bill, Richard Thomson said that the charity lottery sector remained concerned:

> For all the best intentions of Ministers, and whatever ends up in Hansard as a result of our discussions on Second Reading and today, the Bill contains significant ambiguity. In that regard, it is unclear in a way that it does not need to be.[177]

He argued that by simply adding non-commercial society lotteries to the list of excluded contracts in schedule 19 would remove this uncertainty.[178]

The Minister confirmed it was not the Government's intention to include society lotteries, including the national lottery, in the Bill's provisions on subscription contracts.[179] He said the Government was working with the society lottery sector to understand whether chapter 2 needed to be amended

175 Public Bill Committee 4 July 2023 c344
176 Public Bill Committee 4 July 2023 c345
177 Public Bill Committee 4 July 2023 c345
178 Public Bill Committee 4 July 2023 c345
179 Public Bill Committee 4 July 2023 c346

to reflect that, and he felt sure that the issue would be debated again during later stages of the Bill.[180]

Richard Thomson withdrew his amendment but said he might return to the issue on Report.[181]

Opposition amendment 136: commencement

During the Committee's final sitting on 11 July 2023, Neil Coyle moved **amendment 136** to **clause 316**, which sought to provide an explicit implementation period for the subscription contract provisions. Specifically, the amendment proposed that the new rules would come into effect from April 2026.

In speaking to the amendment, Neil Coyle said the Federation of Small Businesses, Sky and other organisations had been surprised by the extent of the Bill's requirements and the lack of time to deliver them.[182] Drawing attention to correspondence from Sky, which went to all members of the Committee, Neil Coyle raise the issue of compliance costs:

> "…measures have shifted away from a high level, principles-based approach"— which was in the consultation initially— with government opting instead for highly prescriptive requirements on the face of the Bill itself. This change was made without any substantive consultation with businesses, despite the material difference such an approach makes to compliance and implementation costs."
>
> That is from Sky, which has 12,000 jobs focused on this issue, so it is in a better position than smaller companies to get on with that work. Its concern is that the Bill does not do what the Government said it would do, and that new costs will be imposed.[183]

He said the Bill's subscription contract provisions were not "a benign set of requirements in legislation" but "a costly endeavour":

> Sky said that the Government's impact assessment suggests that the new requirements "will cost UK business £400 million to set up and £1.2 billion in the first year alone."[184]

Amendment 136 would, he argued, give UK businesses the time needed to prepare for the subscription contract provisions.[185]

Kevin Hollinrake said the Government had listened very closely to the needs of business, meeting with Sky and others that would be affected by the measures. He said the Government believed it had "struck the right balance"

180 Public Bill Committee 4 July 2023 c346
181 Public Bill Committee 4 July 2023 c346
182 Public Bill Committee 11 July 2023 c396
183 Public Bill Committee 11 July 2023 c397
184 Public Bill Committee 11 July 2023 c397
185 Public Bill Committee 11 July 2023 c397

between the needs of businesses and consumers.[186] He agreed there would be a cost to business, "the expectation is that the annual business impact will be about £170 million a year", but it believed there would be "a net gain from this legislation". [187]

Neil Coyle pressed further on the issue of "balance and fairness". He said the Bill proposes a six-monthly reminder system for new services, but there is currently only an annual reminder system for other regulated services such as broadband and mobile phones.[188] Kevin Hollinrake confirmed that the Government was considering these sectoral differences:

> There are differences, and we believe it is right to have slightly more frequent requirements, such as six-monthly notifications, but we are continuing to discuss these issues. Yesterday we met a representative of the media industry, who raised similar concerns, and we are listening to them. We certainly hope to strike the balance that the hon. Gentleman seeks, but we think it is wrong to put a commencement date on the face of the Bill, given that there is quite a lot of work to do to get it to pass through both Houses.[189]

Following the Minister's reassurance that businesses would have time to understand and implement the new rules, Neil Coyle withdrew his amendment.[190]

Opposition new clauses 5 & 6: contract renewal

Seema Malhotra spoke to **new clauses 5** and **6** tabled by herself and Alex Davies-Jones. The new clauses proposed that traders must obtain a consumer's express agreement to an auto-renewing contract by the consumer's active opt-in. There was substantial debate on this issue.

In explaining why these new clauses were necessary, she highlighted comments made by Citizens Advice during the Committee's evidence session:

> The specific change that would make a huge difference and is legislatively straightforward is to provide that, at the end of an annual trial subscription, the default is that the consumer opts out. That is not about things like car insurance, where there is a detriment to people opting out, but for basic subscriptions, opt-out should be the default. - [Official Report, Digital Markets, Competition and Consumers Public Bill Committee, 13 June 2023; c. 14, Q17.][191]

Seema Malhotra said that **new clause 5** would allow the consumer to opt-in-to their subscription auto-renewing every six months or, if the period between payments was longer than six months, before every payment. If the consumer did not opt in for auto-renewal, they would be required to notify the trader manually if they wanted to renew.

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186 Public Bill Committee 11 July 2023 c397
187 Public Bill Committee 11 July 2023 c398
188 Public Bill Committee 11 July 2023 c398
189 Public Bill Committee 11 July 2023 c398
190 Public Bill Committee 11 July 2023 c398
191 Public Bill Committee 4 July 2023 cc352-353

Similarly, **new clause 6** would allow the consumer to opt into their subscription auto-renewing after their free or discounted trial; otherwise, they would have to notify the trader manually if they wanted to continue the subscription. She argued that both new clauses would empower consumers at the start of, end of and throughout their subscription contract, allowing them to opt into auto-renewal".[192]

Addressing both new clauses together, Kevin Hollinrake argued that they were unworkable:

> Through these new clauses, if a consumer had not opted-in to an auto-renewing contract, but they decide they want to keep their subscription, they would have to repeatedly respond to emails or similar to continue their subscription or risk it unintentionally lapsing. That risk could be multiplied across each subscription they hold. For that reason, the Government decided not to pursue that approach, which was supported by our public consultation.[193]

The Minister also argued that the measures would add significant regulatory costs to businesses as they adapt their business models to meet the proposals. [194] The Government, he said, was confident that its approach "strikes the right balance of ensuring consumers are able to exit their contracts at various points during their contract, as well as maintaining consumer convenience".[195]

The Minister also suggested that other provisions in chapter 2 would achieve much of the ambition of the new clauses. Specifically, **clause 250** would ensure consumers are sent regular reminders about their subscription, including towards the end of a free or low-cost trial. **Clause 252** would ensure easy cancellation routes so that subscriptions are as easy to leave as they are to enter. Finally, **clause 256** would enhance consumers' existing cooling-off rights. He said the provisions would enable consumers to make "informed decisions" about their subscription contracts, make it easy for them to leave a contract, but would avoid creating additional steps for those who want to continue the subscription.[196]

Seema Malhotra withdrew the new clauses but asked the Minister to work with the Opposition to resolve its concerns during the passage of the Bill.[197]

Conservative amendment 113: cooling-off periods

Giles Watling (Con) moved **amendment 113** to **clause 256**, which deals with the right to cancel a subscription contract during the cooling-off period.

192 Public Bill Committee 4 July 2023 c353
193 Public Bill Committee 4 July 2023 c350
194 Public Bill Committee 4 July 2023 c350
195 Public Bill Committee 4 July 2023 c350
196 Public Bill Committee 4 July 2023 cc350-351
197 Public Bill Committee 4 July 2023 c353

This was really a probing amendment about the length of time of cooling-off periods and their impact on media businesses. Giles Watling argued that "people could join a service, binge watch an entire series, resign, and then go back again and again".[198]

Kevin Hollinrake explained that the aim was to give consumers a window in which they could change their mind before taking on, or renewing, a contract for what could be a significant ongoing liability. However, he agreed that cancellation rights should be fair to businesses:

> We will engage with businesses, regulators and consumers to ensure that refund and return sales are fair and practical, and work across all sectors, including digital streaming. We intend to return to this issue in secondary legislation to ensure the provisions are fair to providers and the services they provide.[199]

Giles Watling withdrew his amendment.[200]

Opposition amendment 128: offences

Under **clause 263** of the Bill, traders who commit an offence contrary to clause 260(1) are liable on summary conviction to a fine. Seema Malhotra moved **amendment 128** to **clause 263**.

Speaking to this amendment, Seema Malhotra said it would make subscription trap offences "triable either way", therefore bringing it in line with other similar offences in the Bill (eg for misleading actions). In effect, it would allow traders to be prosecuted in both the Magistrates Court and Crown Court and increase potential penalties (including imprisonment) where traders do not inform consumers about their cancellation rights before entering off-premises subscription contracts.

Addressing the amendment, Kevin Hollinrake explained that the penalties in clause 263 were, in fact, designed to be consistent with those for failure to provide information about cancellation rights for off-premises contracts in the Consumer Contracts (Information, Cancellation, and Additional Charges) Regulations 2013.[201] The Regulations currently govern all consumer contracts and would continue to govern other off-premises contracts. He said that it was important to ensure that "breaches of equivalent rules" are treated "fairly and consistently", regardless of the type of contract.[202]

Seema Malhotra withdrew the amendment.

198 Public Bill Committee 4 July 2023 c355
199 Public Bill Committee 4 July 2023 c355
200 Public Bill Committee 4 July 2023 c355
201 SI 3013 No. 3134
202 Public Bill Committee 4 July 2023 c358

Government amendment 79: information & notices

Kevin Hollinrake moved **government amendment 79** to **clause 264** to correct a drafting error. He explained the amendment was needed to ensure consistency across the affected subsection as to when a consumer is treated as having given notice of their desire to end or cancel their subscription contract.[203]

This drafting amendment was agreed.

Government amendments 80, 81 & 82: definitions

Clause 272 of the Bill sets out how important terms and phrases used in chapter 2 are to be interpreted.

Government amendments 80, 81 and **82** to **clause 272** were technical amendments. They sought to remove the words "pre-contract information" from the definition of "durable medium" to ensure that the definition was compatible with its use throughout the chapter.

The Opposition agreed these amendments.

3.4 Chapter 3: consumer savings schemes

Chapter 3 of Part 4 of the Bill would introduce requirements that businesses operating consumer savings schemes adequately protect consumers.

A consumer savings scheme is a contract under which the consumer makes payments to a trader in advance of receiving any goods or services , including contracts that seek to incentivise members not to withdraw their money until a certain time. For example, Christmas savings clubs or other schemes promoted as methods of saving. Currently, these schemes are not regulated as deposit-takers by the Financial Conduct Authority (FCA) and consumers using them are not covered by the Financial Services Compensation Scheme if the scheme becomes insolvent. Many schemes are not subject to any other direct regulation.

Chapter 3 was considered in Committee during the thirteenth sitting (on 4 July 2023). No amendments were moved, the Opposition did move new **clause 7** but this was subsequently withdrawn.

Opposition new cause 7: oversight regulation

Neil Coyle tabled **new clause 7** which sought to make the FCA, rather than trading standards, responsible for regulating consumer savings schemes.

[203] Public Bill Committee 4 July 2023 c360

Specifically, the new clause would create an enforcement role for the FCA within six months of the Bill receiving Royal Assent.

Addressing this new clause, Kevin Hollinrake said that it would not be appropriate for the FCA to take on this role:

> Its primary role is to license and oversee banking and financial services before market entry. Consumer savings schemes are nearly all offered by retailers and groups that service the retail industry. The FCA has no existing relationship with many of these service providers.
>
> The Law Commission also considered whether savings schemes should be regulated as financial products by the FCA. It concluded that the additional burdens placed on the FCA in terms of resources would be disproportionate.[204]

He suggested that trading standards would be able to use their existing relationships with business to oversee these rules. In addition, the Government would work with the Primary Authority Supermarkets Group to develop guidance for enforcers and traders. [205]

Neil Coyle disagreed with the Minister on where responsibility for oversight of savings schemes should sit. In arguing that trading standards lacked the necessary expertise and resources, he drew on the following comments made by the CTSI:

> "These brand new provisions have been inappropriately dumped on local authority trading standards to deal with, but it would be much better placed to give the Financial Conduct Authority the responsibility to regulate new provisions on savings schemes which are similar in nature to banking and other financial matters already regulated by the FCA. Saving schemes are often national schemes"—
>
> [...]
>
> "and therefore should be in the remit of a national regulator with the experience and resources to deal with financial matters. CTSI would like to see all references to local authorities removed in these provisions and to pass on responsibility."[206]

Neil Coyle suggested that if the FCA was not the appropriate regulator, then it was "incumbent on the Government to come up with either the resources and skills – training, whatever it might take – for trading standards to do this" or suggest an alternative body.[207]

The Minister stressed that the Law Commission supported the Government's view that the FCA was not the right body to oversee saving schemes, as "these are clearly not financial products".[208] On the basis that a Primary Authority Supermarkets Group has already been established in the trading standards

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204 Public Bill Committee 4 July 2023 c364
205 Public Bill Committee 4 July 2023 c364
206 Public Bill Committee 4 July 2023 c365
207 Public Bill Committee 4 July 2023 c365
208 Public Bill Committee 4 July 2023 c368

network, and given that supermarkets would probably be offering these kinds of saving schemes, he argued that trading standards was the most relevant body.[209] When pressed further by Neil Coyle on why he thought the thought the CTSI did not want this responsibility, the Minister said he had not heard this feedback, and asked to see this information so he could try to meet the concerns of the CTSI.[210]

New clause 7 was subsequently withdrawn.[211]

3.5 Chapter 4: ADR for consumer contract disputes

Chapter 4 would prohibit alternative dispute resolution (ADR) for consumer contracts where the provider is neither accredited nor exempt (as defined). It would replace the EU-derived Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.[212] Chapter 4 also includes enforcement provisions.

The Opposition welcomed chapter 4. Seema Malhotra argued that not having a full assessment of ADR providers had been an issue with the current arrangements.[213] She hoped the measures in the Bill would "increase trust in and use of ADR services" in consumer disputes.[214]

The Committee considered chapter 4 during its fourteenth sitting on 11 July 2023. The Government moved a series of technical and drafting amendments, all of which were accepted without division. No other amendments were moved, and there were no new clauses. The amendments are considered in detail below.

Government amendments 83, 84-89 & 90-91: ADR procedure & fees

Kevin Hollinrake moved a series of technical government amendments.

Government amendment 83

Government **amendment 83** sought to make a consequential change to **clause 283** in connection with amendments to **clause 287**.

Clause 283 defines ADR (eg mediation, arbitration, early neutral evaluation and action under an ombudsman scheme) and defines who would be an ADR

209 Public Bill Committee 4 July 2023 c368
210 Public Bill Committee 4 July 2023 c368
211 Public Bill Committee 4 July 2023 c366
212 SI 2015 No.542
213 Public Bill Committee 11 July 2023 c374
214 Public Bill Committee 11 July 2023 c374

provider. Chapter 4 would apply only where ADR is provided in the context of a consumer contract dispute. Government **amendment 83** would amend clause 283 by providing a signpost for the reader to **clause 287**, which identifies who are exempt ADR providers for the purposes of Chapter 4.

The Opposition supported the amendment on the basis that it would provide greater clarity in the Bill.

Government amendments 84 to 89

Clause 284 of the Bill defines "consumer contracts" and "consumer contract disputes" for the purposes of chapter 4. Consumer contracts would include suppliers of electricity, gas, water and heat.

Government amendments 84 to **88** to **clause 284** sought to add references to Scottish and Northern Irish legislation in relation to the supply of those utilities, which were omitted on introduction of the Bill. Similarly, **government amendment 89** sought to remove a superfluous definition.

The Opposition agreed the amendments.

Government amendments 90 and 91

Clause 286 would restrict the fees that accredited ADR providers could charge consumers to fees approved by the Secretary of State and published in a way likely to come to the attention of consumers. The aim being to prevent excessive fees and ensure transparency.

Government amendments 90 and **91** to clause 286 sought to clarify that the limited conditions under which fees could be charged would apply only to accredited ADR providers.

In considering these amendments, Seema Malhotra sought further clarification on the process by which the Secretary of State could approve fees.[215] She said the issue was about ensuring a fair and clear process:

> "[…] so that we do not have a situation in which consumers are being charged more than they ought to be because there has not been clarity about the Government's expectations as to how those fees will be set".[216]

The Opposition agreed the amendments.

Government amendments 92-96 & 108-111: exempt ADR providers

Kevin Hollinrake moved **government amendments 92 to 96** to amend **clause 287** and **amendments 108 to 111** to amend **Schedule 22**.

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215 Public Bill Committee 11 July 2023 c375

216 Public Bill Committee 11 July 2023 c375

Clause 287 and **Schedule 22** deal with exempt ADR providers. Schedule 22 contains two parts: **Part 1** lists particular authorities who would be exempt ADR providers, **Part 1A** lists exempt redress schemes. The Secretary of State would be able, by regulations, to add new exemptions or to vary or remove existing ones.

Collectively, government amendments **92** to **96** would distinguish more clearly between the two categories of exemption (Parts 1 and 1A). They would also add exemptions for the local government and social care ombudsman, the Independent Adjudicator for Higher Education, the Parliamentary Commissioner for Administration and redress schemes for social housing, lettings agencies and property management.

These technical government amendments were all agreed.

During consideration of the amendments, Seema Malhotra sought further clarification that consumers using exempt providers (as listed in Schedule 22) could expect the same level of protection:

> We do not have time in Committee to go through all the comparable regulations that exempt providers will be subject to, but from a consumer perspective the expectation should be that the protections, in terms of expectations of service and the regulations, will be comparable.[217]

In explaining the policy rationale, Kevin Hollinrake said that where ADR providers were already regulated by other means, there was no point in duplicating regulation:

> The Financial Ombudsman Service, for example, is already regulated and overseen by the Financial Conduct Authority. We think that it would be needless to duplicate that kind of oversight.[218]

Government amendments 97-100: conditions on ADR providers

Government amendments 97, 98 and **99** to **clause 289** were drafting amendments which sought to clarify that, in extending a limited accreditation to an ADR provider at a later date, the Secretary of State could impose new conditions or alter existing ones. **Amendment 100** would enable the imposition of conditions to make an ADR provider responsible for the acts of a third party carrying out ADR on its behalf.

All these government amendments were accepted on the basis they would extend protections for consumers.[219]

217 Public Bill Committee 11 July 2023 cc377-378
218 Public Bill Committee 11 July 2023 c378
219 Public Bill Committee 11 July 2023 c382

Government amendment 101: fees payable by ADR providers

Clause 291 would allow the Secretary of State to charge accredited ADR providers the cost of processing applications and their ongoing accreditation. **Government amendment 101** sought to correct a drafting error regarding those fee provisions.

In considering the amendment, Seema Malhotra said it was unclear how much the fees would be, the frequency of the charge, or where the money would go. She asked if the detail would be in secondary legislation.[220] Given that small businesses might be involved, she said there must be "clarity and fairness" in the process.[221]

Kevin Hollinrake indicated that under the existing accreditation regime, fees were charged at a pro rata daily rate of £750. He said he expected fees to be set within that context.[222]

The amendment was agreed.

Clause 292 & Schedule 23: expertise of ADR provider

Clause 292 and **Schedule 23** specify the accreditation criteria for ADR providers. These include standards relating to accessibility, expertise, fairness, independence, impartiality and transparency. Clause 292 would also allow the criteria to be kept under review and, if necessary, modified.

There was broad support for clause 292 and Schedule 23, and no amendments were tabled. However, there was debate on what would constitute "sufficient expertise for an ADR provider" as required by criterion 3 in the Schedule. Seema Malhotra asked the Minister how "sufficient expertise" would be determined, measured and judged and whether any professional bodies would be involved.[223]

Kevin Hollinrake said that the expertise criteria would have to be kept at a high level but "it would be wrong to be too specific about how we judge "expertise" because of the variety of different ADR providers.[224] He suggested "we trust the process":

> [...] there are schemes already in place that we are now putting under the mandatory regime. Of course, expertise will be judged on a scheme-by-scheme basis, but it is difficult to set out exactly what expertise we will require in any

220 Public Bill Committee 11 July 2023 c383
221 Public Bill Committee 11 July 2023 c383
222 Public Bill Committee 11 July 2023 c387

223 Public Bill Committee 11 July 2023 c384
224 Public Bill Committee 11 July 2023 c386

> particular scheme, other than that we would expect the person to have the relevant experience and expertise.[225]

Seema Malhotra said the issue was not resolved. Since anyone could say they were an expert, she argued that the basis for determining expertise was important. She said the opposition would look again at the issue and may follow-up with the Minister in writing.[226]

Government amendments 102-105 & 106: information

Clause 294 of the Bill would enable the Secretary of State to make regulations requiring ADR providers (and others) to provide relevant information about ADR to the Secretary of State or publish it to raise consumer awareness. The clause would limit the purposes for which the Secretary of State could require the provision of information.

Government amendments 102 to 105 sought to ensure that those limits would still apply if the Secretary of State's functions were conferred on another person under **clause 298**.[227] The opposition accepted these amendments.

Clause 295 of the Bill would allow the Secretary of State to direct ADR providers and regulators to provide specific information when circumstances require it. **Government amendment 106** to **clause 295** sought simply to remove a definition of data protection legislation because it was defined elsewhere. The Opposition accepted this technical amendment.

Government amendments 107 & 112: drafting amendments

Clause 296 of the Bill would allow the Secretary of State to publish or disclose information they hold in relation to chapter 4.

In speaking to government **amendment 107** to clause 296, Kevin Hollinrake said it was a simple "drafting improvement" to recognise that clause 296 contains several disclosure powers.[228]

Clause 300, which introduces **Schedule 24**, would make some consequential changes to other legislation and would revoke the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.[229] In speaking to government **amendment 112**, Kevin

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225 Public Bill Committee 11 July 2023 c386

226 Public Bill Committee 11 July 2023 c387

227 **Clause 298** would allow regulations to confer functions on persons other than the Secretary of State (for example, to confer accreditation functions on a regulator within the sphere of its regulatory activities)

228 Public Bill Committee 11 July 2023 c381

229 SI 2015 No. 542

Hollinrake said it was a drafting amendment designed to ensure an accurate description of the content of paragraph 11 of schedule 5 to the CRA 2015.

Both amendments were accepted without any debate.

4 Part 5: provision of investigative assistance

Part 5 of the Bill would enhance the UK's ability to co-operate internationally on competition and consumer matters. It sets out rights for the CMA to assist an overseas regulatory body in respect of actions similar to those under the Bill, to exchange information with that foreign regulator, and to publish a notice of its decision to provide assistance.

Part 5 was considered in Committee on 11 July 2023 (fourteenth sitting). No government or opposition amendments were moved and there were no new clauses. There was, however, some debate about the scope of **clauses 302** to **308** and legislative safeguards.

Seema Malhotra said the Opposition understood that the issues around consumer protection and competition must sometimes be dealt with internationally, they were increasingly digital in nature and issues which arise abroad could impact on UK consumers (and vice versa). Although the provisions were necessary, Seema Malhotra raised concerns that the "safeguards that might be needed" were less apparent in the Bill:

> This is an evolving and complicated area. We do not know all the scenarios that might arise and what requests might be made. We do not know what considerations we might take into account when requests come in. For example, do we have a good relationship with the state of which the regulator is part? Do we have other concerns? What information is being asked for? Is any of a potentially commercial nature? How will it be shared? Will it be about specific individuals? Will they know what information is being requested or, indeed, whether it is being shared? Will it come under similar rules as sharing information by the police does, or not because it is a civil matter?
>
> There are some quite important questions about the overall process. We may not have all the answers, but there may well be further debate in the other place on this area. [230]

While the "overriding principle of international co-operation" was important, Seema Malhotra argued that "making sure we have clear principles under which some of the powers are used" was also important.[231]

Under **clause 305** of the Bill, the Secretary of State could authorise individual requests for investigative assistance or give a general authorisation for requests of a particular description from a particular overseas regulator. The

[230] Public Bill Committee 11 July 2023 c391

[231] Public Bill Committee 11 July 2023 c391

clause outlines the factors that the Secretary of State must take into consideration when deciding whether to approve a request for assistance.

The Opposition thought the involvement of the Secretary of State in the authorisation process was important. However, Seema Malhotra asked how the Secretary of State would consider the appropriateness of the assistance, and how transparent the authorisation process would be. Again, she said it was important to get these details right to ensure appropriate safeguards are in place so that the regime works as intended.[232]

Kevin Hollinrake said the Bill would provide significant safeguards with regard to the conditions that the CMA itself needed to consider and, when it comes to the authorisation by a Secretary of State, consideration of appropriate protections (eg around confidentiality). He confirmed that details about the process and how investigative assistance would work in practice would be set out in detailed guidance.[233]

232 Public Bill Committee 11 July 2023 c391-392

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Annex: Public Bill Committee

The Committee consisted of the following Members:

Ali Rushanara (chair)

Philip Hollobone (chair)

Dame Maria Miller(chair)

Steve McCabe (chair)

Andy Carter (Con)

Neil Coyle (Lab)

Alex Davies-Jones (Lab)

Peter Dowd (Lab)

Anna Firth (Con)

Vicky Ford (Con)

Mary Kelly Foy (Lab)

Kevin Hollinrake (Parliamentary Under-Secretary of State, Business & Trade)

Seema Malhotra (Lab/Co-op)

Jerome Mayhew (Con)

Navendu Mishra (Lab)

Dean Russell (Con)

Paul Scully (Parliamentary Under-Secretary of State for Science, Innovation and Technology)

Jane Stevenson (Con)

Richard Thomson (SNP)

Giles Watling (Con)

Mike Wood (Con)

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