

The Digital Markets, Competition and Consumers Act

Consumer law reforms

The long-awaited Digital Markets, Competition and Consumers (DMCC) Act received Royal Assent on 24 May. It is the most significant overhaul in years of the UK's competition and consumer law regimes.

In this guide, we cover the **consumer law** reforms, and what actions businesses should take before many of the key provisions come into force in late 2024.

Expanded consumer rights under the DMCC Act

The Act introduces new consumer protection measures targeting auto-renewing subscriptions, fake reviews and hidden costs in online purchases.

It also brings the CMA's consumer law enforcement powers to the same level as the competition enforcement regime, with the CMA able to fine businesses up to 10% of their global turnover for infringing UK consumer law.

1) Fake Reviews

Fake reviews are nothing new and in recent years consumers have been subjected to an escalation of the practice as platforms offering fake reviews expand, and AI makes it easier to generate make-believe commentary. Government research estimates that between 11% and 15% of all reviews in the product categories it looked at were fake.

The Act clarifies the position by adding to the list of banned business practices:

- the submission of fake reviews; and
- the hosting of a review without taking reasonable steps to check it is real.

2) Drip pricing

Businesses will be:

- prohibited from presenting a headline price for goods or services which does not incorporate in the price any fixed mandatory fees that must be paid by all consumers (for example, booking, administration or handling fees for tickets); and
- required to disclose the existence of any variable mandatory fees and how they will be calculated (for example, delivery fees).

3) Subscriptions

Subscriptions that automatically renew will now be regulated by a new set of rules:

- consumers must be able to end their subscription contracts in a way that is straightforward and without any steps which are not reasonably necessary;
- businesses must provide consumers with all key pre-contract information as close in time to entering the contract as is practicable;
- businesses must allow for a 14 day 'initial cooling-off period' and a 14 day 'renewal cooling-off period' during which a consumer has the right to cancel a subscription in any circumstances and not subject to any conditions;

- consumers must be sent reminder notices before a free-trial or low-cost offer terminates as well as when renewal payments fall due.

4) Secondary ticketing

The Act imposes specific obligations on secondary ticketing facilities. For example, they must not permit tickets for resale unless the trader or business has provided evidential proof of purchase to the ticketing facility.

5) Consumer savings schemes

Schemes where a consumer makes a payment to a trader and this is credited for redemption at a future date must include insurance or trust arrangements so as to protect consumers. Consumers must also be provided with specified information about such protections.

Overhauling consumer law enforcement

The CMA will now have the direct power to enforce consumer protection law (having previously been required to go to the courts). These powers include the ability to issue infringement notices, make directions and require enhanced consumer protection measures.

Where infringements are established, the CMA will be able to fine companies up to 10% of their global turnover, and individuals up to £300,000.

"This is a landmark development that transforms the CMA's consumer enforcement powers and provides the CMA's consumer enforcement division with broadly similar powers to its competition enforcement division. This is likely to increase the number and range of cases that the CMA's consumer law enforcement division will pursue and is expected to significantly increase the deterrent for businesses that breach consumer law. Appeals will be heard by the High Court, rather than the Competition Appeal Tribunal (which has jurisdiction over appeals against fines for breaches of competition law). The High Court's rulings in any early appeals will be key to shaping the regime."

Eleanor Wells, Associate

Before the introduction of the Act, Fieldfisher acted for a party to the CMA's consumer protection investigation into the online video games sector, which looked into allegedly unlawful practices around automatically renewing subscription services.

We helped our client to avoid any enforcement action against it – including having to give any undertakings – through a mixture of changes to some of their practices, and pushing back on the CMA.

We did not think that the consumer law framework applying in the UK at the time covered what the CMA was trying to achieve. At one point, the CMA went so far as to suggest that automatic renewal should not be presented to consumers as the "default" option for a subscription contract.

The Act fills many of the previous gaps in the law, by requiring consumers to be allowed easy exits from their subscriptions, as well as providing for further "cooling off" periods for consumers to change their minds and cancel, and for reminder notices at specific points during the subscription. A proposal that businesses should only be permitted to offer automatically renewing subscriptions on an "opt out" basis was, however, dropped from the draft legislation at an early stage.

The potential for consumer litigation

One proposal that was dropped before the legislation was finalised was to expand the scope of the existing collective actions regime to cover consumer law claims.

"As long as there is no proper collective action, that limits the scope for litigation. People will still sign up for group actions, as with the Dieseltgate claim, but probably only for relatively large claims with significant amounts of money at stake for each consumer. Alternatively, people will try to shoehorn their claims into competition collective actions."

"The new consumer provisions nonetheless have the potential to lead to an increase in consumer litigation. The focus of the CMA on enforcement in areas such as fake reviews and automatically renewing contracts will – in itself – clearly raise the profile of these issues and make it more likely that a claimant firm will actually succeed on a claim, because they are taking less of a shot in the dark. As soon as there is serious interest from the CMA, that will start the wagons rolling."

Richard Pike, Partner

Will the new laws succeed?

The Act represents the first time that platforms and other businesses have faced explicit positive obligations under UK law to monitor the reviews that they publish. The Act includes prohibitions targeted at those who submit or commission fake reviews, as well as those who publish such reviews. For the latter, the prohibitions are qualified – so a platform that publishes reviews is not obliged to remove all fake reviews, but must take *'reasonable and proportionate steps'* to remove and prevent consumers from encountering fake reviews, or stop other information being presented in a way that is capable of misleading consumers.

"In practice, businesses will likely need to implement procedures to (a) assess the risk of consumers being exposed to, (b) remove, and (c) facilitate the reporting of, fake reviews, and to penalise users who post them."

Jonathan Peters, Senior Associate

How to prepare for the Act coming into force

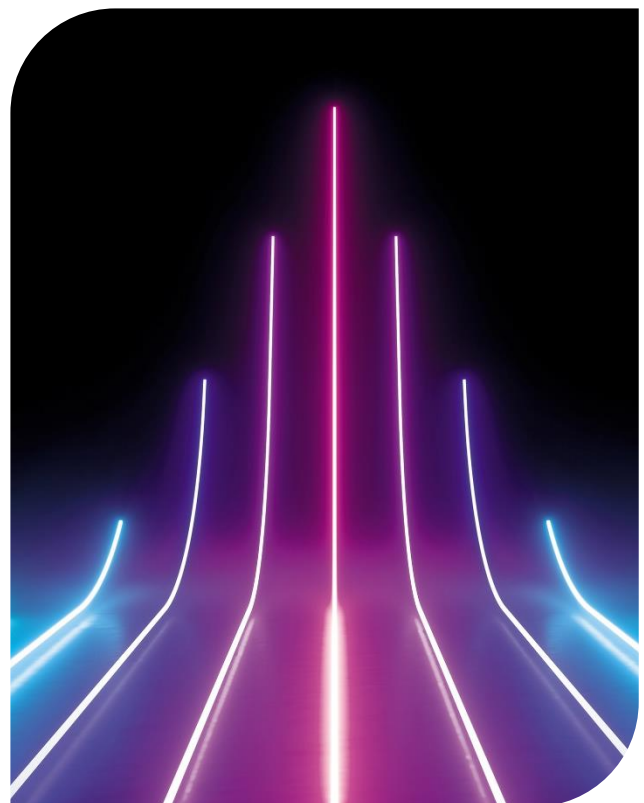
Many of the provisions of the Act are expected to come into force in Autumn 2024.

The consumer law reforms will have the widest impact. Businesses offering subscription services, which host reviews or which operate in certain sectors (such as secondary ticketing) face significant new obligations. However, **all** business to consumer (b2c) firms could be at risk of substantial penalties for breaching existing consumer laws. This materially heightens the risk profile of practices that may be deemed non-compliant.

"We recommend that businesses with b2c operations take the opportunity to assess the extent to which their existing practices are fully compliant with the UK's current consumer law framework, particularly given the heightened enforcement risk as a result of the Act."

John Cassels, Partner

The CMA will consult on aspects of its powers under the Act, which will help to shape how it enforces the Act.



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