



Department for
Business & Trade

Smarter Regulation: Consultation on Improving Price Transparency and Product Information for Consumers

Monday 4 September 2023

Contents

Ministerial Foreword	4
1. Background	5
1.1 Why we are consulting?	5
1.2 What are the Government's objectives?	6
1.3 What is Retained EU Law and why is it relevant to this consultation?	7
1.4 What is the Government consulting on?	7
• The display of pricing information (see pages 10 - 16 for proposals and consultation questions).	7
• Hidden fees and drip pricing (see pages 16 - 20 for proposals and consultation questions).	7
• Fake and misleading reviews (see pages 20 - 26 for proposals and consultation questions).	7
• Online platforms (see pages 26 - 28 for proposals and consultation questions).	7
• Protection from unfair trading – further issues (see pages 28 - 29 for proposals and consultation questions).	7
• Online interface orders (see pages 29 - 31 for proposals and consultation questions).	8
1.5 Consultation timeline:	8
Consultation launches: Monday 4 September 2023	8
Consultation concludes: Sunday 15 October 2023	8
Consultation response published: Autumn 2023	8
1.6 Who should respond to this consultation?	8
2. Overview of consultation topics	9
Summary:	9
2.1 Display of Pricing Information:	9
2.2 Fake reviews:	9
2.3 Drip pricing/ hidden fees:	9
2.4 Online platforms' responsibilities to consumers (platform duty):	10
2.5 Online interface orders:	10
3. Display of pricing information	11
3.1 Summary:	11
3.2 Unit pricing method:	13
3.3 Legibility and prominence:	14
3.4 Offers and promotions:	14
3.5 Small shops:	15
3.6 Deposit Return Schemes (DRS):	16
4. Hidden fees and drip pricing	18
4.1 Summary:	18
4.2 Drip-pricing research:	18
4.3 The current law:	19
	2

4.4 Strengthening the law on drip pricing:	20
4.5 Mandatory fixed fees:	20
4.6 Mandatory variable fees:	20
4.7 Optional dripped fees:	21
5. Fake reviews	23
5.1 Summary:	23
5.2 Proposal:	24
5.3 What will traders be required to do to comply with these rules:	25
5.4 Scope and definitions:	27
5.5 Civil and criminal liability:	28
5.6 Schedule 18 - Other matters:	28
6. Online platforms	29
6.1 Summary:	29
6.2 Proposal:	30
7. Protection from unfair trading: further issues	32
7.1 Private rights of redress: prohibited practices:	32
8. Online interface orders	33
8.1 Summary:	33
Questions	36
Display of pricing information	36
How to respond	40
Confidentiality and data protection	40
Quality assurance	40

Ministerial Foreword

This Government has committed to supporting consumers to deal with the effects of inflation. We launched the Help for Households programme including help with energy costs and household costs, with £26bn in support available this financial year, targeted at those in greatest need.

This shorter-term support must be complemented by regulatory reform to bring down prices in the longer term, to minimise cost to business whilst ensuring consumers have the information to make informed choices when shopping.

Information and consumer transparency is not a luxury or a nice to have, it is a must.

Leaving the EU has given us the opportunity to take control of our laws and regulations and move this forward in the direction that meets our needs. It also means we can look at laws and regulations through the lens of our Smarter Regulation initiative, reducing burdens which stifle innovation and growth. We have already launched reviews to streamline corporate reporting, and make outdated product safety rules inherited from the EU fit for purpose for British consumers and businesses. Smarter Regulation means allowing our homegrown businesses and international suppliers to deliver the goods and services in an economy where there is healthy competition and choice for consumers.

Choice and information go hand in hand, and in this economic climate it is even more important. When shopping for your groceries, you should know at a glance which products are best value. When buying concert tickets, you should know from the start whether you need to pay mandatory administrative fees. When reading reviews of products and services, you should have confidence that the review is a genuine one and not created by a company 'bot' trying to rip you off.

Unclear pricing of products does not suit the consumer. We cannot have efficient markets without price transparency. We cannot have efficient markets without information. We cannot have efficient markets without competition.

This Government is committed to help ensure the British consumer is protected. Not through burdensome, over regulated systems but through meaningful change that delivers on our promises. This is why my department is consulting on a package of reforms aimed at improving consumer transparency.

I would like to thank you for taking the time to respond to this consultation.

Kevin Hollinrake MP

Minister for Enterprise, Markets, and Small Business

1. Background

1.1 Why we are consulting?

Retained EU law

Having left the European Union (EU) we are taking the opportunity to review domestic and retained EU laws to ensure we have the right laws in place to protect UK consumers and facilitate free and competitive markets. The UK has a strong history of protecting consumer rights, and consumers in the UK benefit from a wide range of rights when buying goods and services, through (for example) the Consumer Rights Act 2015 and Consumer Protection from Unfair Trading Regulations 2008 (CPRs). However, the way businesses offer goods and services, and the way consumers buy them is always evolving.

The Price Marking Order 2004 (PMO) and equivalent legislation in Northern Ireland implemented the EU's Price Indications Directive and regulates how retailers display prices for consumers. The aim of these Orders is to ensure consumers have the necessary information presented to them clearly and upfront so they can make informed decisions about the products they purchase. Being able to make the right choices is now even more important as the cost of living is shaping the way individuals and households buy goods.

Furthermore, the Competition and Markets Authority (CMA) published a report into grocery unit pricing on 20 July 2023. The report investigated the instore and online unit pricing practices of the retail sector, and made recommendations to government, including on legislative reform. We have considered the CMA's findings and recommendations and are consulting on them, as set out in section 3.

Digital Markets, Competition and Consumers Bill implementation

The Digital Markets, Competition and Consumers (DMCC) Bill is currently passing through the Houses of Parliament. The Bill aims to boost competition in digital markets and increase consumer choice whilst protecting consumers and businesses from unfair and illegal practices.

The DMCC Bill provides Ministers with regulation making powers to amend the list of automatically unfair commercial practices set out in Schedule 18 to the Bill. The Government's policy is to add practices relating to fake reviews to this list and has committed to consulting on how this will work in practice. Fake reviews mislead consumers when making purchases and can unfairly benefit businesses that deceive relative to those that do not. This consultation therefore seeks views on the practices that will be expressly added to Schedule 18 of the DMCC Bill, as well as proposing key definitions underpinning these practices.

The Government has also published research into so-called drip pricing and hidden fees. These are fees that are introduced by traders after the customer has begun her or his purchasing process: for example, booking fees that are added just before a customer finalises an online payment. The research shows there is a wide variety of dripped fees in today's consumer markets, and also that a range of consumer detriments are associated

with them. This consultation also seeks views on what, if anything, the Government should do to tackle dripped fees, and views on when and if they are problematic.

The DMCC Bill also re-states the Consumer Protection from Unfair Trading Regulations 2008 in UK primary legislation¹. These rules set out consumers' rights to material information when making purchasing decisions, and rights in instances when they are misled or victims of aggressive sales practices. The DMCC Bill re-establishes online platforms' existing responsibilities under consumer law to demonstrate professional diligence with respect to consumer purchases they facilitate. This consultation seeks views on the current understanding of the practical application of professional diligence and how best practice might best be set out and communicated to ensure clarity between online platforms and consumers over the standards they can expect online. This consultation also seeks views on how the framework of consumer law enforcement powers is operating with respect to taking down illegal material online.

1.2 What are the Government's objectives?

A key purpose of the legislation under review in this consultation is to ensure consumers are provided with timely and relevant information when making decisions. This empowers consumers to find better deals and products that best suit them. Whether it is the rules over the pricing information displayed to consumers, or action to prevent fake reviews and hidden fees, the Government's aim is to maximise transparency to consumers, which in turn helps consumers find better deals and avoid rip-offs. We want to ensure that consumers are treated honestly and fairly.

Boosting information and transparency in consumer markets also plays an important role in improving the efficiency of markets. In an efficient market, products are produced at the lowest possible cost and in accordance with consumers' preferences. This outcome allows consumers to maximise the benefit they can achieve from their spending.

Unclear pricing of products will cause consumers to purchase products that do not represent the optimal choice and result in consumers not maximising their benefit from their consumer spend. Similarly, lacking information about products will lead to a sub-optimal spend.

Clearer information allows consumers to make more informed choices, thereby encouraging producers to compete with one another. Increased competition amongst producers generally leads to better functioning markets, including higher quality products, innovation, and price reductions. These changes further improve consumers' ability to gain welfare from their consumer spend.

There is strong theoretical and empirical evidence² that clearer pricing in a market will lead to a reduction in the overall price level within that market.

¹ See Chapter 1 of Part 4 of the Bill.

² "CRS Report for Congress - Does Price Transparency Improve Market Efficiency? Implications of Empirical Evidence in Other Markets for the Health Sector" (2007) found that "Considering all of the evidence of price

1.3 What is Retained EU Law and why is it relevant to this consultation?

Retained EU law (REUL) is a category of UK law that was established by The European Union (Withdrawal) Act 2018 to ensure legal certainty and continuity immediately after Brexit, by preserving EU and EU-derived law as it stood immediately before the UK's exit. However, retained EU law was never intended to sit on the statute book indefinitely.

The Retained EU Law (Revocation and Reform) Act 2023 allows the United Kingdom to take the next step in reasserting the sovereignty of Parliament. REUL that remains in force will be known as assimilated law from the end of 2023. The 2023 Act also abolishes the supremacy of EU law in relation to all UK law, removes general principles of EU law from all UK law and enables EU-derived law to be more easily amended, revoked, and replaced.

The Government is also committed to lightening the regulatory burden on businesses and to help spur economic growth. The Government will continue to review the remaining EU-derived law not already revoked or reformed, or planned for revocation this year, to identify further opportunities for reform.

We are seeking views on certain consumer protection REUL through this consultation as we believe we can make the law work better for the needs of UK consumers and businesses.

1.4 What is the Government consulting on?

- The display of pricing information (see pages 10 - 16 for proposals and consultation questions).
- Hidden fees and drip pricing (see pages 16 - 20 for proposals and consultation questions).
- Fake and misleading reviews (see pages 20 - 26 for proposals and consultation questions).
- Online platforms (see pages 26 - 28 for proposals and consultation questions).
- Protection from unfair trading – further issues (see pages 28 - 29 for proposals and consultation questions).

transparency, the majority of the empirical studies tend to find that greater price transparency...leads to lower and more uniform prices"

- Online interface orders (see pages 29 - 31 for proposals and consultation questions).

1.5 Consultation timeline:

Consultation launches: Monday 4 September 2023

Consultation concludes: Sunday 15 October 2023

Consultation response published: Autumn 2023

1.6 Who should respond to this consultation?

We are seeking views from anyone who has an interest, expertise, or experience in any or all the proposals contained in this consultation document. We would particularly welcome views from:

- Consumers
- Consumer bodies
- Businesses of all sizes
- Business and trade bodies and representative groups
- Enforcement bodies and agencies
- Manufacturers and trade bodies and representative groups of manufacturers
- Charitable organisations

2. Overview of consultation topics

Summary:

We are consulting on proposals on five key areas of consumer information transparency, with the aim of improving the quality and accessibility of information so consumers can make informed choices about the products they purchase, whether it is their weekly shopping or booking a hotel room online.

2.1 Display of Pricing Information:

How retailers display prices for consumers is governed, in particular, by the Price Marking Order (PMO) 2004, which is retained EU law (REUL). Having left the EU, we are reviewing the PMO to ensure it is up to date and fit for purpose. This means providing consumers with the information they need to understand the pricing of products so they can make more informed choices, which now is even more important. The PMO requires traders to display the final selling price and, where appropriate the final unit price (e.g., price per litre/kilogram) of products offered for sale to consumers in a clear and upfront manner. The selling price should include any taxes. This makes it easier for consumers to compare prices of the product.

Following an investigation into unit pricing by the Competition and Markets Authority (CMA), we are consulting on proposals to reform the PMO: to simplify requirements on unit pricing so it is more consistently applied, to clarify requirements on legibility and on how promotional pricing should be displayed, and to review the “small shops” exemption.

2.2 Fake reviews:

The Government is committed to tackling fake reviews. The DMCC Bill establishes regulation making powers which could allow Ministers to add to a list of banned commercial practices relating to consumers. The consultation seeks views on legislating to expressly prohibit the buying and selling of fake reviews, and a firm’s failure to take reasonable and proportionate steps to ensure reviews displayed to consumers reflect genuine consumer experiences. How these rules will work in practice, and the standards expected of firms is important to get right. The consultation therefore sets out key definitional information that we propose underpins the new requirements.

2.3 Drip pricing/ hidden fees:

Drip pricing occurs when consumers are shown an initial price for a product (known as the base price) and additional fees are revealed (or “dripped”) as consumers proceed with a purchase or transaction. This practice can occur in both online and offline settings, and “dripped fees” may be mandatory or optional.

Research we commissioned demonstrates that drip pricing is prevalent across the economy. Drip pricing is problematic when it is used to attract a consumer to a purchase with a low base price, when that base price is in fact misleading given the subsequent addition of further mandatory fees. However, there are other instances when drip pricing reflects the nature of the product sold, for instance when the personal preferences of the consumer are established, and optional additional features are added to the product. The consultation seeks views on whether and how the Government should approach the issue,

and to identify drip pricing that may be grounds for future Government intervention or stronger guidance.

2.4 Online platforms' responsibilities to consumers (platform duty):

The Digital Markets, Competition and Consumers Bill re-establishes consumer law which sets out rules around unfair trading. These include the responsibilities of online platforms (and all other commercial actors) to act with professional diligence in relation to consumer transactions promoted or made on their platforms. Consumers buy an increasing volume of products and services online, including from online platforms. Despite the UK having a strong set of core consumer rights, it is sometimes unclear how those rights should be applied in relation to those platforms.

This consultation seeks views on whether and how the Government should build on the existing definition of professional diligence. The aim would be to ensure online platforms and consumers have greater clarity over their respective rights and responsibilities. Mainly online platforms take active steps to ensure consumers using their sites are treated fairly. The Government therefore is particularly interested in developing the concept of professional diligence directly with online platforms, as well as with consumer representatives.

2.5 Online interface orders:

With online shopping becoming the norm for shoppers across the UK, "online interfaces" such as websites and apps give consumers access to an array of products, including some that are falsely described or substandard. While enforcers like sector regulators and local authority trading standards services already have powers that can address online consumer harms, the Competition and Markets Authority (CMA) has an additional, targeted power to seek court orders to label, modify or remove online content that infringes consumer law. The Government is considering whether to extend this power to apply to court for online interface orders (OIOs) and interim online interface orders (IOIOs) to additional enforcers to enable them to tackle online conduct that may not be adequately covered by their existing powers.

3. Display of pricing information

3.1 Summary:

How retailers display prices for consumers is governed, in particular, by the Price Marking Order 2004³ (the “PMO”), and, for Northern Ireland, the Price Marking Order (Northern Ireland) 2004⁴. These and predecessor orders implemented the EU’s Price Indications Directive⁵. As the PMO is almost 20 years old, and having left the EU, we are reviewing the PMO (for GB) to ensure it is fit for purpose. The Government’s aim is for consumers to have the information they need to understand the price make up of products so they can make more informed choices, whilst minimising regulatory burden to business.

The PMO requires traders to display the selling price and, where appropriate, the unit price of products sold to consumers⁶. Unit price means the final price for a metric unit of the particular product, for example kilogram or litre. The final price must be inclusive of VAT and other taxes. In the case of certain goods, listed in Schedule 1 of the PMO, unit price means the final price (including VAT and all other taxes) for the corresponding units of quantity set out in that Schedule⁷. The purpose of these requirements is to make it easier for consumers to compare the price of products.

Stakeholders have raised concerns that how the requirements of the PMO apply to certain types of promotion, such as volume pricing (e.g., multibuy discounts) or loyalty pricing (e.g., lower prices for customers who are members of the trader’s reward scheme), are unclear and capable of differing interpretation. Some retailers provide unit pricing for promotional items, but this practice is not consistent.

Some traders are exempt from some requirements in the PMO, they are covered by the ‘Small Shops exemption’. This means shops that are equal to or under 280 square metres are not required under the PMO to display unit prices for packaged products or bread made up in a prescribed quantity. We are aware that some small shops opt to provide unit pricing, however, this is also not applied consistently.

Our thinking has been informed by the Consumers and Markets Authority (CMA) report into the review of unit pricing which was published on 20 July 2023⁸. The CMA identified that whilst the larger retailers often comply with the PMO, there are certain provisions of the PMO which are unclear, leading to inconsistent approaches taken by traders as well as additional regulatory burden. This could lead to anti-competitive outcomes, as new entrants to the market are bound by the requirements of the PMO but do not have clear direction on how to comply with these requirements. We have reviewed the CMA’s report

³ SI 2004/102.

⁴ SI 2004/638.

⁵ Directive 98/6/EC.

⁶ The PMO does not apply to goods supplied in the provision of a service. The requirements to display selling price and unit price are also subject to certain exceptions, see Articles 4 and 5).

⁷ See Article 14 PMO.

⁸ The CMA report on unit pricing: <https://www.gov.uk/government/publications/unit-pricing>

thoroughly and have reflected their recommendations within our proposals in this consultation.

Separately, the Department for Environment, Food and Rural Affairs (DEFRA), the Welsh Government and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland plan to introduce a Deposit Return Scheme applying to England, Northern Ireland and Wales in October 2025. The Scottish Government plans to introduce a similar scheme in Scotland, also in October 2025.

The DRS aim to encourage consumers to recycle plastic bottles and drinks by requiring customers to pay an additional deposit when purchasing single-use drinks containers, which is then returned when the container is recycled. We are proposing to update the PMO to set out how the deposit should be displayed on the products price label, and we are consulting on how we can best do this.

Proposal

We propose to reform the PMO, so it better suits the needs of today's consumers and businesses.

There are clear consumer benefits in being able to compare prices quickly and effectively. Price transparency enables the operation of the free market, as consumers can make better informed decisions on the products that best suit their preferences on both price and quality. Open competition encourages innovation between suppliers and retailers. The PMO was developed on these sound principles to help consumers have the information they need to make informed decisions. However, over time consumer and retailer needs and behaviours have shifted, and it is important that our laws remain in step with real life needs and practices.

The PMO proposals we are consulting on cover Great Britain only. Very similar rules for Northern Ireland are set out in the Price Marking Order (Northern Ireland) 2004. It will be a matter for the Northern Ireland Executive to determine if and how it reforms the PMO (NI) 2004. The requirements of the Northern Ireland PMO currently broadly mirror those of its Great Britain equivalent. The Department will work closely with the Northern Ireland Executive, including to share the findings from this consultation, to inform policy development in Northern Ireland.

The proposals we are consulting on are:

- Mandating the consistent use of unit pricing measures for products so businesses can more easily comply, and consumers can compare similar items more easily.
- Improving the legibility of pricing information through adopting consistent standards that businesses can easily comply with rather than having to invent their own.
- Whether the current small shop exemption should be revised for clarity in any way.
- Strengthening and clarifying the requirement to provide promotional unit pricing for promotional offers, such as loyalty schemes or multibuy of similar items.
- How the DRS deposit should be displayed on pricing labels.

We encourage respondents to respond to as many questions as fully as possible, with evidence to support their views where practicable.

3.2 Unit pricing method:

The PMO generally requires traders to display the final price of a product offered for sale to consumers, inclusive of any taxes and subject to certain exceptions. In addition to the 'final price', traders must also display the unit price of a product offered for sale to consumers for, broadly, products sold from bulk and packaged goods that come within the Weights and Measures Act 1985⁹. This is the price of an item per metric unit, generally per kilogram or per litre. The display of the total selling price and total unit price allows consumers to compare similar items to make informed decisions on which item they may want to purchase based on the price.

For example, item X weighs 2 kilograms and the total price of the item is £1.50. The unit price per 1 kilogram for item X is 75 pence. Item Y is a similar product but is a different brand. Item Y also weighs 2 kilograms, but the total price of item Y is £2. This means the unit price for item Y is £1 per kilogram.

Consumers want to get the best deal possible and not pay over the odds for products. The display of final selling price and unit price helps consumers make the right choices within their budget. However, unit pricing in particular is not always consistent and can make it hard for consumers to compare products.

The CMA findings point to two key issues relating to the unit of measure traders use when displaying unit pricing. Firstly, there are issues around compliance where retailers have deviated from using the required unit of measure prescribed in the PMO. The CMA found that some retailers displayed prices per 100 grams or per 100 millilitres, instead of unit pricing by the kilogram or litre as required by the law for the products in question.

Secondly, the CMA argue that Schedule 1 of the PMO is out of date. Schedule 1 sets out a list of products that are exceptions: rather than being displayed in unit prices per kilogram or litre, the schedule establishes that they should be displayed per 100 grams or 100 millilitres. There are sound reasons for these exceptions. The schedule covers products which are lighter in weight, and for which kilogram units, for instance, do not make sense. However, the Schedule is problematic insofar as it is out of date as the CMA point out, and non-exhaustive. It does not account for developments in retail markets over the past 20 years.

We propose to simplify the PMO by revoking relevant provisions so that the unit price for all products must be displayed by kilogram, litre, square metre, cubic metre or number. Where items can be sold by weight *or* volume, we propose requiring that retailers pick one measure and apply that consistently to all comparable products in their store. We believe that these simplifications will make the regulation easier for businesses to comply with, and by mandating greater consistency in the units used for unit pricing we will make it easier for consumers to compare products and enable them to make a more informed assessment of what is good value.

Questions:

⁹ Government is continuing to review the responses to the consultation on flexibility on imperial measures.

1. Traders are currently required to unit price certain items. Should traders be required to adopt consistent unit pricing, per kilogram or per litre, for comparable products that can be sold by weight or by volume?
2. If you answered 'no', please could you explain why.
3. Are there any products for which you think exceptions should be made, or continue to apply, for example herbs and food colourings are currently required to be provided in unit measurements of per 10 grams? If so, which ones and why?
4. Is there anything else you would like to add?

3.3 Legibility and prominence:

Article 7 of the PMO requires that the selling price and the unit price are, in particular “unambiguous, easily identifiable, and clearly legible”.

However, other information is often displayed on or nearby the price label which can undermine the clarity of the selling and unit pricing. For example, there may be a lower price on a product for shoppers who are part of a particular reward or loyalty scheme. Quite often the lower price, which is aimed at an exclusive group, is displayed more prominently, and could lead other consumers, who are not part of the exclusive group, to think that is the price they will be paying. By addressing the issue of prominence, we will help improve consumer transparency so they are clear on what price they will pay for goods.

Furthermore, the CMA’s investigation of in-store practices found that there are issues around legibility of unit pricing information. This includes the size of font used by retailers, crowded or obscured shelf edge labels, and the use of additional decimal points, which makes it harder for consumers to read the pricing information of products.

We are consulting on whether and how to update the PMO to improve the display of pricing information¹⁰. This could include enhanced requirements for how the unit price should be displayed in relation to the selling price. In particular, we propose where promotional selling or unit prices are displayed for particular groups, e.g., members of loyalty schemes, that these selling, or unit prices are not displayed any more prominently than the price that non-loyalty scheme customers will pay. Having a clear, consistent approach will remove any ambiguity for traders. This will also help ensure consumers are clear on what the selling and unit price is and what price they will pay for goods.

Questions:

5. Are there examples of poor displays of pricing (for example, in relation to illegibility, ambiguity or proximity) that Government should consider when updating the PMO?
6. If you said ‘yes’, please can you provide more detail.
7. We intend to balance the PMO requirements on display of pricing, so they are useful to businesses without being overly prescriptive and burdensome. Do you have views on how we can ensure pricing information is clear to consumers?

3.4 Offers and promotions:

Stakeholders have raised concerns that whether Article 9 of the PMO applies to certain types of price promotion, such as volume pricing (e.g., multibuy discounts) or loyalty pricing (e.g., lower prices for customers who are members of the trader's reward scheme), is unclear, and capable of differing interpretation¹¹.

Whilst placing products on offer or promotion can give consumers good value for money, current differences in the interpretation of the PMO and pricing practices means consumers cannot easily compare products to ensure they are in fact getting a good deal. Inability to compare the unit price, in particular, of items could mean that whilst there may be some savings to the items on offer or promotion, it may not necessarily be the cheapest option.

We propose to update Article 9 of the PMO firstly, to explicitly require unit pricing for products on promotion to reflect the promotional unit price where this is practical. However existing exemptions should continue to apply – e.g., the exemption for products discounted due to damage or deterioration.)

Secondly, to update the PMO to explicitly require the promotional selling price to be given. However relevant exemptions should continue to apply (for example, for products sold from bulk). These requirements would apply to a price which is (i) a reduction from a previous selling or unit price, (ii) a loyalty price presented alongside a standard selling price or (iii) for multi buy products of the same price and size, or another type of volume-based price reduction.

This will help consumers understand what price they can expect to pay for the item, as well as be able to compare like for like items regardless of whether they are an 'exclusive' price, on offer or promotion, or the 'regular' price.

Questions:

8. Should the display of the promotional *unit* price be explicitly required for all products offered for sale to consumers on promotion, wherever practical e.g., where the same products in the same quantity are sold together on promotion?
9. Should the display of the promotional *selling* price be explicitly required for all products offered for sale to consumers on promotion?
10. Are there examples of items on promotion which should be excluded from unit pricing, such as 'meal deals'? Please provide detail on your answer.

3.5 Small shops:

Small shops (defined as 'having relevant floor area not exceeding 280 square metres') ⁽²⁰²³⁾ are exempt from the PMO requirements to unit price pre-packaged products in constant quantities¹². This reflects the Government's approach to minimising the burden of regulation and exempting the smallest businesses from regulation where possible.

We are using this consultation as an opportunity to seek views on whether the small shop exemption should continue to apply, and whether we should use an alternative threshold

¹¹ CMA Groceries Unit Pricing, Review of Compliance, July 2023 at paras 95, 98 – 107.

¹² See Article 5(3)(c) and (d) PMO 2004.

to determine the exemption, e.g., basing on annual turnover or number of employees. Using such an alternative threshold could mean small shops that belong to national chains are no longer exempt, whilst the exemption could extend to small online retailers who currently must comply with unit pricing requirements for pre-packaged products in constant quantities.

Questions:

11. Should the small shops exemption¹³ continue to apply?
12. If you answered 'no', please can you explain why.
13. Are there other ways Government can clarify or improve the threshold used to determine the small shops exemption in the PMO?
14. Is there anything else regarding the PMO you would like to tell us?

3.6 Deposit Return Schemes (DRS):

DEFRA, the Welsh Government and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland plan to introduce a Deposit Return Scheme applying to England, Northern Ireland and Wales in October 2025. The Scottish Government plans to introduce a similar scheme in Scotland, also in October 2025.

This is because UK consumers go through an estimated 14 billion plastic drinks bottles and 9 billion cans a year, yet consumers often fail to place a value on drinks containers once used or are unable to find an appropriate or convenient route for recycling. This leads many containers to be littered or disposed of in residual waste, despite being recyclable.

It is a priority for governments in all nations to move towards a circular economy, where resources are protected and kept in use for as long as possible and waste is minimised. Introducing a Deposit Return Scheme (DRS) for single use drinks containers forms a key part of delivering this, as well as supporting government ambitions to reduce litter, and to combat the effects of plastic pollution. Latest collection rates in the UK for in-scope drink containers are around 70% (2018). We expect a DRS in England, Wales and Northern Ireland to increase collection rates for in-scope material to over 90%.

Two consultations have been held on developing a DRS for England, Northern Ireland and Wales, with the latest consultation response being published in January 2023. DRS Regulations have been in place in Scotland since 2020. Governments have set out that the DRS will start from 1 October 2025. All four nations are working closely together to ensure schemes can work together across the UK.

A DRS would charge a consumer a deposit up-front when they buy a drink in a container that is in-scope of the scheme. The deposit can then be redeemed when the empty container is returned to a designated return point. The deposit provides a financial incentive for consumers to return drinks containers for recycling.

¹³See Article 1(2) PMO 2004 which defines relevant floor area as: "in relation to a shop means the internal floor area of the shop excluding any area not used for the retail sale of products or for the display of such products for retail sale."

A retailer who sells in-scope containers directly to a consumer in the UK will be required to add the deposit value to the purchase price and ensure pricing information clearly displays both the price of the in-scope containers and the deposit attached.

We propose to amend the PMO to include requirements for the proposed deposit return schemes (DRS).

Questions:

15. To make it clearer to consumers, we propose that retailers should display the cost of the deposit separately, so consumers know how much money they will get back if they return the eligible item to a return point. Do you agree?
16. Should the displayed unit price be calculated exclusive of the deposit so that the price per unit of drink remains comparable?
17. If you answered 'no', could you please explain why.

4. Hidden fees and drip pricing

4.1 Summary:

Drip pricing occurs when consumers are shown an initial price for a product (known as the base price) and additional fees are introduced (or “dripped”) as consumers proceed with a purchase or transaction. These additional fees can be for optional add-ons or represent mandatory charges that are required to complete the purchase. While this practice is most commonly seen online, the same can happen in offline settings.

Drip pricing can result in consumers being “baited” into choosing a product because of its lower base price, but then ultimately paying more once further fees and optional products are added. These additional 'dripped' fees will often be added once the consumer has invested her or his time in the purchase process (e.g., entering personal information), which can discourage consumers from starting the process over again with a different trader.

Drip pricing can undermine price transparency and make it difficult for consumers to make informed purchase decisions based on price and/or the characteristics of the product. As well as leading consumers to spend more than they otherwise would if the total price was clear upfront, this lack of transparency may also limit price competition as traders compete on artificially low headline prices rather than the price which consumers pay in practice. This means that consumers cannot easily compare prices across providers and make informed purchasing decisions.

Furthermore, findings from previous research have shown that drip pricing exploits consumers' behavioural biases meaning that consumers often complete a purchase despite dripped fees rendering the final of the item higher than the alternative. This is because consumers either place more weight on the first piece of information they are presented with, on the time spent going through the transaction process or convince themselves that they made the right choice by selecting one product over another despite later finding out that it will cost them more.

All these behavioural biases distort consumer decision making.

4.2 Drip-pricing research:

This year, the Government commissioned research into the prevalence and impact of online and in-app drip pricing in the UK. The research found that drip pricing is a common strategy used by online traders in the transport and communication, hospitality, and entertainment sectors in the UK:

- 46% of the 525 online and mobile app providers sampled include at least one dripped fee (not including delivery fees) as part of their checkout process. Out of the sectors sampled (entertainment, hospitality, retail, transport & communication), dripped fees are most frequently found in the transport & communication sector (72% of providers) and least frequently in the retail sector (15% of providers) once delivery fees are excluded.
- Across all sectors, service fees (fees charged to receive/purchase a service, such as booking or processing fees) tended to meet the most criteria of harm (all service

fees in the sample were mandatory, and almost three-quarters were presented late in the checkout process i.e., more than halfway through the process).

- The median mandatory dripped fee was 6% of the base product price, while the median optional dripped fee was 14% of the base product price. The largest average fees relative to the base product price were found in the transport & communication sector.

After factoring in provider market share, consumer expectations and the size/degree of harm of the dripped fees, dripped fees (other than delivery fees) are estimated to cause UK consumers to spend an additional £595 million to £3.5 billion online each year.

4.3 The current law:

UK consumer protection law already requires traders to provide consumers with the information they need to make informed decisions relating to a purchase including the provision of upfront, clear, and complete information about the price and any additional charges. For example, The Price Marking Order 2004 requires traders to indicate the final selling price on all goods for sale to consumers.

The **Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”)**, which are largely being restated in the **Digital Markets, Competition and Consumers Bill**, prohibit unfair commercial practices, including misleading actions and omissions, and failing to provide material information in an invitation to purchase, that are likely to impact a consumer’s transactional decision.

A misleading action includes providing a consumer with false information about the price of a product, or the way the price is calculated, or presenting the pricing information in a way that is likely to mislead the consumer, even if the facts themselves are accurate.

A commercial practice amounts to a misleading omission if it:

- omits “material information” (which includes information that the average consumer needs to make an informed transactional decision);
- hides “material information”; or
- provides material information in an unclear, unintelligible, ambiguous or untimely manner to consumers.

Traders who engage in commercial practices that are misleading omissions or misleading actions may be committing a criminal offence.

The Digital Markets, Competition and Consumers Bill will make the omission of material information from an invitation to purchase a separate unfair commercial practice and an offence under clause 230 of the ‘Protection from Unfair Trading’ chapter. This means that where there is an invitation to purchase, consumers must be provided with information, including that specified in the bill, which they need to make an informed transactional decision, such as a decision to visit a shop.

Questions:

18. To what extent do you think current law protects consumers from any detriment that may be caused by drip pricing?

19. Are there further steps the Government should take to better explain or promote these rules, to improve consumer protection?

4.4 Strengthening the law on drip pricing:

This section seeks views on whether there should be further intervention specifically focused on drip pricing, and if so, which practices it should address.

We are keen to seek views on the circumstances relating to drip pricing, including why businesses may use it, when it is most detrimental to consumers and when it is used legitimately.

Drip pricing is not just a concern in the UK. Canada, for example, amended and strengthened the general criminal and misleading advertising provisions of the Competition Act in 2022, to prohibit drip pricing, where compulsory charges or fees are not included in the upfront price to consumers.

4.5 Mandatory fixed fees:

Mandatory fixed dripped fees are fixed compulsory charges, which all consumers have to pay but which are not included in the base price. These may include, for example, booking or processing fees; set cover charges at a restaurant; and mandatory insurance cover required for hiring a car.

The Price Marking Order 2004 (where relevant) and the Consumer Protection from Unfair Trading Regulations 2008 (in most circumstances) require traders to include mandatory fixed fees, i.e., all fees that are compulsory and known in advance, in the price first displayed to consumers for a product.

Questions:

20. Would an explicit requirement on traders to include all mandatory fixed fees in the up-front price be effective in reducing consumer detriment? Or would better guidance explaining the existing rules be more appropriate?

4.6 Mandatory variable fees:

Mandatory variable fees are also compulsory charges, but unlike fixed fees, cannot be reasonably calculated in advance. These may include, for example, delivery fees and mileage fees for car rentals. The Consumer Protection from Unfair Trading Regulations 2008 require traders, in most circumstances, to make clear that additional mandatory fees will be added to the purchase and how they would be calculated when the base price is first displayed to a consumer.

Questions:

21. Is the provision of mandatory variable fees a problem that Government should seek to address? Please explain the reasons for your answer.

22. Should traders be required to make clear the existence of mandatory variable fees, and how they will be calculated, when they display the price for a product? Or would better guidance explaining the existing rules be more appropriate?

23. Are there any circumstances in which traders would not be able to inform consumers about the existence of mandatory variable fees and how they will be calculated at the time of providing them with the price of a product?

4.7 Optional dripped fees:

These fees may include, for example, seat selection fees and car hire charges when booking flights; a charge for gift wrapping when buying a product; and insurance when buying expensive jewellery. In each instance, the dripped fee is optional for the consumer.

The rationale for Government intervention is stronger and more relevant when dripped fees are mandatory. Nevertheless, there are optional dripped fees which a consumer may believe are in fact mandatory because of how the optional dripped fees are displayed to the consumer, for example through the use of pre-checked boxes.

In other instances, fees are presented as optional but must be paid by most consumers for a product to be usable or fit for purpose. Examples include:

- In the consumer electronics sector, appliances sold without accessories that are essential to the functioning of the product, which are then presented as optional add-ons. For example, traders selling phones and adding charging cables as an optional fee, and printers being sold with ink cartridges being charged as an optional fee.
- In the retail sector, toys being sold without the required batteries, which are charged as an optional fee to consumers.
- In the transport sector, long-haul flight tickets being sold to consumers without luggage, which is then charged as an optional fee later in the purchasing process.

Optional fees that are presented late in the purchasing process can cause additional consumer detriment, particularly where these optional fees must be paid by certain groups of consumers.. Consumers are less likely to abandon the purchase when they discover additional fees later in the purchase process as they have already spent time making an initial decision informed by the product's base price. This means that consumers may spend more money than they initially intended and can find it difficult to compare total prices across different providers. Government is therefore seeking views in this consultation on how the provision of optional fees can be made fairer and more transparent to enable consumers to make informed purchasing decisions.

Questions:

24. When should traders that provide optional fees for products present these to consumers in the purchasing process? Please explain the reasons for your answer.
25. Are there any types of optional fees that cannot be presented to consumers early in the purchasing process? If so, what are these, and why?
26. Are there any other features of products or services that are presented as optional fees but are in practice unavoidable for most, or certain groups of consumers? For example, is it really optional, when buying airplane tickets for parents with young children to choose to sit together?

27. In what circumstances might it be reasonable for traders to charge for features that are presented as optional but are in practice unavoidable for certain groups of consumers? What might the consequences be of any action to limit this practice?
28. Should the law be strengthened to address optional dripped fees that are detrimental to consumers, or should guidance be produced for specific sectors that sets out how to provide optional fees in a way that is fair, transparent, and lawful? Please explain the reasons for your answer.
29. Should any guidance that is produced on optional fees be targeted to specific sectors? If so, which sectors should guidance focus on?

5. Fake reviews

5.1 Summary:

UK consumers spent £224 billion in online retail markets in 2022¹⁴. Reviews play an essential role in online shopping, providing valuable insights and social proof that can help consumers make more informed decisions. Nine out of 10 UK consumers report reading reviews¹⁵.

As the number of consumers shopping online continues to increase, reviews will play an increasingly important role, making it crucial to ensure the authenticity of online reviews is protected. Whilst genuine consumer reviews can help consumers make better informed purchasing decisions, the growing prevalence of fake reviews can distort consumer purchase decisions, potentially leading consumers to choose poorer quality products¹⁶ and making it difficult for traders to operate on a level playing field.

In 2022, the Government commissioned research into the prevalence and impact of fake consumer reviews on UK e-commerce platforms¹⁷. The research found that:

- For the nine most frequently used e-commerce platforms by UK consumers, an estimated **11 to 15 per cent of all reviews are fake**.
- **Consumers cannot spot well-written fake reviews and were 3.1 per cent more likely to purchase a product when exposed to these**. This impact increases with price as consumers were 9.2 per cent more likely to purchase a product with well-written fake reviews if the product price was greater than £80.
- Fake review text alone causes an estimated **£50 million to £312 million** of detriment to UK consumers every year.

There are a number of practices involving fake reviews that cause harm to consumers that the government is seeking to address. The most common is traders paying for, or incentivising others to submit reviews that do not reflect a genuine experience of a product or trader. These reviews can be positive or negative and are likely to mislead consumers through the provision of information that does not reflect a genuine experience. Traders may use positive fake reviews for their own products to boost sales and pay for negative fake reviews to be posted on competitor's products to gain an unfair advantage.

Whilst traders may use incentivised reviews to gather feedback on their products, these should not be contingent on providing positive feedback. Incentivised reviews that do not reflect an individual's genuine experience of that product or trader are also likely to mislead consumers, including where the review is not clearly labelled so consumers are

¹⁴ Capgemini. (January 10, 2023). Online retail spending in the United Kingdom (UK) from 2011 to 2022 (in billion GBP).

¹⁵ Salience Search Marketing. (February 19, 2021). Online product review reading behaviour among consumers in the United Kingdom (UK) in 2021.

¹⁶ Jesper Akesson, Robert W. Hahn, Robert D. Metcalfe, and Manuel Monti-Nussbaum, "The Impact of Fake Reviews on Demand and Welfare," National Bureau of Economic Research Conference, 20 July 2022

¹⁷ Fake online reviews research: estimating the prevalence and impact of fake online reviews, Department for Business and Trade April 2023.

unaware of the incentive. Linked to this are reviews that appear to be consumer reviews but are actually reviews written by the trader, on behalf of the trader, or hidden advertising. Such reviews are considered misleading in most circumstances and harmful to consumers.

There are also a range of practices through which traders (including online platforms) that publish or provide access to reviews may manipulate the information derived from reviews to mislead consumers. This includes suppressing or deleting negative reviews (sometimes known as 'cherry picking'); applying different weightings to reviews depending on the source consumer such that the aggregate ratings are artificially inflated; disabling the ability for a consumer to change any default sorting option (for example, such that the only available order is by highest review score), and presenting reviews of a different product as relating to the product a consumer is considering (sometimes known as review hijacking, review merging, or catalogue abuse).

Following its consultation in 2021, the Government committed to consult on adding the following practices to the list of banned practices in Schedule 1 of the Consumer Protection from Unfair Trading Regulations (CPRs):

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

The CPRs have been largely re-stated in Chapter 1 of Part 4 of the DMCC Bill entitled 'Protection from Unfair Trading'. Schedule 18 to the DMCC Bill sets out 31 commercial practices which are unfair in all circumstances. The Government is seeking to take in the Bill a delegated power to amend the list of practices in Schedule 18. This consultation seeks views on proposals to add practices involving fake reviews to this list as well as make minor clarificatory changes to existing automatically unfair commercial practices.

5.2 Proposal:

The aim of these proposals is to reduce the prevalence of fake reviews so that i) consumers can have greater confidence in reviews from other consumers and any information that is determined or influenced by them when considering purchases; and ii) businesses can compete on the strength of their products without being undermined by unfair practices. The Government is proposing to do this by making specific review-related practices automatically unfair in all circumstances so that enforcers can take more effective and swifter action against those who seek to deceive consumers through the buying, selling, commissioning, and publishing of fake reviews. The Government also proposes to make it explicit that there is a legal responsibility on traders (including online platforms) to take appropriate steps to prevent any information they choose to publish concerning reviews from deceiving consumers.

We therefore propose to add the following practices to Schedule 18 of the DMCC Bill and invite public views:

- Submitting a fake review, or commissioning or incentivising any person to write and/or submit a fake review of products or traders.
- Offering or advertising to submit, commission or facilitate a fake review.
- Misrepresenting reviews, or publishing or providing access to reviews of products and/or traders without:
 - i. taking reasonable and proportionate steps to remove and prevent consumers from encountering fake reviews;
 - ii. taking reasonable and proportionate steps to prevent any other information presented on the platform that is determined or influenced by reviews from being false or in any way capable of misleading consumers.

5.3 What will traders be required to do to comply with these rules:

Any trader that publishes or provides access to reviews has a responsibility to make sure that consumers are not misled by the information that they present to consumers from those reviews. Given the scale and increasing sophistication of fake reviews, traders that publish or provide access to reviews of their own products, and/or the products of third-party traders, are often the only ones to have the quality of information about business and user reviewer activity and available tools to proactively identify and tackle fake reviews effectively.

Taking reasonable and proportionate steps to prevent consumers from encountering fake reviews is likely to require a trader to have policies and processes in place for regularly and proactively assessing risk, detecting suspicious reviews; removing fake reviews; and sanctioning those that commission, facilitate, or otherwise arrange for the posting of fake reviews. Traders should also have in place reporting mechanisms that allow consumers to report suspicious activity; as well as conduct a regular evaluation of the effectiveness of their policies, processes, and monitoring systems.

In general, this proposal is unlikely to result in traders being subject to enforcement action on the basis that they publish a single fake review. This would be a very burdensome and disproportionate regulation. The trader's key responsibility under these provisions is to ensure consumers are not misled about the nature of other consumers' experience of a product or trader due to the impact of fake reviews.

It is also important for traders to ensure that if they draw on information from reviews to determine or influence other information that they present to consumers – for example aggregated ratings or endorsements – that the information they draw on and present is accurate, and they are transparent about how they have compiled the information. Aggregated information is often the first thing consumers see and is likely to be used by consumers to compare products and traders, so can be very influential in transactional decisions. As such, if a trader is going to present such information, they have a responsibility to ensure that consumers are not deceived or otherwise likely to be misled by it.

Given that commercial practices and technology can evolve over time, we recognise that what are deemed “reasonable and proportionate steps” in relation to tackling fake reviews may also change over time. We therefore propose to work with the CMA to produce guidance to explain the law and set out what Government expects traders to do to comply. We would expect the CMA to consult on this guidance and once finalised used the new administrative enforcement powers they will be given by the DMCC Bill to take enforcement action against traders failing to follow the guidance. This will be in addition to the continuing work of Local Authority Trading Standards who will also be able to use the guidance as a reference in their enforcement action.

Questions:

30. Do you agree with the addition of the following commercial practices to Schedule 18 of the DMCC Bill?
- Submitting a fake review, or commissioning or incentivising any person to write and/or submit a fake review of goods or services.
 - Offering or advertising to submit, commission or facilitate fake reviews.
 - Misrepresenting reviews, or publishing or providing access to reviews of products and/or traders without: taking reasonable and proportionate steps to remove and prevent consumers from encountering fake reviews; taking reasonable and proportionate steps to prevent any other information presented on the platform that is determined or influenced by reviews from being false or in any way capable of misleading consumers.
31. Do you agree that adding the misrepresentation of consumer reviews in ways which are likely to mislead consumers to Schedule 18 of the DMCC is sufficient to prohibit traders from:
- Deleting or suppressing negative reviews;
 - only publishing positive reviews;
 - applying different weightings to reviews based on the source consumer;
 - publishing or providing access to incentivised reviews that are not clearly labelled as such;
 - disabling the consumer from changing default sorting options; and
 - presenting reviews of a different product as relating to the product a consumer is considering (sometimes known as review hijacking, review merging, or catalogue abuse).
32. Do you agree that guidance should be published to help traders understand and comply with the proposed requirements concerning “*reasonable and proportionate steps*”? If so, what form should this guidance take?
33. What reasonable and proportionate steps do you consider traders should take to remove fake reviews and prevent consumers from encountering them?
34. What reasonable and proportionate steps should traders take to prevent any other information presented on the platform that is determined or influenced by reviews from misleading consumers?
35. Should traders in scope of these requirements be expected to:
- Have proactive detection processes in place to identify suspicious reviews;
 - Have procedures for removing and preventing consumers from encountering fake reviews; and

- c) Sanction users and businesses in response to fake views.
36. Do you agree that some traders should also be expected to:
- a) have a process for assessing the risk that fake reviews will appear on their website;
 - b) a reporting mechanism that allows people to report suspicious activity; and
 - c) undertake regular evaluation of the effectiveness of these systems?

5.4 Scope and definitions:

A review is fake if it purports to but doesn't represent a genuine consumer experience. We propose that reviews should be in scope if they are targeted at consumers and relate to the promotion or supply of products. Reviews may be of products (goods, services, and digital content) that may be purchased, experienced, or used by consumers, and traders promoting or supplying such products. They may take the form of narrative, ratings, endorsements, votes. Reviews in scope may also be on different mediums and include written, video and voice reviews.

There may be reviews which are of interest or useful to consumers which may not be by consumers, such as professional reviews in a newspaper or magazine, or reviews by influencers. Any review that purports to be left by a consumer when this is not the case would be considered fake as it does not represent a consumer's genuine experience of a product or trader. For example, an influencer who pretends to have used and be reviewing a product as a consumer but in fact has been incentivised to endorse or promote it in way they have not. Such conduct can also amount to falsely representing oneself as a consumer, which is an unfair commercial practice in all circumstances under the Schedule 18 of the DMCC Bill.

If the content of a review is influenced by a trader in such a way that it does not represent a consumer's genuine experience, it is considered a fake review. Our proposals aim to prohibit such fake reviews. We recognise that traders may want to encourage the submission of reviews for legitimate reasons, such as to gather feedback, and may offer incentives to do so. For a review to be genuine, the content of incentivised reviews must represent a genuine experience, and any steps taken to encourage or incentivise the submission of reviews should not have any influence on the content of the review. In addition, traders (including online platforms) publishing or providing access to such reviews should clearly label where reviews have been incentivised and set out what the incentive was. This is to distinguish incentivised reviews from other reviews to avoid misleading consumers.

Further, traders should have a fair and transparent policy on incentivised reviews. For example, traders may encourage consumers to leave reviews by telling them that they will be entered into a prize draw. This would be a fair practice on the basis that the incentive is offered in a way that is not likely to distort the content of reviews, such as by only being offered to consumers who leave a certain type of review. Traders offering free products for review should make clear to consumers that the review is the result of receiving a free or discounted product and information should be available explaining how these reviewers are selected.

Questions:

37. Are there any kinds of review that are (a) missing from the description above, or (b) that you think should not be in scope? If so, please explain why.
38. Do you think that the definition of fake review should require a consumer to have bought or used the relevant product?
39. Do you agree with the policy on incentivised reviews above? Are there any forms of incentivisation that would not be covered by it?

5.5 Civil and criminal liability:

Currently, all but banned practices 11 and 28 in Schedule 1 of the CPRs carry criminal liability. The delegated power that the Government is seeking to be able to amend Schedule 18 will only allow practices added to the Schedule to carry civil liability. Given the scale, sophistication and commercial impact associated with the generation of fake reviews we are seeking views as to whether all or some of the proposed banned practices should also be criminal offences, and whether, if they attract civil liability alone, that would be sufficient for effective enforcement and deterrence.

Question:

40. Should the proposed new banned practices on fake reviews be subject to criminal liability? If so, which? Please explain the reasons for your answer.

5.6 Schedule 18 - Other matters:

We would also welcome hearing from respondents about any other improvements to Schedule 18 that they would like us to consider. The practices currently listed there largely reflect those set out at Schedule 1 of the CPRs which came into effect in the UK in 2008. It is therefore important to ensure they remain relevant and necessary, and, to that end, we would welcome views from respondents as to whether any practices ought to be removed, updated or clarified.

Questions:

41. Are the current banned practices in Schedule 18 relevant? If no, please identify which you think are redundant and explain why?
42. Do any of the banned practices require updating or clarifying? If yes please elaborate which one, what in your view needs changed and why.
43. Are there any practices you think should be added to Schedule 18? If yes, please identify which and why?

6. Online platforms

6.1 Summary:

The growth of online retail has changed the relationship between UK consumers and the traders from whom they purchase products or services. Not only are many purchases now made electronically, at a distance from the retailer, but they are also often made or promoted on a third-party website or app – a so-called ‘online marketplace’ - or promoted through a third-party online platform.

Consumers have always been able to buy products from some online marketplaces, like Amazon or eBay. But increasingly other kinds of online platforms are developing marketplace functions or are facilitating the promotion of products or services. For instance, traders increasingly promote products through social media platforms, and Facebook, Instagram and TikTok all offer ‘shops’ functionalities that allow traders to sell their products directly through the platform’s interface. Facebook also provides its Marketplace functionality, which allows users to sell to each other. And many online platforms generate revenue from other traders advertising on their platform¹⁸.

While this has increased consumer choice and driven price competition, it has also created a new avenue for consumer harms. The Consumer Protection Study 2022 found that in the 12 months to April 2021, £1.8bn of net monetised detriment was caused to UK consumers by purchases through online marketplaces, £0.6bn was caused by purchases through social media platforms, and £2.5bn was caused by transactions on other websites where individuals sell to each other. This £4.9bn of total net detriment caused to consumers by purchases on online third-party platforms constituted around 10 per cent of all monetised net detriment (£54.2bn) experienced by UK consumers over the same period through all purchase mediums (i.e., both online and in-person).

Rogue traders selling or promoting through online platforms also undercut UK businesses that comply with the rules, undermining fair competition and therefore negatively impacting the jobs and economic growth those businesses create.

Current consumer law imposes duties on traders, including online platforms, to protect consumers. As businesses that facilitate the promotion, sale and supply of products to and from consumers, online platforms that perform these functions fall within the Consumer Protection from Unfair Trading Regulations 2008 both in their own right and when acting in the name of or on behalf of another trader. These provisions are restated in the Digital Markets, Competition and Consumers Bill, which expressly state that acts or omissions relating to the supply or promotion of another trader’s products to consumers, or a consumer’s products to a trader or any other person, amount to a commercial practice and are within the scope of the legislation.

¹⁸ Separately, DCMS are consulting on online advertising programme:
<https://www.gov.uk/government/consultations/online-advertising-programme-consultation>.

These provisions include the prohibition on acting contrary to the requirements of professional diligence and prohibitions on misleading actions or omissions and aggressive practices, as well as the list of practices that are in all circumstances considered unfair set out in Schedule 1 to the Consumer Protection from Unfair Trading Regulations 2008 and Schedule 18 of the DMCC Bill.

The prohibition on acting contrary to the requirements of professional diligence requires traders to act with reasonable skill and care, commensurate with honest market practice and the general principle of good faith in their field of activity. The Government is keen to ensure that the application of these standards to online platforms is well understood. This consultation therefore seeks to understand how both traders and consumers consider this general standard applies across all consumer transactions on online platforms.

Consumers also benefit from specific protections in areas like product safety and advertising standards, where the government is also acting to ensure consumers are protected. For example, the recently published UK Product Safety Review consultation (UKPSR)¹⁹ includes proposals for ensuring online platforms take due care to identify and remove unsafe products, provide consumers with accurate information on higher risk products and cooperate with regulators.

The Government intends that the practical application of the professional diligence requirements should complement area-specific obligations such as those proposed in the UKPSR.

6.2 Proposal:

The Government wishes to explore options for providing helpful guidance in this area, to drive up compliance with the requirements of consumer law and increase consumers' confidence in shopping online without adversely affecting the innovation in online retail that has brought such significant consumer benefits.

The Government therefore invites views from the public on the following:

- What practices of online platforms are or should be considered consistent with the requirements of professional diligence?
- How best practice for complying with the requirements of professional diligence for online platforms should best be set out and communicated. This could include government guidance, a code of conduct, a self-regulatory forum or other options.

Questions:

44. Which consumer harms are particularly prevalent and/or detrimental on online platforms?
45. What do you understand the requirements of professional diligence to require in practice from online platforms?
46. Are you aware of any examples of where the requirements of professional diligence have hampered innovation in the online platforms sector?

¹⁹ <https://www.gov.uk/government/consultations/smarter-regulation-uk-product-safety-review>

47. Are there particular practices of online platforms where the application of the professional diligence requirements is uncertain?
48. How should best practice for complying with the requirements of professional diligence for online platforms be set out and communicated?
49. Is the current definition of professional diligence appropriate for regulating online platforms? If not, how do you consider it could be improved?

7. Protection from unfair trading: further issues

7.1 Private rights of redress: prohibited practices:

At present, the CPRs provide for consumers to exercise private rights of redress, under certain circumstances, where they have been the victim of a *misleading action* or an *aggressive practice*. This is replicated in the DMCC Bill. On the other hand, consumers who have suffered detriment as the result of a *misleading omission*, a *breach of professional diligence* by a trader or a *practice listed at Schedule 1 of the CPRs or Schedule 18 of the DMCC Bill* do not have any private rights of redress currently.

Clause 235(3)(a) of the DMCC Bill provides a power for the Secretary of State to extend the existing rights of redress to unfair commercial practice or practices which do not attract such rights currently. Accordingly, and pursuant to that clause, we invite views on the following:

Question:

50. Should the Government add further commercial practices that are unfair under Part 4, Chapter 1 to the list of prohibited practices which attract private rights of redress? Please explain your answer.

8. Online interface orders

8.1 Summary:

As more commercial practices move online, “online interfaces” such as websites and apps have become increasingly central to consumers’ shopping habits. The law already protects consumers buying online and enforcers increasingly take action to tackle online content of concern, such as untransparent price information on online travel agencies’ websites²⁰ or improper disclosure of paid-for promotions in influencers’ social media posts²¹.

Existing powers under Part 8 of the Enterprise Act 2002 (EA02) allow consumer enforcers like the CMA, sector regulators like Ofcom and Ofgem and local authority trading standards services (LATSS) to seek voluntary undertakings and court orders to stop or prevent consumer law breaches.

In addition, under Part 8, the CMA may apply to court for an online interface order (OIO) or, in urgent cases, for an interim online interface order (IOIO). These are court orders that direct a person to do one or more of the following:

- remove content from, or modify content on, an online interface;
- disable or restrict access to an online interface;
- display a warning to consumers accessing an online interface;
- delete a fully qualified domain name and take any steps necessary to facilitate the registration of that domain name by the CMA.

The court can make an online interface order as a last resort, and only if certain conditions are met, i.e. that there has been or is likely to be an infringement of consumer protection law, there are no other wholly effective means of stopping or preventing the infringement and the order is necessary to avoid the risk of serious harm to the collective interests of consumers. The court can make an *interim* online interface order where the infringement is alleged, and the court considers that it is likely that the strict criteria listed above for it to make an online interface order would be met.

The court-based enforcement regime in Chapter 3 of Part 3 of the DMCC Bill²² restates, simplifies and enhances the regime provided by Part 8 of the EA02. Clause 144 of the DMCC Bill²³ defines two categories of enforcers: public designated enforcers (to which the CMA, sector regulators and LATSS belong) and private designated enforcers (of which there is currently only one – the Consumers’ Association, i.e. Which?).

In updating the online interface powers through the DMCC Bill²⁴, the Government is seeking views on whether empowering additional consumer enforcers to seek OIOs and

²⁰ <https://www.caa.co.uk/media/dhbd15h2/table-of-undertakings.pdf>

²¹ <https://www.gov.uk/cma-cases/social-media-endorsements>

²² This regime will replace the court-based regime set out in Part 8 of the Enterprise Act 2002 for, broadly, conduct which takes place after commencement of the DMCC Bill.

²³ Bill version as amended in Public Bill Committee: <https://publications.parliament.uk/pa/bills/cbill/58-03/0350/220350.pdf>.

²⁴ See clauses 153 to 155, Bill version as amended in Public Bill Committee.

IOIOs from the court may bolster the impact of their interventions and/or increase the deterrence effect of the regime.

8.2 Proposal:

The Government is considering whether to extend the power to apply to court for OIOs and IOIOs to additional consumer law enforcers. With the rise of online commerce, it is important that all enforcers have the powers they need to tackle problematic online practices effectively.

While the online interface powers are currently limited to the CMA, other enforcers are already empowered to take action against traders who use online interfaces to promote or supply falsely described or substandard products. For example, they can apply to court for an enforcement order or interim enforcement order against a person suspected of breaching consumer protection laws or any person acting as an accessory.

Accordingly, in an appropriate case, an enforcer may be able to seek an enforcement order which directs the enforcement subject to take one or more of the actions which can be included in an online interface order. For example, the court granted an interim enforcement order on application from the Office for Fair Trading (OFT)²⁵ requiring several traders to cease to offer or sell London Olympic Games tickets through their websites²⁶. Ultimately, the OFT was able to have the sites redirected so that consumers could no longer access them.

However, in some instances where the infringing trader cannot be easily identified or is based in a jurisdiction beyond the enforcer's practical reach, stopping a harmful practice may rely on enforcers' ability to take formal enforcement action through a third party owning and/or operating the online interface. This may be, for example, a platform hosting another trader's content or a domain name system.

Sometimes a third party may wish to cooperate fully with an enforcer but only if its cooperation is required by law to avoid clashing with its contractual responsibilities to its clients. In such cases, online interface powers may be a more effective tool as they allow orders to be made against third parties as well as the traders breaching the law.

Questions:

51. Should the power to make applications to the court for online interface and interim online interface orders under Part 3 of the Digital Markets, Competition and Consumers Bill be extended to additional enforcers (listed in clause 144 of the DMCC bill)?
52. In what circumstances do you expect this power to be used by non-CMA enforcers if it is so extended?
53. Are there any downsides to extending this application power to additional enforcers, provided the decision to make online interface and interim online interface orders will continue to rest with the court?

²⁵ The OFT was the CMA's predecessor organisation.

²⁶ <https://www.gov.uk/cma-cases/olympic-tickets-sales-by-unauthorised-traders>

54. Should either or both public designated enforcers and private designated enforcers, as defined in clause 144 of the DMCC Bill, be empowered to seek online interface and interim online interface orders from the court?

55. Please explain your answer to question 4 above.

Questions

Display of pricing information

1. Traders are currently required to unit price certain items. Should traders be required to adopt consistent unit pricing, per kilogram or per litre, for comparable products that can be sold by weight or by volume?
2. If you answered 'no', please could you explain why.
3. Are there any products for which you think exceptions should be made, or continue to apply, for example herbs and food colourings are currently required to be provided in unit measurements of per 10 grams? If so, which ones and why?
4. Is there anything else you would like to add?
5. Are there examples of poor displays of pricing (for example, in relation to illegibility, ambiguity or proximity) that Government should consider when updating the PMO?
6. If you said 'yes', please can you provide more detail.
7. We intend to balance the PMO requirements on display of pricing, so they are useful to businesses without being overly prescriptive and burdensome. Do you have views on how we can ensure pricing information is clear to consumers?
8. Should the display of the promotional *unit* price be explicitly required for all products offered for sale to consumers on promotion, wherever practical e.g., where the same products in the same quantity are sold together on promotion?
9. Should the display of the promotional *selling* price be explicitly required for all products offered for sale to consumers on promotion?
10. Are there examples of items on promotion which should be excluded from unit pricing, such as 'meal deals'? Please provide detail on your answer.
11. Should the small shops exemption²⁷ continue to apply?
12. If you answered 'no', please can you explain why.
13. Are there other ways Government can clarify or improve the threshold used to determine the small shops exemption in the PMO?
14. Is there anything else regarding the PMO you would like to tell us?
15. To make it clearer to consumers, we propose that retailers should display the cost of the deposit separately, so consumers know how much money they will get back if they return the eligible item to a return point. Do you agree?
16. Should the displayed unit price be calculated exclusive of the deposit so that the price per unit of drink remains comparable?
17. If you answered 'no', could you please explain why.

Hidden fees and drip pricing

²⁷See Article 1(2) PMO 2004 which defines relevant floor area as: "in relation to a shop means the internal floor area of the shop excluding any area not used for the retail sale of products or for the display of such products for retail sale."

18. To what extent do you think current law protects consumers from any detriment that may be caused by drip pricing?
19. Are there further steps the Government should take to better explain or promote these rules, to improve consumer protection?
20. Would an explicit requirement on traders to include all mandatory fixed fees in the up-front price be effective in reducing consumer detriment? Or would better guidance explaining the existing rules be more appropriate?
21. Is the provision of mandatory variable fees a problem that Government should seek to address? Please explain the reasons for your answer.
22. Should traders be required to make clear the existence of mandatory variable fees, and how they will be calculated, when they display the price for a product? Or would better guidance explaining the existing rules be more appropriate?
23. Are there any circumstances in which traders would not be able to inform consumers about the existence of mandatory variable fees and how they will be calculated at the time of providing them with the price of a product?
24. When should traders that provide optional fees for products present these to consumers in the purchasing process? Please explain the reasons for your answer.
25. Are there any types of optional fees that cannot be presented to consumers early in the purchasing process? If so, what are these, and why?
26. Are there any other features of products or services that are presented as optional fees but are in practice unavoidable for most, or certain groups of consumers? For example, is it really optional, when buying airplane tickets for parents with young children to choose to sit together?
27. In what circumstances might it be reasonable for traders to charge for features that are presented as optional but are in practice unavoidable for certain groups of consumers? What might the consequences be of any action to limit this practice?
28. Should the law be strengthened to address optional dripped fees that are detrimental to consumers, or should guidance be produced for specific sectors that sets out how to provide optional fees in a way that is fair, transparent, and lawful? Please explain the reasons for your answer.
29. Should any guidance that is produced on optional fees be targeted to specific sectors? If so, which sectors should guidance focus on?

Fake reviews

30. Do you agree with the addition of the following commercial practices to Schedule 18 of the DMCC Bill?
 - a) Submitting a fake review, or commissioning or incentivising any person to write and/or submit a fake review of goods or services.
 - b) Offering or advertising to submit, commission or facilitate fake reviews.
 - c) Misrepresenting reviews, or publishing or providing access to reviews of products and/or traders without: taking reasonable and proportionate steps to remove and prevent consumers from encountering fake reviews; taking reasonable and proportionate steps to prevent any other information presented on the platform that is determined or influenced by reviews from being false or in any way capable of misleading consumers.

31. Do you agree that adding the misrepresentation of consumer reviews in ways which are likely to mislead consumers to Schedule 18 of the DMCC is sufficient to prohibit traders from:
- Deleting or suppressing negative reviews;
 - only publishing positive reviews;
 - applying different weightings to reviews based on the source consumer;
 - publishing or providing access to incentivised reviews that are not clearly labelled as such;
 - disabling the consumer from changing default sorting options; and
 - presenting reviews of a different product as relating to the product a consumer is considering (sometimes known as review hijacking, review merging, or catalogue abuse).
32. Do you agree that guidance should be published to help traders understand and comply with the proposed requirements concerning “*reasonable and proportionate steps*”? If so, what form should this guidance take?
33. What reasonable and proportionate steps do you consider traders should take to remove fake reviews and prevent consumers from encountering them?
34. What reasonable and proportionate steps should traders take to prevent any other information presented on the platform that is determined or influenced by reviews from misleading consumers?
35. Should traders in scope of these requirements be expected to:
- a) Have proactive detection processes in place to identify suspicious reviews;
 - b) Have procedures for removing and preventing consumers from encountering fake reviews; and
 - c) Sanction users and businesses in response to fake views.
36. Do you agree that some traders should also be expected to:
- a) have a process for assessing the risk that fake reviews will appear on their website;
 - b) a reporting mechanism that allows people to report suspicious activity; and
 - c) undertake regular evaluation of the effectiveness of these systems?
37. Are there any kinds of review that are (a) missing from the description above, or (b) that you think should not be in scope? If so, please explain why.
38. Do you think that the definition of fake review should require a consumer to have bought or used the relevant product?
39. Do you agree with the policy on incentivised reviews above? Are there any forms of incentivisation that would not be covered by it?
40. Should the proposed new banned practices on fake reviews be subject to criminal liability? If so, which? Please explain the reasons for your answer.
41. Are the current banned practices in Schedule 18 relevant? If no, please identify which you think are redundant and explain why?
42. Do any of the banned practices require updating or clarifying? If yes please elaborate which one, what in your view needs changed and why.
43. Are there any practices you think should be added to Schedule 18? If yes, please identify which and why?

44. Which consumer harms are particularly prevalent and/or detrimental on online platforms?
45. What do you understand the requirements of professional diligence to require in practice from online platforms?
46. Are you aware of any examples of where the requirements of professional diligence have hampered innovation in the online platforms sector?
47. Are there particular practices of online platforms where the application of the professional diligence requirements is uncertain?
48. How should best practice for complying with the requirements of professional diligence for online platforms be set out and communicated?
49. Is the current definition of professional diligence appropriate for regulating online platforms? If not, how do you consider it could be improved?

Protection from unfair trading: further issues

50. Should the Government add further commercial practices that are unfair under Part 4, Chapter 1 to the list of prohibited practices which attract private rights of redress? Please explain your answer.

Online interface orders

51. Should the power to make applications to the court for online interface and interim online interface orders under Part 3 of the Digital Markets, Competition and Consumers Bill be extended to additional enforcers (listed in clause 144 of the DMCC bill)?
52. In what circumstances do you expect this power to be used by non-CMA enforcers if it is so extended?
53. Are there any downsides to extending this application power to additional enforcers, provided the decision to make online interface and interim online interface orders will continue to rest with the court?
54. Should either or both public designated enforcers and private designated enforcers, as defined in clause 144 of the DMCC Bill, be empowered to seek online interface and interim online interface orders from the court?
55. Please explain your answer to the question above.

How to respond

Respond online at: https://ditresearch.eu.qualtrics.com/jfe/form/SV_eVsEonReTZaSL66

or

Email to: consultation.consumertransparency@businessandtrade.gov.uk

Write to:

Consumer Protection and Enforcement
Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

A response form is available on the GOV.UK consultation page:
<https://www.gov.uk/government/consultations/smarter-regulation-improving-price-transparency-and-product-information-for-consumers>

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

Legal disclaimer

Whereas every effort has been made to ensure that the information in this document is accurate the Department for Business and Trade does not accept liability for any errors, omissions or misleading statements, and no warranty is given or responsibility accepted as to the standing of any individual, firm, company or other organisation mentioned.

Copyright

© Crown Copyright 2023

You may re-use this publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence visit:

www.nationalarchives.gov.uk/doc/open-government-licence or email: psi@nationalarchives.gov.uk.

Where we have identified any third party copyright information in the material that you wish to use, you will need to obtain permission from the copyright holder(s) concerned.

This document is also available on our website at gov.uk/dbt

Any enquiries regarding this publication should be sent to us at

enquiries@businessandtrade.gov.uk.