



Department for
Business & Trade

Consultation on the implementation of the new subscription contracts regime

18 November 2024

Background	3
The Digital Markets, Competition and Consumers Act	3
Why is Government consulting?	4
Who should respond?	4
How to respond	5
1. Overview of the Digital Markets, Competition and Consumers Act and consultation proposals	7
1.1 Digital Markets, Competition and Consumers Act 2024	7
1.2 Overview of consultation proposals	8
2. Cooling-off cancellation rights: returns and refunds	11
2.1 Approach for cooling-off return and refunds	12
2.2 Refunds and returns for goods	14
2.3 Refunds for services	23
2.4 Refunds for digital content	26
2.5 Refunds for mixed contracts	32
2.6 Termination of ancillary contracts	34
2.7 Extension of cooling-off periods	36
2.8 Application of cooling-off rights	39
3. Cancellation remedies for breach of duties	43
4. Repayment of refunds	47
5. Contractual terms for exiting a contract	49
6. Arrangements for exiting a contract	54
7. Information notices	56
7.1 Reminder notices	56
7.2 End of contract notices	59
7.3 Cooling-off notices	61
8. Pre-contract Information	63
Questions	66

Background

The Digital Markets, Competition and Consumers Act

Subscription contracts have become increasingly commonplace and bring convenience and benefit to both traders and consumers. However, consumers can also become stuck in subscriptions they no longer want. This may be due to a number of reasons, including a lack of clear information when a consumer enters a contract, trials which auto-renew without a consumer realising, or difficulty exiting a contract.

There are approximately 155 million active subscriptions in non-regulated sectors in the UK, representing consumer spend of approximately £26 billion per year. Approximately 5.8% of active subscriptions are unwanted by the consumer, meaning an estimated 9.7 million unwanted subscription contracts are active in the UK.

Of these unwanted subscription contracts, an estimated 3.6 million are thought to be the direct result of being rolled over from a free or discounted subscription trial period, whilst approximately 1.3 million are thought to be the result of auto-renewing subscriptions. In total it is estimated that £1.6 billion a year is spent by consumers on unwanted subscription contracts.¹

To address this unwanted spend, the Digital Markets, Competition and Consumers Act 2024 (DMCCA) sets out a legislative regulatory framework to strengthen protections for consumers when they enter a subscription contract (Part 4, Chapter 2 of the DMCCA). Chapter 1 of this consultation summarises the subscription provisions in the DMCCA.

The new consumer protections in the DMCCA are based on the existing Consumer Contracts (Information, Cancellation and Additional Charges) and Cancellation Regulations 2013 ('the CCRs') but extended to take into account the recurring nature of subscription contracts. The DMCCA is underpinned by the principle that the existing consumer protections in the CCRs should not be reduced. This principle also underpins the proposals in this consultation.

¹ All figures are taken from the Government's Impact Assessment for the Digital Markets, Competition and Consumers Act: [Subscription traps: annex 2 impact assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Why is Government consulting?

The DMCCA sets out the broad framework of rules for subscription contracts but secondary legislation is required to implement the regime. We are seeking views on proposed policies to inform the content of these regulations. In addition, we are also seeking views on certain points which we anticipate will be covered in the guidance that covers the subscription regime as a whole.

The consultation covers the following topics:

Chapter 1 - Overview of the Digital Markets, Competition and Consumers Act and consultation proposals

Chapter 2 - Cooling-off cancellation rights - returns and refunds: policy proposals on the regulatory provisions needed to implement the DMCCA's cooling-off cancellation rights.

Chapter 3 - Cancellation remedies for breach of duties: regulatory proposals for a consumer's refund rights when they cancel following a breach of implied terms concerning the trader's duties.

Chapter 4 - Repayment of refunds: sets out regulatory proposals for when and how repayments to the consumer must be made by the trader.

Chapter 5 - Contractual terms for exiting a contract: regulatory proposals to ensure that traders do not use contractual terms which may have the effect of making a consumer pay for a subscription contract for longer than they want or expected.

Chapter 6 - Arrangements for exiting a contract: the DMCCA's requirements relating to the arrangements which the trader must put in place to ensure that the consumer can exit the contract easily and offers some proposals for guidance to clarify the DMCCA's provisions.

Chapter 7 - Information notices: regulatory proposals for additional requirements in relation to reminder notices, end of contract notices, and renewal cooling-off notices.

Chapter 8 - Pre-contract information: our expectations on aspects of guidance that may be issued on the DMCCA's pre-contract information requirements.

Who should respond?

We would like to hear from anyone with an interest in subscription contracts but particularly from individual traders and their representatives who consider they will be in scope of the subscription rules. In addition, we welcome views from businesses that support traders to deliver their subscription services, including e-commerce platforms. We would also like to hear from consumer advocacy groups, legal firms, and enforcement authorities.

Deadline

The deadline for responses is 10 February 2025

How to respond

To help us analyse the responses, please [respond online](#) wherever possible.

If you are unable to use the online system, please email subscriptionregulations@businessandtrade.gov.uk with your response.

You may also write to us at:

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

If responding via email or post, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please state:

- a. The name of your organisation
- b. The nature of your organisation's activities
- c. Whether your organisation is:
 - i. a business with no employees
 - ii. a business with 1-49 employees
 - iii. a business with 250 or more employees
 - iv. a consumer advocacy organisation
 - v. an enforcement authority
 - vi. a legal firm
 - vii. Other (please describe)

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. If you do not wish the name of your organisation to be included, please let us know.

Quality assurance

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

1. Overview of the Digital Markets, Competition and Consumers Act and consultation proposals

1.1 Digital Markets, Competition and Consumers Act 2024

1. Part 4, Chapter 2 of the DMCCA sets out new rules for traders offering subscription contracts and new rights for consumers entering into them.
2. The DMCCA defines a subscription contract as a contract which is between a trader and a consumer for the supply of goods, services or digital content in return for the consumer's payment, which is not an excluded contract,² and which contains contract terms that have the effect of either or both of:
 - Auto-renewing features and a right to bring the contract to an end, which means a consumer must take action to stop the continuation of the contract beyond a mandatory period, or stop the renewal or extension of the existing contract period, rather than it terminating by default.
 - A free trial or a reduced cost for a specified period of time, after which the contract continues at full cost (for example the trader has an option to impose a charge or an increase to the original rate) and the consumer must take action to avoid defaulting to contract terms which involve paying the full or higher price.
3. The new requirements for traders and rights for consumers include:
 - **Pre-contract information:** Traders must provide clear information before a consumer enters a subscription contract. This is so the consumer knows what they are signing up to.
 - **Reminder notices:** Traders must send reminders at key points which include:
 - Before a trial comes to an end.
 - Before long-term contracts (12 months or longer) roll onto a new term.
 - Roughly every 6 months for rolling monthly contracts.
 - **Easy Exit:** Traders must provide exit routes which are straightforward and not put in place steps which are unreasonably necessary to exit the contract. If a consumer can sign up online, they must be able to exit online.
 - **Initial cooling-off period:** The consumer has a right to cancel a subscription contract. The cancellation period starts on the day the contract is entered into and

² See Schedule 22 of the DMCCA, "Excluded contracts"

ends 14 days from the day after the contract is entered. Unless the contract is for the supply of goods, in which case the period ends 14 days from the day after the first supply of goods are received. This is consistent with the CCRs. On cancelling the contract, the consumer may be entitled to a refund as set out by the regulations.

- **Renewal cooling-off period:** When there is a renewal relating to a trial or long-term subscription contract (for example, where the renewal payment is due every 12 months or longer), the consumer has 14 days to cancel from the day after they become liable for the relevant renewal payment. On cancelling the contract, the consumer may be entitled to a refund as set out by the regulations.

4. In addition, the subscription rules in the DMCCA give consumers a right to cancel a subscription if the trader breaches certain duties.
5. Public enforcers, including Trading Standards and the Competition and Markets Authority (CMA) will have powers to enforce the new regime under Part 3, Chapter 3 of the DMCCA. Part 3, Chapter 3 of the DMCCA will replace and enhance the existing consumer protection enforcement regime (under Part 8 of the Enterprise Act 2002). Under Chapter 3 of Part 3 of the DMCCA, public enforcers are empowered to seek a court order to stop breaches of specified consumer protection legislation (including the subscription rules in the DMCCA) where there is harm to the collective interests of consumers. The DMCCA provides new powers for the courts, for example, to impose civil monetary penalties on enforcement subjects who have infringed the consumer protection laws in scope of Part 3.
6. Part 3, Chapter 4 provides a new direct enforcement regime for the CMA in respect of infringements of specific consumer protection laws (including the subscription rules in the DMCCA) where there is harm to the collective interests of consumers. The CMA will be able to investigate suspected infringements of these consumer protection laws, take action to stop the infringement and impose monetary penalties on enforcement subjects directly without the need to seek a court order.

1.2 Overview of consultation proposals

Chapter 2: Cooling-off rights: return and refunds

7. On entering a subscription contract, the DMCCA gives a consumer a right to cancel a subscription contract during an initial cooling-off period. It also gives a consumer a right to cancel a contract in specific circumstances during the renewal cooling-off period. While the DMCCA provides some provisions in relation to these rights (for example, that cancellation ends both the consumer's and trader's obligations to continue to perform the contract), it gives the Secretary of State the power to make detailed provisions in regulations about the consequences of the consumer exercising them.

8. This chapter seeks views on proposed regulatory provisions needed to implement the DMCCA's cooling-off cancellation rights. Our proposals cover the following issues:
- When a consumer is entitled to a refund following the exercise of a cooling-off right in a subscription contract for the supply of goods, services, or digital content (respectively).
 - The trader's rights to recover goods supplied before the contract is cancelled.
 - How the cooling-off rights apply to a mixed subscription contract that is a subscription contract for the supply of two or more of the following: goods, services and digital content (known as 'mixed contracts').
 - The effect of exercising a cooling-off right on a contract which is ancillary to the main subscription contract.
 - Extension of the statutory cooling-off periods set down in the DMCCA.
 - The application of the cooling-off rights to contracts for the supply of particular products.
9. In developing our policy proposals, our starting point has been the long-standing cooling-off provisions in the CCRs, including the waiver for digital content. The CCRs provisions have been extended to take into account the characteristics of subscription contracts. This consultation seeks views on the operation of these new rules.

Chapter 3: Cancellation rights for breaches of duties

10. The DMCCA provides that certain contractual terms are implied into a subscription contract, which means that these terms form part of the subscription contract even when they are not written into the contract. The implied terms cover the trader's compliance with certain duties imposed on them under the DMCCA. Breach of these implied terms gives the consumer a right to cancel the contract. This chapter sets out our regulatory proposals for a consumer's refund rights when they exercise this cancellation right.
11. Again, by setting out a fairly detailed policy proposal, our intention is to assist stakeholders to fully engage in, and provide feedback on, all relevant issues including alternative approaches regarding remedies and other matters covered.

Chapter 4: Timing of repayment of refunds

12. If a consumer exercises a cancellation right in the DMCCA, a consumer may be entitled to a refund. In this chapter, we seek views on our proposed policy for regulations on when and how the trader must make refunds to the consumer.

Chapter 5: Contractual terms for exiting a contract

13. There is a risk that a trader could include terms that make the consumer liable for a payment for a renewed contract period unduly early, or unduly restrict when the consumer can exercise a contractual right to exit the contract. Both these types of terms may give rise to consumer detriment by having the effect of making the consumer pay for products which they no longer want. This chapter discusses regulatory proposals that could stop traders using these types of contract terms in subscription contracts.

Chapter 6: Arrangements for exiting a contract

14. This chapter sets out the requirements that the DMCCA places on traders to ensure that consumers can genuinely exercise their contractual right to exit a contract. It also offers some proposals to clarify the legislation which we anticipate will be delivered through guidance.

Chapter 7: Information notices

15. This chapter sets out the requirements for the different information notices that traders are required under the DMCCA to send consumers at different points of a subscription contract. It also sets out regulatory proposals for additional requirements related to these notices.

Chapter 8: Pre-contract information

16. This chapter sets out our expectations of some of the matters that guidance on the DMCCA's pre-contract information requirements is likely to include.

2. Cooling-off cancellation rights: returns and refunds

17. This chapter sets out proposals for the minimum statutory refund a consumer will be entitled to if they cancel a subscription contract within a cooling-off period, as well as proposed rules regarding returns.
18. The DMCCA provides consumers with two 14 day ‘cooling-off’ periods:
- **Initial cooling-off period:** This applies after a consumer enters a subscription contract.³
 - **Renewal cooling-off period:** This applies when a consumer is liable for a renewal payment⁴ in particular circumstances, that is, when a trial period auto-renews onto the full contract, or a contract auto renews onto a 12-month period or longer.
19. These rights are to protect consumers from being trapped in contracts they do not want.
20. During the cooling-off periods, the DMCCA gives consumers a right to cancel the subscription contract. The DMCCA also gives the Secretary of State the power to make regulations about the consequences that follow a consumer exercising a right to cancel the subscription contract in a cooling-off period (‘cooling-off rights’). These regulations may include provisions that give consumers a right to a refund, give traders a right to recover goods that have been supplied during the relevant cooling-off period, and that extend a cooling-off period in certain circumstances.
21. The proposals for secondary legislation relating to the operation of the DMCCA’s cooling-off rights discussed in this chapter cover:
- The considerations that have been taken into account when formulating regulatory proposals for calculating refunds after the subscription contract is cancelled (see section 2.1).
 - How the cooling-off rights could operate for subscription contracts for the supply of goods including proposed regulatory provisions covering consumer’s refund rights and the trader’s right to recover goods (see section 2.2).
 - How the cooling-off rights could operate for subscription contracts for the supply of services, and in particular how consumer refunds could be calculated to take into account that services may have been supplied to the consumer in a cooling-off period before the contract is cancelled (see section 2.3).

³ This is broadly consistent with the existing cooling-off right in the CCRs.

⁴ A renewal payment is defined in the DMCCA, in relation to a subscription contract as “a payment for which the consumer could avoid liability by exercising a right to bring the contract to an end” (section 258(7)).

- Options relating to the consequences of exercising a cooling-off right when the subscription contract is for the supply of digital content (see section 2.4).
- Proposals to clarify how the consumer's cooling-off rights operate in the case of a mixed subscription contract, that is where a combination of two or more of goods, services or digital content are supplied under the same subscription contract (see section 2.5).
- Proposals regarding the termination of a contract that is related to the main subscription contract but ancillary to it, when a consumer cancels the main subscription contract in the initial cooling-off period (see section 2.6).
- Proposed regulatory provisions to extend the DMCCA's cooling-off periods when a trader fails to meet the DMCCA's information requirements relating to the cooling-off rights (see section 2.7).
- Considerations of the scope of the application of the cooling-off rights to specific types of contracts (see section 2.8).

2.1 Approach for cooling-off return and refunds

22. The CCRs already allow for a consumer to cancel a distance or off-premises contract within a 14-day period and, for example, to receive a full refund for the goods returned to the trader in a resaleable condition or a pro-rata refund for services based on the contract price and what has already been supplied.

23. In developing refund rules in relation to the cancellation of subscription contracts we have sought to do the following:

- Ensure that the existing level of statutory rights for consumers in the CCRs is maintained – consumers should not lose a right they currently have, even if they gain rights elsewhere.
- Maintain the principle underlying the CCRs that if a consumer exercises a cooling-off right, neither they nor the trader should be unfairly out of pocket. For example, if a trader has already supplied a perishable product that cannot be resold and has therefore incurred non-recoverable costs, that is considered in calculating the refund.
- Take into account the nature of the subscription, including the type of product supplied, and whether or not the consumer has been supplied a product in the cooling-off period before exercising a cancellation right.
- In keeping with the intention of the DMCCA, ensure the consumer has the opportunity to reflect on whether they want to continue with a contract. This is because they will be liable for ongoing payments unless they take action to stop them.
- Where possible, streamline the operation of the rules to make the rules accessible to consumers and businesses.

Questions

Question 1. In developing the approach to cooling-off returns and refunds, we have sought to do the following (set out in paragraph 23):

- Ensure that the existing level of statutory rights for consumers in the CCRs is maintained – consumers should not lose a right they currently have, even if they gain rights elsewhere.
- Maintain the principle underlying the CCRs that if a consumer exercises a cooling-off right, neither they nor the trader should be unfairly out of pocket. For example, if a trader has already supplied a perishable product that cannot be resold and has therefore incurred non-recoverable costs, that is considered in calculating the refund.
- Take into account the nature of the subscription, including the type of product supplied, and whether or not the consumer has been supplied a product in the cooling-off period before exercising a cancellation right.
- In keeping with the intention of the DMCCA, ensure the consumer has the opportunity to reflect on whether they want to continue with a contract. This is because they will be liable for ongoing payments unless they take action to stop them.
- Where possible, streamline the operation of the rules to make the rules accessible to consumers and businesses.

Do you agree with the principles set out in this approach?

- a. Yes / No / Don't know
- b. Please provide the reasoning and any evidence behind your answer.

Question 2. Please provide any evidence you have on the extent to which consumers cancel their contracts or take action to bring their subscription contract to an end within 14 days after:

- signing up for a subscription
- a subscription trial period ending and rolling over into a paid or higher cost subscription
- a long-term subscription (12 months or longer) automatically renewing.

2.2 Refunds and returns for goods

24. Regulations need to set out the consequences of a consumer cancelling a contract within the initial and renewal cooling-off periods. For the purpose of informing these regulations, in relation to subscription contracts for the supply of goods, this section sets out our proposals covering:

- the consumer's right to a refund of the relevant payment(s)⁵ following the cancellation of a goods subscription contract during a cooling-off period, and
- the trader's right to recover any goods supplied in the relevant cooling-off period.

25. We have taken the following factors into consideration when developing refund and return policy proposals for goods:

- The extent to which it is possible and practical for the consumer to return the goods supplied under the subscription contract in the same condition they were received.
- Whether the goods have been dispatched by the trader, or whether they have been supplied/delivered to the consumer.
- How to fairly allocate responsibility and cost for returning the goods between the trader and the consumer.
- Whether goods have certain characteristics which require additional or different rules.

2.2.1 Categories of goods

26. When a consumer exercises a cooling-off right, there is no requirement to establish that the trader is at fault. This underlines the need that regulations relating to consumer refunds do not have the effect of leaving the trader out of pocket. Where the consumer has a right to cancel a contract for the supply of goods, one way to secure a fair outcome for a trader is to ensure that the regulations make sufficient provision for the trader to recover the cancelled goods in a resaleable condition.

⁵ 'Relevant payment', in the case of a subscription contract cancelled in the initial cooling-off period, is likely to mean all payments for which the consumer is liable on entering the subscription contract. In subscription contracts, this is usually the payment in return for the products being supplied during the initial contract period (for example, for a subscription that runs from month to month, a payment paid to cover the first month of the contract). In the case of a contract cancelled in a renewal cooling-off period, reference in this consultation document to 'the relevant payment' or 'relevant renewal payment' refers to the renewal payment which covers the renewed contract period in which the consumer exercises a cooling-off right (and any other subsequent payment for which the consumer became liable for). Given that a renewal cooling-off right only arises in certain circumstances, it will usually be a reference to either the first renewal payment following the end of a free trial (or reduced rate period) or a renewal payment where the consumer will not become liable for the next renewal payment until after a 12-month period or the contract will continue for more than 12 months.

27. Taking this into account, we have identified three broad categories of goods and developed separate consumer refund proposals for each category. The three categories of goods are:

Category 1: Returnable goods: Goods where it is possible for the consumer to return them to the trader and they can be resold (for example, books).

Category 2: Non-returnable goods (due to their characteristics): Goods where the inherent nature of the goods affects whether they can be resold. This category comprises:

- **Perishable goods:** as defined in the CCRs as goods which are “liable to deteriorate or expire rapidly”.
- **Bespoke goods:** as defined in the CCRs as goods which are “made to the consumer's specifications or are clearly personalised”.

Category 3: Non-returnable goods (due to circumstances): These goods fall into the category of returnable goods if in their original condition. However, if they are unsealed or become inseparably mixed with other items after delivery, different return and refund rules apply. This category comprises:

- Goods which are sold sealed for health protection or hygiene reasons and are unsealed after delivery.
- Sealed audio recordings, video recordings, and computer software which are unsealed after delivery.
- Goods that have become mixed inseparably with other items (by virtue of their nature) after delivery.

2.2.2 Proposed regulations for returnable goods (category 1)

28. When a consumer exercises their cancellation right (during the initial or the renewal cooling-off period) in a contract for returnable goods, we propose the regulations include provision for consumer refunds of the relevant payment as well as provision for the trader's recovery of cancelled goods as follows:

a) Refunds

- If goods have not been supplied in a cooling-off period before the consumer exercises a cooling-off right the consumer's liability for ongoing payments is ended and they are entitled to receive:
 - In the case of the consumer exercising an initial cooling-off right, a full refund (including a refund of the delivery fee, unless the consumer has

- chosen a more expensive option, in which case, then only the trader's least expensive cost of delivery should be refunded).
 - In the case of the consumer exercising a renewal cooling-off right, a full refund of the relevant renewal payment and the least expensive delivery fee (as above).
- If goods have been supplied, the consumer's liability for ongoing payments is ended. As long as the trader can get the cancelled goods back (see paragraph (b) below), the consumer should generally be entitled to a full refund of the relevant payment including the least expensive delivery fee (as above).

b) Return of goods

- The trader is entitled to recover goods which have been supplied to the consumer in the relevant cooling-off period before the consumer cancelled.
- Following contract cancellation, it should be the consumer's responsibility to return the goods (for example send them back or hand them over to the trader) and pay the direct costs unless the circumstances in the next bullet point apply.
- Consistent with the CCRs, it should be the trader's responsibility to arrange collection of goods and cost of returns if:
 - The trader has offered to be responsible for the collection of goods and cost of return.
 - It is an off-premises subscription contract⁶ where the goods were delivered to the consumer's home and cannot be returned by the consumer by post.
 - In the case of a contract cancelled during the initial cooling-off period, the trader has failed to provide the pre-contract information, on returns and costs, in accordance with the DMCCA's requirements on how that information must be provided.⁷
 - In the case of a contract cancelled during the renewal cooling-off period, the trader has failed to provide the cooling-off notice in accordance with the DMCCA.⁸
- Where it is the consumer's responsibility to return the goods, they must be returned not later than 14 days after:
 - a) the consumer cancelled the contract, or

⁶ 'off-premises subscription contract' is defined in section 268(5) of the DMCCA

⁷ This is the information set out in Paragraph 21(d)(iii) of Schedule 23 to the DMCCA which provides, "in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader, including the likely cost of returning the goods if they cannot normally be returned by post." The information must be provided under the DMCCA in accordance with sections 256(1)(b), 257(9) and 272(8).

⁸ See section 266 of the DMCCA. For clarity, we propose adding to the list of information that must be included in the cooling-off notice by inserting at the end of section 266(2)(f)(iii) of the DMCCA the following: "including the likely cost of returning the goods if they cannot normally be returned by post" (see section 7.3 on cooling-off notices).

- b) the consumer has provided evidence that they have done so.
- If the consumer breaches their obligation to return the goods, the trader should be appropriately compensated.
- If the consumer excessively handles the goods, the trader should be appropriately compensated for a reduction in the value of the returned goods.⁹

29. This operational framework is consistent with the cooling-off return and refund rules in the CCRs though extended, with some modifications for simplicity and to accommodate the renewal cooling-off right.

30. An example of how this proposal would work in practice is:

- A consumer takes out a yearly subscription for £100 per year to receive a new murder mystery novel once a month. The delivery costs are included in the subscription price.
- The trader provides the pre-contract information in accordance with the DMCCA's requirements, including details about the consumer's obligation to return the book and cost of doing this if the consumer exercises their initial cooling-off right.
- On day 3 of the subscription, the consumer receives their first book. On day 5 they decide they no longer wish to have the subscription and exercise their cooling-off right.
- The consumer arranges and pays for the return of the book.
- The trader is liable for refunding £100. .

2.2.3 Proposed regulations for non-returnable goods due to their characteristics (category 2)

31. The following policy proposal for regulations applies to certain goods which fall into the non-returnable category because of the nature of the product:

- **Perishable goods**, as defined in the CCRs as goods which are 'liable to deteriorate or expire rapidly'.
- **Bespoke goods**, as defined in the CCRs as goods which are 'made to the consumer's specifications or are clearly personalised'.

32. We propose that refunds are calculated on the basis of when goods are dispatched rather than when they are supplied/delivered as we think this is a better reflection of

⁹ Note, for cancellation within the initial cooling-off period, we propose that this right to compensation should not apply where the trader fails to comply with the Full pre-contract Information requirements covering information on the initial cooling-off right (see paragraph 21, Schedule 23 of the DMCCA). This approach is in line with the CCRs. Similarly, for cancellation within the renewal cooling-off period, we propose that this right for compensation should not apply where the trader has failed to provide the cooling-off notice, as required by the DMCCA (see section 2.7 on the extension of the cooling-off period).

how things work in practice. After dispatch, it is unlikely that the trader would be able to recover most or any of their costs relating to the contract's cancellation. Also, the date of dispatch is a point which can be clearly communicated to a consumer pre-contract and, if necessary, is likely to be capable of verification by a consumer.

33. Accordingly, we propose that the regulations reflect the following approach:

- If goods have not been dispatched in a cooling-off period before the consumer exercises a cooling-off right on contract cancellation, the consumer's liability for ongoing payments is ended and they are entitled to receive:
 - In the case of a consumer exercising an initial cooling-off right, a full refund including the least expensive delivery fee.
 - In the case of a consumer exercising a renewal cooling-off right, a full refund of the relevant renewal payment and least expensive delivery fee.

- If goods have been dispatched, the consumer's liability for future payments is ended. However, as the goods are not returnable, the trader is entitled to reduce the refund:
 - by the contract price of the goods dispatched in the relevant cooling-off period.
 - to reflect the amount of the delivery option chosen and paid by the consumer for the dispatched items.

34. For a refund to be reduced in this way, we propose that the regulations require that the trader must:

- **For the initial cooling-off right:**
 - Provide the pre-contract information about the consumer's initial cooling-off right in compliance with the DMCCA's requirements of how that information must be provided.¹⁰ For this category of goods, this includes information on when the dispatch date is and the consequences of exercising an initial cooling-off right after this (such as the amount by which the refund will be reduced or how the reduction will be calculated).

¹⁰ This is the information in paragraph 21 of Schedule 23 to the DMCCA, which covers, "The following information about the consumer's right to cancel the subscription contract during the initial cooling-off period—

(a) when that period begins and ends;

(b) how the consumer may exercise the right;

(c) if the consumer may lose the right, the circumstances under which that will happen;

(d) the consequences of the consumer exercising the right, including—

(i) any refund the consumer may be entitled to,

(ii) any reason that refund might be diminished, and

(iii) in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader, including the likely cost of returning the goods if they cannot normally be returned by post." This information must be provided under the DMCCA in accordance with sections 256(1)(b), 257(9) and 272(8).

- Secure the consumer's express request that the perishable or bespoke goods be dispatched during the cooling-off period before they start dispatching the goods during the cooling-off period. For off-premises contracts the consumer must make this request on a durable medium.¹¹

- **For the renewal cooling-off right:** Comply with the DMCCA's requirements to provide a consumer with a cooling-off notice.¹²

35. We did consider whether the trader must seek the consumer's express request before continuing to dispatch non-returnable goods at the start of the renewal period. However, although the consumer's express request is required before supply begins in the initial cooling-off period, we do not think it is practical to replicate this mechanism at the start of a renewal period because if the consumer does not respond, the trader would be required not to supply any goods until the 14 days cooling-off period is over. Such arrangements would add complexity that we do not think is proportionate. It also risks the performance of the contract being paused and interrupting the supply. This could potentially lead to inconvenience for some consumers as well as administration costs for businesses.

36. An example of how our proposed policy could work in practice is:

- A consumer takes out a monthly subscription to receive a bunch of flowers delivered each month (£40 per month including delivery). On entering the contract, the consumer pays for the first supply of flowers including delivery.
- The trader provides the pre-contract information, including details about the consumer's initial cooling-off right. The latter will include when the flowers will be dispatched and the consequences on the refund amount if the consumer cancels after the date of dispatch.
- The consumer expressly chooses to receive the first supply of flowers on day 7 of the subscription and understands that this is within a cooling-off period.
- On day 3 their first supply of flowers are dispatched (for example, packed up and handed over to the delivery driver). Shortly after dispatch, but before the flowers are delivered, the consumer exercises their initial cooling-off right.

¹¹ This approach reflects the safeguard provided in the CCRs, for example, where the consumer must pay a proportion of the total price for the services supplied prior to the consumer exercising the CCRs cooling-off right but only if the consumer expressly requested that the supply of service can begin before the end of the cooling-off period (see Regulation 36(1)(a)). In addition under the CCRs there is no requirement for a consumer, following cancellation, to pay for services provided during the cancellation period if the trader failed to provide the pre-contract information on the right to cancel (paragraph (l) of Schedule 2 to the CCRs) or the pre-contract information on payment of costs (paragraph (n) of Schedule 2 to the CCRs) in accordance with Part 2 of the CCRs.

¹² See section 266 of the DMCCA.

- The consumer is liable to pay for the contract price of the flowers dispatched (including delivery costs) but any liability for further payments under the contract ends.
- As the supply of flowers was dispatched and the contract price was £40 (including delivery), the consumer is not entitled to a refund.

2.2.4 Proposed regulations for non-returnable goods due to circumstances (category 3)

37. This regulatory proposal applies to certain goods which we consider fall into the non-returnable category of goods in certain circumstances:

- Goods which are sold sealed for health protection or hygiene reasons but are unsealed after delivery.
- Sealed audio recordings, video recordings, and computer software but are unsealed after delivery.
- Goods that have become mixed inseparably with other items (by virtue of their nature) after delivery.

38. If a consumer exercises their cooling-off right (during the initial or the renewal cooling-off period) before the relevant goods are unsealed or inseparably mixed, we propose that the regulatory provisions for returnable goods apply (see sub-section 2.2.2). However, if they do so after these goods are unsealed or inseparably mixed, we propose the regulations should reflect that. In these circumstances, we propose that after the contract is cancelled, the consumer's liability for future payments is ended but that the trader is entitled to:

- reduce the consumer's refund of the relevant payment by the contract price of the goods which are unsealed or inseparably mixed after delivery; and
- where the consumer has chosen a premium delivery option, the trader only needs to refund the amount of the trader's least expensive cost of delivery.

39. In addition, to reduce the consumer's refund in the way described above, the trader must:

- **For the initial cooling-off right:** provide the pre-contract information about the consumer's initial cooling-off right, in compliance with the DMCCA's requirements for how this information is provided.¹³

¹³ This is the information in paragraph 21 of Schedule 23 to the DMCCA, which covers, "The following information about the consumer's right to cancel the subscription contract during the initial cooling-off period—

(a) when that period begins and ends;

(b) how the consumer may exercise the right;

(c) if the consumer may lose the right, the circumstances under which that will happen;

(d) the consequences of the consumer exercising the right, including—

- **For the renewal cooling-off right:** comply with the DMCCA's requirements on giving the consumer a cooling-off notice.¹⁴

40. Where the goods are not of satisfactory quality or not delivered, these proposals do not undermine, but rather sit alongside, the consumer's statutory rights and remedies under Part 1 of the Consumer Rights Act 2015.

Questions

Question 3. We have taken the following factors into consideration (set out in paragraph 25) when developing refund and return policy proposals for goods:

- The extent to which it is possible and practical for the consumer to return the goods supplied under the subscription contract in the same condition they were received.
- Whether the goods have been dispatched by the trader, or whether they have been supplied/delivered to the consumer.
- How to fairly allocate responsibility and cost for returning the goods between the trader and the consumer.
- Whether goods have certain characteristics which require additional or different rules.

Do you agree with the factors that we have taken into consideration when developing the proposals for refunds for goods?

- a. Yes / No / Not applicable
- b. Please provide the reasoning and any evidence behind your answer

(i) any refund the consumer may be entitled to,
(ii) any reason that refund might be diminished, and
(iii) in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader, including the likely cost of returning the goods if they cannot normally be returned by post." This information must be provided under the DMCCA in accordance with sections 256(1)(b), 257(9) and 272(8).

¹⁴ See section 266 of the DMCCA.

Question 4. To what extent do you agree with the regulatory proposal for returns and refunds for returnable goods (category 1 goods)?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer
- c. If you are a trader and provide a subscription contract for goods in this category, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide any evidence and explanation of costs where possible.

Question 5. To what extent do you agree with the regulatory proposal for refunds for perishable and bespoke goods (category 2, non-returnable goods due to their characteristics)?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer
- c. If you are a trader and provide a subscription contract for goods in this category, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide any evidence and explanation of costs where possible.

Question 6. To what extent do you agree with the regulatory proposal for refunds for sealed goods and inseparably mixed goods (category 3, non-returnable goods due to circumstances)?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer
- c. If you are a trader and provide a subscription contract for goods in this category, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide evidence and explanation of costs where possible.

2.3 Refunds for services

41. Whether something is a service will depend on the facts of the case and is likely to cover a wide range of contracts. But is likely to include subscription contracts for things such as gym memberships and memberships to cultural or entertainment attractions (for example, heritage sites, theme parks).
42. For the purpose of informing regulations on the consequences of exercising a cooling-off right, our proposals for services have taken into consideration that:
- Due to their nature, services received by the consumer are not returnable to the trader.
 - A consumer may have been supplied with the service before exercising a cooling-off right.
 - By cancelling the contract, consumers should not be able to receive services for free during a cooling-off period.

2.3.1 Proposed regulations for services

43. If a consumer exercises a cooling-off right (during the initial or the renewal cooling-off period) and the service:
- **has not been supplied before the consumer cancels the contract**, the consumer's liability for further payments under the subscription contract ends. The consumer receives, in the case of exercising:
 - an initial cooling-off right, a full refund (including the least expensive delivery fee).
 - a renewal cooling-off right, a full refund of the relevant renewal payment (including the least expensive delivery fee).
 - **has been supplied within a cooling-off period**, the consumer's liability for further payments under the subscription contract ends. However, the consumer will remain liable to pay a proportion of the price agreed under the subscription contract for the part of the contract performed in the relevant cooling-off period. In principle, where the price agreed under the subscription contract is £X amount for X amount of time of the service (for example, a month or a year) refunds would be calculated on a pro-rata time basis.
44. However, for a consumer to be liable to pay for the services supplied (as explained above) and a consumer's refund to be reduced accordingly, these obligations must also be met:
- **For the initial cooling-off right:** The trader must provide the consumer with the pre-contract information about their initial cooling-off rights, in compliance with the

DMCCA's requirements for how this information is provided.¹⁵ Before the trader starts supplying the services, they must seek the consumer's request that the services be supplied in the initial cooling-off period. For off-premises contracts the consumer must make this request on a durable medium.

- **For the renewal cooling-off right:** The trader must comply with the requirements to provide a consumer with a cooling-off notice.¹⁶ Although the consumer's express request is required before supply begins in the initial cooling-off period, we do not think it is practical to replicate this mechanism at the start of a renewal period and require the trader to seek the consumer's express request before continuing the supply of the service. Where the consumer does not respond, the trader would be required not to supply the service until the 14 days cooling-off period is over and so this requirement may require the contract performance to pause, leading to an interruption of supply. Such arrangements would add complexity which we do not consider proportionate to the benefit for traders and consumers. This could also lead to consumer complaints as well as administration costs for businesses.

45. How these proposals would apply in practice will depend on the facts and circumstances. However, an example for when the consumer exercises a cancellation right in the initial cooling-off period could be:

- A consumer takes out an annual subscription for a membership service at the price of £365 per year.
- The trader provides the pre-contract information about the initial cooling-off period as required under the DMCCA, including information on a reduction to refunds if, following the consumer's express request, supply begins during the initial cooling-off period.
- The consumer expressly requests the service to start before the end of the initial cooling-off period and the service starts.

¹⁵ This is the information in paragraph 21 of Schedule 23 to the DMCCA, which covers, "The following information about the consumer's right to cancel the subscription contract during the initial cooling-off period—

(a) when that period begins and ends;

(b) how the consumer may exercise the right;

(c) if the consumer may lose the right, the circumstances under which that will happen;

(d) the consequences of the consumer exercising the right, including—

(i) any refund the consumer may be entitled to,

(ii) any reason that refund might be diminished, and

(iii) in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader, including the likely cost of returning the goods if they cannot normally be returned by post." This information must be provided under the DMCCA in accordance with sections 256(1)(b), 257(9) and 272(8).

¹⁶ Section 266 of the DMCCA sets out the requirements for the cooling-off notice for the renewal period.

- The consumer exercises their initial cooling-off right on day 7 of the membership. The consumer is liable to pay for the proportion of the contract delivered, but any liability for further payments ends.
- The trader refunds £358 to the consumer, reflecting the price agreed under the contract for the supply of the service for 7 days.

46. We consider this is a proportionate approach as it enables consumers to end their liability for further payment, but to pay for the proportion of the service contract they have received. This approach to the calculation of refunds is consistent with the CCRs.

Questions

Question 7. In our proposals, we have taken into consideration (set out in paragraph 42) that:

- Due to their nature, services received by the consumer are not returnable to the trader.
- A consumer may have been supplied with the service before exercising a cooling-off right.
- By cancelling the contract, consumers should not be able to receive services for free during a cooling-off period.

Do you agree with the factors that we have taken into consideration when developing the proposals for refunds for services?

- Yes / No / Not applicable
- Please provide the reasoning and any evidence behind your answer

Question 8. To what extent do you agree with the regulatory proposal for refunds for services?

- Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- Please provide the reasoning and any evidence behind your answer
- If you are a trader and provide services under a subscription contract, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide evidence and explanation of costs where possible.

2.4 Refunds for digital content

47. Whether something is digital content will depend on the facts and circumstances. Like services, digital content cannot be returned. In addition, once downloaded, the consumer may have gained most or all of the benefits from the digital content. This is akin to a CD or a DVD being unsealed and therefore cannot be returned. In light of this, the CCRs require that traders do not begin to supply digital content before the end of the CCRs' cooling-off cancellation period unless a consumer expressly consents for this to happen and acknowledges that their right to cancel under the CCRs will be lost.
48. During parliamentary passage of the DMCCA, some stakeholders raised strong concerns that if this waiver was not maintained for subscription contracts, consumers could abuse the cooling-off rights. In particular, the digital streaming sector argued that consumers could sign up, binge watch content, and then cancel for a full refund.
49. In developing the proposals for digital content, we have taken into consideration that:
- Due to its nature, digital content is not returnable.
 - A consumer may have been supplied with the digital content before exercising their cooling-off right.
 - Consumers should not be able to receive digital content for free during a cooling-off period.

2.4.1 Proposals for regulation

50. The proposals below set out three options for how the refund rules could work in regulations when a consumer exercises a cooling-off right in relation to a digital content contract.

Option 1: Proportionate refund for both initial and renewal cooling-off periods

51. If a consumer exercises the cancellation right during an initial or a renewal cooling-off period and the digital content:
- **has not been supplied during a cooling-off period**, the consumer's liability for further payments under the subscription contract ends and the consumer receives:
 - in the case of the consumer exercising an initial cooling-off right, a full refund;
 - in the case of the consumer exercising a renewal cooling-off right, a full refund of the relevant renewal payment.
 - **has been supplied within the cooling-off period**, the consumer's liability for further payments under the subscription contract ends. However, the consumer will remain liable to pay a proportion of the price agreed under the subscription contract for the part of the digital content contract performed in the relevant cooling-off

period. In principle, where the price agreed under the subscription contract is £X amount for X amount of time (for example, for a month or a year) refunds would be calculated on a pro-rata time basis.

52. We propose, under this option, in order for the trader to seek reimbursement for the digital content supplied (in the way described) and for the consumer's refund to be reduced accordingly, the trader must also meet these obligations (which also apply in the case of services and non-returnable goods):

- **For the initial cooling-off right:** The trader must provide the consumer with the pre-contract information about their initial cooling-off rights, as required under the DMCCA.¹⁷ Before the trader begins to supply digital content, they must seek the consumer's express request that the digital content be supplied in the initial cooling-off period. For off-premises contracts the consumer must make this request on a durable medium.
- **For the renewal cooling-off right:** The trader must comply with the requirements to provide a consumer with a cooling-off notice.¹⁸ Although the proposal is that consumer's express request is required before supply begins in the initial cooling-off period, we do not think it is practical to replicate this mechanism at the start of a renewal period and require the trader to seek the consumer's express request before continuing supply of the digital content. Where the consumer is silent at the time of renewal or refuses the request, the trader would be required to delay supply of the digital content at the start of the renewal period until the 14-day cooling-off period is over. Such arrangements would add complexity which we do not consider is proportionate to the benefit of traders and consumers. Such an approach risks performance of the contract being paused, leading to an interruption of supply, it could potentially lead to consumer complaints as well as administration costs for businesses.

¹⁷ This is the information in paragraph 21 of Schedule 23 to the DMCCA, which covers, "The following information about the consumer's right to cancel the subscription contract during the initial cooling-off period—

(a) when that period begins and ends;
(b) how the consumer may exercise the right;
(c) if the consumer may lose the right, the circumstances under which that will happen;
(d) the consequences of the consumer exercising the right, including—
(i) any refund the consumer may be entitled to,
(ii) any reason that refund might be diminished, and
(iii) in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader, including the likely cost of returning the goods if they cannot normally be returned by post."

¹⁸ Section 266 of the DMCCA sets out the requirements for the cooling-off notice for the renewal period.

53. How this option applies in practice will depend on the facts and circumstance, but an example could be:

- A digital content contract costs £31 per month.
- Having received the pre-contract information as required under the DMCCA, the consumer expressly requests the supply of the digital content to start before the end of the initial cooling-off period.
- The consumer exercises their cooling-off right, and the contract is ended after 7 days of performance.
- The consumer is entitled to a pro-rata refund of £24 to reflect that 7 days of the 31 days of the contract was performed.

54. This approach would apply broadly the same rules for digital content as the proposed refund rules for services and non-returnable goods. This would simplify the rules and bring consistency across different contract types. Moreover, given the challenges that can arise in distinguishing between digital content and services, applying the same rules would make it easier for traders, consumers and enforcers to understand and implement. It would also bring fairness and consistency to how different product types are treated.

Option 2: Waiver for initial cooling-off period and proportionate refund for renewal cooling-off period

55. Under this proposal, we anticipate that the 'waiver' provisions, applicable to the initial cooling-off right, would operate similarly to the corresponding provisions in the CCRs as follows:

- **For the initial cooling-off right:** Before the trader starts to supply digital content in the initial cooling-off period, they must secure the consumer's:
 - express consent for supply to begin before the end of the initial cooling-off period and
 - acknowledgement that their cooling-off right to cancel under the DMCCA will be lost.

In practice, this would mean if the consumer wants their supply to start immediately, they waive their initial cooling-off right to cancel the subscription contract for a refund during the contract sign-up process. Consistent with the CCRs, if the trader supplies the digital content during the initial cooling-off period without securing the consumer's express consent and acknowledgment as described above, we propose that the consumer will not have to pay for the digital content supplied.

- **For the renewal cooling-off right:** Providing the trader provides the required cooling-off notice in accordance with the DMCCA, if the consumer cancels during a

renewal cooling-off period they receive a proportionate refund for what has been supplied (this is the same approach as set out in option 1).

56. This option would provide similar benefits to option 1 in relation to the renewal cooling-off period, whilst preserving current arrangements for the initial cooling-off period with which businesses are familiar. We consider that the risks of “binge and cancel” are less acute during a renewal cooling-off period as the consumer has already been supplied the digital content and, in the case of long-term contracts, would have been supplied the digital content for over a year.

57. How this option applies in practice will depend on the facts and circumstance, but an example could be:

- An annual subscription contract costs £365 per year.
- During the contract sign-up process, the consumer expressly consents to the supply of the digital content to start before the end of the initial cooling-off period and acknowledges that their initial cancellation right will be lost. The supply of the digital content begins at the start of the contract. The consumer cannot exercise their initial cooling-off right to cancel the contract.
- After a year, the contract auto-renews for another year and the consumer’s bank account is debited £365. Up to this point, the trader has complied with the applicable subscription rules including giving the consumer a cooling-off notice on the first day of the renewal cooling-off period. The consumer exercises their renewal cooling-off right, and the contract is ended after 7 days of performance within the relevant renewal cooling-off period.
- The consumer is entitled to a pro-rata refund of £358 to reflect that 7 days of the 365 days the contract was performed.

Option 3: Waiver for initial cooling-off period, and waiver for renewal cooling-off period

58. We considered the option that a consumer waives both their initial and renewal cooling-off rights together on entering the contract. However, we consider that a single waiver of this kind (where the waiver applies to the initial and all subsequent renewal cooling-off periods) is not compatible with the policy objective of the renewal cooling-off period. A waiver in perpetuity, secured when the consumer enters the contract, would undermine the policy objective reflected in the DMCCA to protect consumers from being stuck in a new contract term after a trial or long-term contract auto-renews.

59. For a waiver to apply to the renewal cooling-off period, the waiver (the consumer’s express consent for the supply to begin before the end of the renewal cooling-off period and acknowledgement that they have lost their renewal cooling-off right) would need to

be secured contemporaneously to the relevant renewal occurring and before the supply of the digital content continues in the renewal cooling-off period. This is what we propose under Option 3.

60. Our initial view of this option is that we do not think it is likely to be practical to require the trader to seek the consumer's express consent to waive their renewal cooling-off right at the start of a relevant renewal period. Where the consumer does not give their express consent to waive their renewal cooling-off rights at this time, the trader would be required to delay supply of the digital content at the start of the renewal period until the 14-day cooling-off period is over. Such arrangements would add complexity that we do not consider is proportionate to the benefit of traders or consumers. Such an approach risks the performance of the contract being paused, leading to an interruption of supply. This could potentially lead to consumer complaints as well administration costs for businesses.
61. In addition, given it is not always easy to understand the difference between when a product is a service and when it is digital content, different rules for each type of subscription contract could make it harder for traders, consumers and enforcers to know what is expected.

Questions

Question 9. In developing the proposals for digital content, we have taken into consideration (set out in paragraph 49) that:

- Due to its nature, digital content is not returnable.
- A consumer may have been supplied with the digital content before exercising their cooling-off right.
- Consumers should not be able to receive digital content for free during a cooling-off period.

Do you agree with the factors that we have taken into consideration?

- a. Yes / No / Not Applicable
- b. Please provide the reasoning and any evidence behind your answer

Question 10. a. Considering the three options set out for how refunds could work for digital content, which approach would you recommend?

- Option 1 (proportionate refund for both initial and renewal cooling-off periods)
- Option 2 (waiver for initial cooling-off period and proportionate refund for the renewal cooling-off period)
- Option 3 (waiver for initial cooling-off period, and waiver for renewal cooling-off period)
- None of these
- Don't know
- Not applicable

b. Please provide the reasoning and any evidence behind your answer

Question 11. If you are a trader and supply digital content, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide evidence and explanation of costs where possible.

- Option 1 (proportionate refund for both initial and renewal cooling-off periods)
- Option 2 (waiver for initial cooling-off period and proportionate refund for the renewal cooling-off period)
- Option 3 (waiver for initial cooling-off period, and waiver for renewal cooling-off period)

Question 12. To what extent do you agree with the following statement about Option 3 (waiver for initial cooling-off period, and waiver for renewal cooling-off period):

“Permitting the use of a waiver for digital content subscriptions for the renewal cooling-off period which is sought from the consumer at the start of relevant renewal period (as set out in Option 3) is impractical”.

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer. If you don't agree with the statement, do you consider that there are ways of mitigating these?

2.5 Refunds for mixed contracts

62. In sections 2.2 to 2.4, we propose that how cooling-off rights apply depends on whether the subscription contract entered is a contract for the supply of returnable goods, non-returnable goods, services, or digital content. However, some subscription contracts are 'mixed' as they are for the supply of a number of product types (for example, goods and services) from the same trader. We have heard from some stakeholders that it would be beneficial to have more clarity on how the relevant cooling-off rules apply in such cases.

63. This section proposes to make regulatory provision to clarify how the consumer's cooling-off rights operate in the case of a mixed subscription contract, where a combination of two or more of goods, services or digital content are supplied under the same contract. This section also proposes how ancillary contracts (contracts which are subsidiary to the main subscription contract) are treated if the consumer exercises a cooling-off right.

2.5.1. Proposal for regulations for mixed contracts

64. We consider the DMCCA already makes sufficient provision to determine the length of the cooling-off periods applicable to a mixed subscription contract. In the initial cooling-off period:

- **Where goods are supplied under any subscription contract:** the initial cooling-off period starts from the day the contract is entered and ends 14 days after the day the consumer receives the first supply of goods.

- **In any other case:** the initial cooling-off period starts from the day the contract is entered and ends 14 days beginning the day after the day the contract is entered.

65. The length of the renewal cooling-off period is the same, regardless of whether the subscription contract is for the supply of goods, services or digital content. However, uncertainty may remain as to how the relevant refund provisions apply to a mixed contract.

66. We propose that regulations reflect that for mixed contracts the relevant refund rules for goods, services and digital content apply separately to the corresponding components of the goods, services or digital content supplied under the subscription contract. This approach is consistent with the CCRs.

67. An example of how this would work in practice for a mixed contract for services and returnable goods is:

- A monthly membership subscription to a children's play centre with the offer including members receive a toy at the start of each month. A consumer is required to pay a fee of £20 for the first month, £10 for the membership and £10 for the toy. The consumer pays the fee on entering the contract and requests that the membership begins immediately.
- As goods are supplied under the contract, the consumer has a right to cancel the contract (that is, both the supply of the goods and services) during the initial cooling-off period under the DMCCA, which begins with the day the contract is entered into and ends 14 days after the day the toy is received.
- If a consumer exercises their initial cooling-off right during the initial cooling-off period after their first toy has been received, the usual expectation would be:
 - The consumer returns the toy and receives a refund for the toy of £10 and
 - The trader calculates a pro-rata refund of the £10 membership price in a way that ensures that the consumer pays for the number of days they could use the play facilities prior to the contract cancellation.

Questions

Question 13. Do you think that there should be regulations for how mixed contracts work, or is guidance sufficient?

- a. Regulations / guidance
- b. Please provide the reasoning and any evidence behind your answer

2.6 Termination of ancillary contracts

68. An ancillary contract is a contract related to the main subscription contract but subsidiary to it. For example, a warranty, credit agreement, or insurance for the goods supplied under the main subscription contract. Generally, the types of contracts which are ancillary contracts are ones which the consumer would not have entered into if they had not entered the main subscription contract.
69. Particularly where the consumer cancels the main subscription contract shortly after entering it (i.e. in the initial cooling-off period), ancillary contracts are likely to be redundant and can relatively easily be brought to an end. We consider this is less likely to be case when ancillary contracts have been in place for a year or longer, which is likely to be the case if a consumer has entered an ancillary contract and exercised a renewal cooling-off right in relation to the main subscription contract.
70. Reflecting the approach of the provisions in the CCRs for the automatic termination of an ancillary contract when the consumer exercises a CCRs' cancellation right after entering a distance or off-premises contract, below, we set out similar regulatory proposals for subscription contracts.

2.6.1 Proposed regulations for ancillary contracts

71. We propose that the regulations make provision for the automatic termination of an ancillary contract when the consumer exercises an initial cooling-off right resulting in the cancellation of the main subscription contract. For a contract to qualify as an ancillary contract we propose it must be:
- a contract for the goods, services or digital content related to the main subscription contract; and
 - where these goods, services or digital content are provided by the trader to the main subscription contract or by a third party with whom the trader has an arrangement.
72. Note that although insurance and financial services contracts are excluded from the subscription rules in the DMCCA, we propose this does not mean they cannot be ancillary contracts.
73. If the main subscription contract is cancelled, our proposed policy is that the consumer will not be liable for any costs under the ancillary contract other than those which mirror the types of costs that the trader can deduct from a consumer's refund under the main subscription contract. For example, the consumer may be liable to pay a proportionate amount for services supplied under the ancillary contract prior to the consumer exercising an initial cooling-off right.
74. This approach is broadly consistent with how ancillary contracts are treated and operate under the CCRs.

Questions

Question 14. To what extent do you agree with the regulatory proposal for how ancillary contracts are treated?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

2.7 Extension of cooling-off periods

75. As referred to in sections 2.2, 2.3 and 2.4, the DMCCA requires that the trader provides the consumer with information about their cooling-off rights. In the case of the initial cooling-off right, the trader must provide the consumer with the pre-contract information about their initial cooling-off right in accordance with the requirements under the DMCCA. In relation to the renewal cooling-off right, in accordance with the DMCCA's requirements, the trader must provide the consumer with a cooling-off notice which provides detail about their renewal cooling-off right.
76. If the trader does not comply with these requirements, they are in breach of statutory obligations under the DMCCA. For certain types of subscription contracts, our proposed policy is that if these requirements are not complied with the consumer will not be liable to pay for the products supplied in the relevant cooling-off period. However, in this section, our focus is on proposals for regulations on provisions to extend the DMCCA's cooling-off periods when a trader fails to meet these statutory information requirements. Our proposed approach is consistent with the CCRs.

2.7.1 Proposed regulations for extending cooling-off periods

77. We propose that regulations include provisions which in effect provide that where the trader fails to inform the consumer of the:
- **Initial cooling-off right** via the pre-contract information in accordance with the DMCCA's requirements on how this information must be provided, the initial cooling-off period extends up to a maximum of 12 months and the consumer continues to have the right to cancel.¹⁹ This is consistent with the CCRs.
 - **Renewal cooling-off right** (via the cooling-off notice and in line with the DMCCA's requirements to give that notice), the renewal cooling-off period extends up to a maximum of 12 months and the consumer continues to have the right to cancel.

¹⁹ This is the information in paragraph 21 of Schedule 23 to the DMCCA, which covers, "The following information about the consumer's right to cancel the subscription contract during the initial cooling-off period—

(a) when that period begins and ends;

(b) how the consumer may exercise the right;

(c) if the consumer may lose the right, the circumstances under which that will happen;

(d) the consequences of the consumer exercising the right, including—

(i) any refund the consumer may be entitled to,

(ii) any reason that refund might be diminished, and

(iii) in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader, including the likely cost of returning the goods if they cannot normally be returned by post."

78. Broadly following the CCRs approach, we propose that the regulations cater for the trader's ability to limit the extension of a cooling-off period by providing the relevant cooling-off information in writing and on a durable medium during the 12-month period referred to above (for example, by email or on paper by post). If they do this, the cooling-off period would end 14 days after the consumer receives the information.
79. If the consumer cancels during an extended cooling-off period, we propose that the regulations give effect to our proposed policy that the consumer is not liable to pay for the non-returnable goods, services or digital content provided during the extended cooling-off periods. We consider that this is a proportionate approach, supported by the CCRs. This reflects that the trader is in breach of their obligations to provide the required information which informs a consumer about their cooling-off rights.
80. For returnable goods, we propose that following cancellation within an extended cooling-off period that the return and refund rules are similar to those during the non-extended cooling-off periods, namely that the trader should be able to recover cancelled goods (see sub-section 2.2.2 for more detail).
81. Although under our proposed policy the trader has the right to recover the goods supplied in the relevant period before cancellation, we propose that regulations reflect the policy position that the trader will not be able to recover compensation from the consumer where the goods are devalued as a result of the consumer's handling of the goods before return (see paragraph 28, point (b) in sub-section 2.2.2). This approach is in line with the CCRs.
82. We consider that this is important as where a cooling-off right is exercised in an extended cooling-off period, given the passage of time, it is likely to be reasonable for the consumer to have used the goods delivered before exercising a cooling-off right. Similarly, preventing the trader from making a deduction for use of goods should be of assistance where the consumer has lost the relevant goods (e.g. due to the passage of time). Where this is the case, our expectation is that the consumer's liability for failing to return the goods could be negligible. Even if the goods were available for return, it may be reasonable to expect that the goods were used, worn out and so worth a small amount to the trader.

Questions

Question 15. To what extent do you agree with the regulatory proposal for the extension and operation of the cooling-off period if the trader does not comply with their duties to inform the consumer of their initial or renewal cooling-off right?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know

- b. Please provide the reasoning and any evidence behind your answer

2.8 Application of cooling-off rights

83. There are a number of products which the CCRs either exclude from the cooling-off right or have specialised rules about when and how the right applies. This is primarily because, where the contract is cancelled, there is limited ability for the trader to be compensated by re-selling the product. While the CCRs generally envisage a one-off purchase, a subscription contract includes a liability for future supply and we would expect consumers, during a cooling-off period, to have the ability to stop this ongoing liability.

84. This is how we propose the regulations accommodate for the product categories which in the CCRs are excluded from the cooling-off right:²⁰

A. Bespoke goods

- Cooling-off rights and specialised refund rules apply.
- If the goods have been dispatched in a cooling-off period, on cancellation the consumer's refund, will be reduced to reflect the contract price of the relevant goods dispatched.
- As a consumer is subject to ongoing liability in a subscription contract, it is important that the consumer has a right to end this liability. However, where goods have been made to a consumer's specification and dispatched, the trader should be paid for those goods.
- See subsection 2.2.3 for more details.

B. Perishable goods

- Cooling-off rights and specialised refund rules apply.
- If the goods have been dispatched in a cooling-off period, on cancellation the consumer's refund will be reduced to reflect the contract price of the relevant goods dispatched.
- As a consumer is subject to ongoing liability in a subscription contract, it is important that they have a right to end this liability. However, where perishable goods have been dispatched, given the trader cannot easily recover and resell the goods, they should be paid for by the consumer.
- See subsection 2.2.3 for more details on these refund rules.

²⁰ Note, there are other product categories which are excluded from the CCRs cooling-off cancellation provisions relating (broadly speaking) to prescription medicines and products supplied by a healthcare professional as part of the health service. However these types of subscription contract are excluded from the subscription chapter. See paragraphs 3 and 4 of Schedule 22 to the DMCCA, which outlines the kind of healthcare and medical contract that are excluded from Part 4, Chapter 2 to the DMCCA.

C. Goods which are sealed for health protection or hygiene reasons and are unsealed after delivery (and therefore unsuitable for return)

- Cooling-off rights and specialised refund rules apply.
- If the goods are unsealed after delivery in the relevant period, on cancellation of the contract, the consumer's refund will be reduced by the contract price of these goods.
- As a consumer is subject to ongoing liability in a subscription contract, it is important that they have a right to end this liability. Where goods remain sealed, they can be returned in line with the rules for returnable goods. However, where goods have been unsealed, they can no longer be resold by the trader so the consumer should pay for them.
- See subsection 2.2.4 for more details on these refund rules.

D. Sealed audio/video recordings and computer software which are unsealed after delivery

- Cooling-off rights and specialised refund rules apply.
- If the goods are unsealed after delivery in the relevant period, on cancellation of the contract, the consumer's refund will be reduced by the contract price of these goods.
- As a consumer is subject to ongoing liability in a subscription contract, it is important that they have a right to end this liability. Where goods remain sealed, they can be returned in line with the rules for returnable goods. However, where goods have been unsealed, they can no longer be resold by the trader so the consumer should pay for them.
- See sub-section 2.2.4 for more details on these refund rules.

E. Goods that have become inseparably mixed with other items after delivery

- Cooling-off rights and specialised refund rules apply
- If the goods are inseparably mixed with other items after delivery in the relevant period, on cancellation of the contract, the consumer's refund will be reduced by the contract price of these goods.
- As a consumer is subject to ongoing liability in a subscription contract, it is important that they have a right to end this liability. Where goods remain separate, they can be returned in line with the rules for returnable goods. However, where goods have become inseparably mixed, they can no longer be resold by the trader so the consumer should pay for them.
- See sub-section 2.2.4 for more details on these refund rules.

F. Supply of a newspaper, magazines or periodicals

- The cooling-off rights apply because a consumer is subject to ongoing liability in a subscription contract and it is important that they have a right to end this liability.
- The proposed rules apply as relevant. See sections 2.2, 2.3 and 2.4 for more details on these refund rules.
- The CCRs only exclude these from the cooling-off right when they are not a subscription contract. Therefore this approach ensures existing levels of consumer protections are maintained.

G. Passenger transport services

- Where a passenger transport contract is a subscription and is not regulated under the Package Travel Regulations, it is our understanding there are no similar consumer protection rules available, therefore we do not consider that there is a policy reason to exclude these types of contracts from the subscription cooling-off rights.
- The cooling-off rights apply because a consumer is subject to ongoing liability in a subscription contract and it is important that they have a right to end this liability.
- We do not consider specialist refund rules are needed, and that the relevant rules proposed for services are sufficient.
- See section 2.3 for more details on these refund rules.

H. The supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities, if the contract provides for a specific date or period of performance

- We consider that it is unlikely that subscription contracts concern activities for a specific date or period and for this reason specific regulation is not necessary.
- See section 2.3 for more details on these refund rules.

I. Off premises contracts where the value is less than £42

- The proposed refund rules for goods, services or digital content apply as relevant. This is because subscription rules apply regardless of the value of the contract, or where they were concluded. There is no policy reason to exclude these types of contracts from the cooling-off right or provide specialist refund rules.
- See sections 2.2, 2.3 and 2.4 for more details on these refund rules.

J. Where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance

- Due to their nature, we do not anticipate this type of contract could be a subscription contract. Therefore we do not consider that specialist rules are required in relation to the cooling-off right or refunds.

K. Public auctions

- Due to their nature, we do not anticipate this type of contract could be a subscription contract. Therefore we do not consider that specialist rules are required in relation to the cooling-off right or refunds.

L. Goods/services (other than the supply of water, gas, electricity or district heating) for which price depends on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the cancellation period

- Due to their nature, we do not anticipate this type of contract could be a subscription contract. Therefore we do not consider that specialist rules are required in relation to the cooling-off right or refunds.

M. Supply of alcohol where the price has been agreed at the time the contract is concluded, delivery can only take place after 30 days, and value is dependent on fluctuations in the market which cannot be controlled by the trader

- Due to their nature, we do not anticipate this type of contract could be a subscription contract. Therefore we do not consider that specialist rules are required in relation to the cooling-off right or refunds.

Questions

Question 16. Do you have any concerns with the proposed approach in relation to product categories (f) to (m)? *Please focus your answers on categories (f) to (m) as categories (a) to (e) were addressed in sections 2.2.3 and 2.2.4 and questions 3, 5 and 6.*

- a. Yes / No / Not applicable
- b. If yes, please state each product category and your concerns, providing the reasoning and any evidence for each

3. Cancellation remedies for breach of duties

85. If a trader breaches certain duties in the DMCCA, the DMCCA gives a consumer a statutory right to cancel the contract. This chapter sets out what rights the DMCCA provides and our regulatory proposals to deal with the consequences of the consumer exercising this cancellation right.
86. The DMCCA provides that certain duties placed on traders are implied into a subscription contract as contract terms (implied terms). This means that if a trader fails to comply with these terms, they will be considered to have breached the contract regardless of whether these terms are mentioned in the contract. Where the trader breaches these implied terms, the DMCCA gives the consumer a right to cancel the subscription contract, even when the trader's breach is minor. The relevant duties which give rise to a consumer cancellation right are:
- To give the Key pre-contract Information (as set out in section 256(1)(a) and Part 1 of schedule 23).
 - To give reminder notices (as required by section 258).
 - To specify in the Key pre-contract information a reasonable time for giving a reminder notice (as required by section 259(4)).
 - To make straightforward arrangements, without any unreasonable steps, enabling a consumer to exercise a contractual right to end the contract (as set out in section 260(1)).
87. Regulations are needed to provide details on the consequences of a consumer exercising a cancellation right where the above implied terms/duties are breached by the trader. This chapter proposes policy for these regulations including what refund a consumer may be entitled to, how any refund may be calculated, and how products supplied under a cancelled contract should be treated.
88. The key principles that underpin our proposals for how the refund and return provisions in the case of a breach of implied terms should work include:
- The remedies available to the consumer should be straightforward so they are easily understood by consumers and traders.
 - The consumer should receive a sum which reasonably reflects the financial loss caused by the trader's breach.
 - The trader should not be unfairly penalised. For example, the trader's liability to compensate the consumer should reflect the nature of the trader's breach and whether the consumer took reasonable steps to reduce their financial loss.
 - The trader should bear any responsibility or cost for the recovery of returnable goods as they are in breach of their duties.

3.1 Proposed regulations remedies after contract cancelled for breach of implied terms

89. Based on these principles, our proposed policy on refund remedies can be summarised as follows:

Step 1: Right to a refund: On exercising a right to cancel, following the trader's breach of an implied term, the consumer is entitled to a refund where they became liable for one payment under the contract that they would not otherwise have become liable for.

Step 2: Calculation of refund: Where step 1 is established, the consumer is presumed to be entitled to a refund of all payments made following the occurrence of a relevant event listed below (as applicable to the trader's breach) until the consumer cancels the contract.

The relevant events, referred to below, reflect when the breach occurred or when the breach is operational in practice and we propose that:

- **For a breach of the implied term relating to the Key pre-contract information requirements:** when the contract is entered.
- **For breaches of the implied terms relating to giving reminder notices (including specifying reasonable periods):** the last day after the reminder notice in issue should have been issued.
- **For a breach of easy exit requirements:** the last day on which the consumer would have exited the contract had the trader been in compliance.

Step 2 is subject to step 3 below.

Step 3: Safeguards: To ensure that the trader is not automatically held liable for all payments made by the consumer from the time of the event that constitutes the breach, we also propose that the regulations establish the following safeguards for traders:

- The trader can rebut the presumption, referred to in step 2 above, where the trader establishes (on the balance of probabilities) that the consumer increased their own financial loss by taking an unreasonable amount of time to exercise the cancellation right.
- A limitation period of 12 months (starting the day following the occurrence of the relevant events) for the consumer to exercise the cancellation right.

Step 4: Return requirements: In relation to the goods, services or digital content supplied to the consumer and subject to refunds following the cancellation of the contract, we propose that the regulations reflect the following policy for:

- **Non-returnable goods (as defined in Chapter 2), digital content, and services:** As these are non-returnable, there are no requirements on the consumer to return them.
- **Returnable goods:** Such goods supplied are treated as unsolicited gifts. However, after the contract is cancelled, the consumer may agree that the trader can make arrangements for the goods to be returned or collected. But the consumer must not bear the costs for such an arrangement.

90. Examples of how the proposed regulatory provisions could work in practice:

Scenario 1: A trader commits a significant breach by not providing any of the Key pre-contract information. The consumer realises quickly, cancels, and is able to prove they are entitled to a refund.

- A consumer pays an initial fee on entering a monthly subscription contract for the delivery of goods each month but the prescribed Key pre-contract information is not provided at all by the trader.
- This means that the consumer does not realise they are in a subscription contract until the first monthly renewal payment is taken and goods are delivered.
- In these circumstances, the consumer can rely on the statutory cancellation right for breach of the implied term relating to the trader's duty to give the Key pre-contract information.
- The consumer cancels the subscription contract soon after the first monthly renewal payment is taken and establishes that, as a result of the trader's failure to provide the Key pre-contract information, they became liable for the monthly renewal fee. Under our policy proposals, the consumer would be entitled to a refund of all payments (the initial payment made on entering the contract, and the renewal payment).

Scenario 2: A trader commits a significant breach by not providing the Key pre-contract information at all. The consumer does not take action for many months, so agrees with the trader a limited refund.

- The same scenario as scenario (1). However, the consumer does not exercise their cancellation right until 6 months after the contract is entered, despite receiving goods each month and monies being debited from their account. They request a refund of the initial payment, and all subsequent payments (for example, the renewal payments). There are no reasonable mitigating circumstances for why the consumer has not acted sooner.

- The trader offers to refund the initial and first renewal payment, which the consumer accepts.

Questions

Question 17. We propose that these principles (set out in paragraph 88) underpin the remedies when a consumer cancels because of a breach of the relevant implied terms provided for under the DMCCA:

- The remedies available to the consumer should be straightforward so they are easily understood by consumers and traders.
- The consumer should receive a sum which reasonably reflects the financial loss caused by the trader's breach.
- The trader should not be unfairly penalised. For example, the trader's liability to compensate the consumer should reflect the nature of the trader's breach and whether the consumer took reasonable steps to reduce their financial loss.
- The trader should bear any responsibility or cost for the recovery of returnable goods as they are in breach of their duties.

Do you agree with these principles?

- a. Yes / No / Don't know
- b. Please provide the reasoning and any evidence behind your answer

Question 18. To what extent do you agree with the regulatory proposal for refunds and treatment of goods, services and digital content (subject to refunds) if a consumer cancels because a trader has breached an implied term?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

4. Repayment of refunds

91. When a consumer exercises a statutory cancellation right under the DMCCA (during a cooling-off period or because the trader has breached an implied term), they may be entitled to a refund. The DMCCA requires traders to make those repayments (section 261(2)) but does not set out further detail. This chapter proposes regulations that set out when and how repayments must be made, based on existing consumer protection provisions found in the CCRs and the Consumer Rights Act 2015.

4.1 Proposed regulations on repayment of refunds

92. If a consumer cancels the subscription contract during a cooling-off period,²¹ we propose that the regulations require the trader to:

- Make any refund to the consumer without undue delay, and in the case of:
 - **Non-returnable goods, services, digital content**, no later than 14 days after the day the trader is notified of the consumer's decision to cancel the contract.
 - **Returnable goods**, where the consumer is responsible for the return of the goods and returns them, no later than 14 days after the day on which the trader receives the goods back or, if earlier, no later than 14 days after the day on which the consumer supplies evidence of having sent the goods back.
- Make the refund using the same means of payment as the consumer used for the initial transaction unless the consumer has expressly agreed otherwise.

93. If a consumer cancels because the trader has breached a specified implied term and is entitled to a refund,²² we propose that the regulations reflect that the trader must:

- Make the repayment without undue delay and no later than 14 days after the day on which the trader agrees the consumer is entitled to a refund.
- Make the refund using the same means of payment as the consumer used for the initial transaction unless the consumer has expressly agreed otherwise.

²¹ See Chapter 2 for more details

²² See Chapter 3 for more details

94. If a consumer exercises their contractual right to bring a subscription contract to an end, refund obligations on a trader should follow the terms of the contract. However, we expect any such refunds to be made in a timely manner.
95. In the next chapter we seek views on proposals to ensure that a consumer's contractual right to end a subscription contract, without penalty, can be exercised in practice and provides consumers with the intended protection against experiencing an unwanted extension of their subscription contract and payment obligations.

Questions

- Question 19.** To what extent do you agree with the regulatory proposal for how repayment of refunds work?
- Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
 - Please provide the reasoning and any evidence behind your answer

5. Contractual terms for exiting a contract

96. The contractual terms of a subscription contract set out how the contract operates and places rights and obligations on the contracting parties. This may include stipulating when the consumer becomes liable to pay for the products to be supplied in the renewed contract term.

97. Some traders may seek to include terms that make the consumer liable for a renewal payment unduly early, or unduly restrict when the consumer can exit the contract. These types of contract terms could have the effect of making consumers pay for subscription contracts that they no longer want. This chapter considers regulatory proposals to strengthen existing consumer protections (for example under unfair terms legislation) in a way that prevents traders from using contract terms which can give rise to this type of consumer detriment.

5.1 Proposed regulations for when a consumer can be made liable for a renewal payment

98. This proposal is to ensure that traders do not use terms in the subscription contract that make the consumer liable for a renewal payment before their contract actually renews.²³

99. Generally, the date on which the contract is entered determines both when the contract will auto-renew onto a new term ('the contract renewal date') and when the consumer is liable to pay for the products supplied in that contract term ('the renewal payment').

100. For example, if a consumer signs up to a monthly rolling contract on the 15th of the month, on the 15th of each month, generally:

- the contract will automatically renew, and the contract will continue for the renewed term
- the consumer's payment will be due, and payment will be taken from the consumer.

101. We recognise that there may be small variations in when payments are taken. For example, a consumer may be able to choose their payment date so as to accommodate a number of subscriptions with a single trader.

²³ See sections 273(2) and (3) of the DMCAA.

102. However, we consider that terms under the subscription contract that makes a consumer liable for the renewal payment before the contract renewal date could potentially have the effect of extending the consumer's payment obligations for longer than they want or expect as the consumer has to take action to avoid liability for the payment sooner than they expect. For example, in a monthly subscription contract, there could be two terms: a term that states the contract renewal date is the 15 April, and another term that states the consumer becomes liable to pay for this renewed contract period on 9 April.
103. The term could inadvertently trap the consumer: for example, a consumer takes action to bring their contract to an end on the 10 April on the basis that the consumer considers the 10 April to be well ahead of their contract renewal date of 15 April. The consumer assumes taking action on 10 April will give the trader sufficient notice that they want the contract to stop at the end of their current contract period and to avoid making any more payments. The consumer is surprised, when the trader informs them, they have acted too late. The trader points the consumer to the terms and conditions, which state that the consumer became liable for the renewal payment on 9 April. The consumer ends up paying for the renewal payment which they wanted to avoid paying.
104. Our proposed policy is that the regulations include provisions which ensure that any term of a subscription contract which seeks to impose on a consumer liability for a renewal payment before the day on which the contract renews is of no effect (see section 273(2) of the DMCCA). This will ensure that traders include contract terms in their subscription contracts that make a consumer liable for a renewal payment on or after the subscription contract's renewal date consistent with a consumer's usual expectations.
105. Should the trader rely on a term which imposes liability for the renewal earlier than this, the consumer would be entitled to claim the relevant renewal payment back. We consider that this approach is proportionate and necessary to help ensure that a consumer's contractual right to end a subscription contract (without penalty) genuinely offers a consumer real protection against paying for unwanted products

5.2 Proposed regulations for when a consumer can end a contract

106. Even when the consumer is liable for a renewal payment on or after the day that the contract renews, there still remains the potential for traders to set unreasonable limits in their terms and conditions on when the consumer can actually exercise a contractual right to bring their subscription contract to an end and so stop the contract from renewing onto a new period. For instance, we are aware that a contract may sometimes include terms which set down specific windows of time in which the consumer is permitted to inform the trader that their contract should terminate at the

end of their current contract period. We consider that it may be appropriate for provisions to be made in the regulations to ensure that these types of terms do not undermine the consumer's contractual right to end or exit the contract in practice. We consider the potential for consumer harm and possible regulatory options below.

107. An example, of the type of term which causes us concern might be a term in a 12-month auto-renewing contract which permits a consumer to take action to ensure the contract does not renew onto another 12-month period only during month 9 and 10 of the current contract period. Another example could be a term, which requires that the consumer must give 6 months' notice before the contract renews to stop the contract rolling over onto another 12-month term. Even when the consumer is not liable for the renewal payment before the contract renews, such terms may make it disproportionately difficult for the consumer to end a contract, thereby increasing the risk of them being trapped in a subscription they no longer want.
108. By giving the Secretary of State the power to set down in regulations when a consumer is permitted to exercise a contractual right to end a subscription contract (see section 260(3)), the DMCCA provides the opportunity to make direct and accessible protection for consumers. However, we are mindful that consumer legislation already provides protection from the type of detriment considered here. For example, contract terms in a subscription contract which require a consumer to give an excessive notice period before exiting a subscription contract may be unfair under Part 2 of the Consumer Rights Act (CRA) 2015 and so not binding on a consumer.²⁴
109. When considering the necessity of further legislative provision, we have taken into account that the unfair terms legislation in the 2015 CRA is a principled-based provision. It requires a legal assessment to determine whether or not a term is unfair taking into account, amongst other things, all the circumstances existing when a term is agreed. Given this, we can see that a regulatory provision which provides clear parameters as to when a consumer is able to exercise their contractual right to exit a subscription contract could provide businesses, consumers and enforcers with more certainty as to what the law requires. That said, we consider that these parameters would need to be sufficiently flexible to accommodate the full range of subscription

²⁴ In particular, the unfair terms provisions in the Consumer Rights Act 2015 state "that the following term may be unfair: "A term which has the object or effect of automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express a desire not to extend the contract is unreasonably early". (Paragraph 9, Part 1 of Schedule 2 to the Consumer Rights Act 2015).

models. This means that setting clearer rules, as opposed to tailored principles in legislation, is not a straightforward exercise.

110. We do not consider that it would be reasonable to prohibit traders from imposing any limits on when the consumer can exercise their contractual right to exit a contract. For example, we recognise that a trader may need to include contract terms which provide that the last day the consumer can exercise their right to end the contract is a few days before the consumer becomes liable for the renewal payment. This is to ensure that the trader has sufficient time to stop the renewal payment being taken and thereby avoid the administrative burden of having to make a refund to a consumer.
111. However, we see no legitimate reason for a trader to use contract terms in subscription contracts which require a consumer to wait for a period of time on entering the contract or after a renewal before they can exercise their contractual right to exit the contract before the next renewal. For example, requiring a consumer with a 90 day renewing subscription to exit only after 30 days and before 60 days.
112. Therefore, subject to a reasonably short period of time necessary for the trader to complete the steps to end the subscription contract before the consumer becomes liable for a renewal payment, we consider that consumers should be able to exercise their contractual right to exit the contract at any time including as soon as a subscription begins or renews. We propose making regulations to ensure this is always possible.

Questions

Question 20. To what extent do you agree with the regulatory proposal for when the consumer can be made liable for a renewal payment?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

Question 21. To what extent do you agree with the regulatory proposal for when a consumer can exercise a contractual right to bring a subscription contract to end?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

6. Arrangements for exiting a contract

113. This chapter sets out the requirements that the DMCCA places on traders to ensure that traders put in place arrangements which enable consumers to exercise their contractual right to exit a contract. It also offers some proposals to clarify the legislation through guidance.
114. Consumers sometimes face barriers when attempting to exit an unwanted subscription contract. For example, being required to exit over the phone during restrictive opening hours, having to contact a trader several times, or having to navigate a complicated website. The DMCCA places new requirements on traders to ensure that arrangements are in place so that consumers can exercise their contractual right to end ('exit') a subscription contract easily. The DMCCA makes the following provisions:
- **For all subscription contracts (including those entered into online):** traders must ensure that there is a straightforward method by which a consumer can exit their subscription contract. The consumer must not have to take steps that are not reasonably necessary to exit their contract.
 - **For contracts entered into online only:** Traders must ensure that consumers who enter their subscription contracts online are able to exit online. Traders must ensure that the instructions for how to exit online are displayed online in a place that a consumer seeking to exit the contract is likely to find them.
115. The requirement for consumers who enter their subscription online to be able to also exit online does not prohibit traders from offering other exit methods (such as via telephone) in addition to the online method. In these instances, traders must ensure all methods offered follow the principles of being straightforward, and without the consumer having to take steps that are not reasonably necessary to exit the contract.
116. Regardless of the method used by a consumer to enter the subscription contract, the DMCCA provides consumers with the ability to exit their contract by making a clear statement to the trader in which they set out their decision to bring their contract to an end. This mirrors the current right in the CCRs relating to cancelling a contract during the cooling-off period.
117. The DMCCA does not prohibit traders from making offers or seeking feedback from consumers during the exit mechanism, provided that the arrangements for exiting a

contract comply with the DMCCA's requirements. Accordingly, offers or feedback must not frustrate or unreasonably elongate the exit process.

6.1 Proposals for guidance

118. The principle behind the DMCCA's requirements is that consumers should not have to put in more effort to exit a subscription contract than they did to enter it. To align with this principle, we propose clarifying the exit requirements in the DMCCA by setting out in guidance:

- The requirement for a consumer to be able to exit online if they entered the contract online is generally likely to mean that the consumer is able to exit their contract via the same online medium that they used to sign up. In practice, we expect this will largely be delivered through the trader's website or app. For example, a consumer could exit via their online membership page, or by completing a webform on the trader's website, amongst other options.
- Clarifying that an exit method is more likely to be considered 'straightforward' and without the consumer having to take steps that are not 'reasonably necessary' if it allows consumers to conclude their exit within a short period of time and without the consumer having to contact the trader more than once.
- Clarifying that any offers or feedback requests that a trader makes to a consumer whilst exiting the contract should not be compulsory for the consumer to engage with in order to exit the contract. There should also not be an unreasonable number of offers made.

Questions

Question 22. Do you have any views on these proposals about arrangements to exit a contract? Please provide specific examples and evidence where possible.

7. Information notices

119. This chapter sets requirements for the different information notices (listed below) that traders are required to send consumers at different points of a subscription contract. It also sets out proposals for additional requirements related to these notices. Any additional requirements will be made by regulations.
120. The DMCCA requires traders to send the following notices:
- **Reminder notices:** to be sent at key points during the contract (see section 7.1 of this chapter).
 - **End of contract notices:** to be sent after a consumer has exercised their contract right to exit a contract (see section 7.2 of this chapter).
 - **Renewal cooling-off notices:** to be sent at the start of the renewal cooling-off period (see section 7.3 of this chapter).
121. The purpose of all of these information notices is to provide key information to consumers and to allow them to refer back to this information as required.

7.1 Reminder notices

122. Consumers can lead busy lives and may not remember key dates relating to their subscription contracts, leading them to make payments for subscriptions they do not want or use. The purpose of a reminder notice is therefore to remind consumers that they are in a subscription contract, alert them that they are about to become liable for another payment, and provide them with the steps they need to take to exit the contract and avoid that payment should they wish. The full list of information that must be included in a reminder notice is in Part 3 of Schedule 23 to the DMCCA and must be given all together in the communication.
123. The DMCCA requires traders to send a reminder notice to consumers a reasonable period ahead of certain 'renewal payments'. A renewal payment is a payment that can be avoided by a consumer if they exercise their contractual right to exit the contract. A reminder notice is required to be given ahead of the last (or only) renewal payment within

a six-month period.²⁵ If a consumer will not become liable for a renewal payment within the six-month period then the reminder notice requirements will be triggered in relation to the very first renewal payment. If the renewal payment will not be for 12 months (or longer), two reminder notices must be given ahead of the renewal payment. If the subscription contract has a concessionary period (for example a free trial period), a reminder notice must be given before the consumer is liable for the first renewal payment.

124. In practice, we expect that this will mean that traders must send:

- In the case of monthly auto-renewing contracts, a reminder notice a reasonable period ahead of the 6th renewal payment. This repeats ahead of every 6th renewal payment thereafter (therefore two notices per year).
- In the case of contracts which auto-renew every 12 months, two notices a reasonable period ahead of the first renewal payment. This repeats ahead of every renewal payment thereafter (therefore two notices per year).
- In the case of contracts that offer a concessionary period, an additional reminder notice a reasonable period ahead of the concessionary period coming to an end.

125. The DMCCA requires traders to set out the ‘reasonable period’ in which they will send a reminder notice to consumers in the Key pre-contract information. In setting out this period, traders must ensure the period is reasonable for the purposes of informing the consumer that they are about to become liable for the renewal payment (to which the notice relates). It must give the consumer sufficient time to decide whether they want to exit the contract and to take the necessary steps to exit the contract should they wish.

126. The DMCCA also permits the trader to provide reminder notice information with other information (for example promotional material), however the reminder notice information must be more prominent than any other information given at the same time.

7.1.1 Proposed regulations reminder notices

127. In addition to the above requirements, we propose to introduce, via regulations, requirements for:

²⁵ Section 258(2) of the Act defines the “relevant six-month period” for these purposes. It sets out that the 6 month period is considered to be 6 months, which begins on the day after the contract was entered into. Then each subsequent 6 month is determined by each 6 month period that begins with day after the consumer became liable for a renewal payment.

- **Reminder notices to be given to consumers in writing and on a durable medium.** This is to ensure that consumers can refer back to key information in these notices. This would also more fully align all notice requirements under this legislation making it simpler for businesses to understand and implement.
- **The purpose of the reminder notice communication to be immediately apparent to the consumer.** For example, if a reminder notice is given to a consumer via email, the subject line should make it clear that the primary purpose of the communication is to provide the reminder notice information. This is to ensure the consumer immediately understands the purpose of the communication and increase the likelihood of them engaging with the information.
- **The prescribed information (in Part 3 of Schedule 23 to the DMCCA) must be given upfront so that it is the first information contained in the reminder notice that the consumer sees.** This is to ensure that prescribed reminder notice information is not overlooked by the consumer because, for example, its positioning increases the chances of the information being obscured by the other information given to the consumer at the same time.

Questions

Question 23. To what extent do you agree with the regulatory proposals for reminder notices?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

7.2 End of contract notices

128. When consumers decide to exit or cancel their subscription contract, they do not always receive confirmation that their decision has been received by a trader. The DMCCA therefore requires traders to acknowledge that a consumer has exited the subscription contract. The DMCCA also requires traders to send an end of contract notice if a consumer cancels their contract by exercising a statutory right to cancel under the subscription rules (see Chapter 2 (Cooling-off cancellation rights) and Chapter 3 (Cancellation remedies for breach of duties)).
129. In this notice, the DMCCA requires traders to acknowledge that the consumer has decided to exit or cancel their contract. Traders must also set out the date in which the contract came to an end or will come to an end, or the day it was or will be cancelled. This must be given to consumers in writing on a durable medium.
130. The DMCCA requires the notice to be given to consumers within the following timeframes:
- **If the consumer exits or cancels their subscription contract online:** within 24 hours of the consumer notifying the trader.
 - **If the consumer exits or cancels in any other way:** within 3 working days beginning the day after the consumer notifies the trader.
131. If there has been an overpayment, the trader must also refund the overpayment. An overpayment is any payment made by the consumer for which the consumer is not liable as a result of cancelling or exiting the subscription contract.
132. The DMCCA does not prohibit traders from sending other information alongside the end of contract notice information in the same communication.

7.2.1 Proposed regulations on end of contract notices

133. We propose building on the DMCCA's requirements through regulations by:
- **Requiring that the prescribed timeframe to send a notice begins after the trader has accepted the consumer has a statutory right to bring their contract to an end due to a breach of an implied term.** This is where cancellation rights are being exercised because of a breach of implied terms and is to ensure that traders have time to confirm there has been a breach of an implied term whilst still adhering to the regulations.

- **Requiring the prescribed information in these notices to be given in a way that is more prominent than any other information given at the same time.** The prescribed information is information which the DMCCA requires to be set out in the end-of-contract notices. This is to ensure that important end of contract information is not lost amongst other information (for example, promotional material) given to the consumer at the same time.
- **Requiring the prescribed information to be given upfront so that it is the first information that the consumer sees.** This is to support the effectiveness of the purpose of the prominence requirement referred to above. Without this additional requirement, there is a risk that the prescribed information is placed in a position that increases the risk of the consumer overlooking the information or not recognising its significance.
- **Requirement for the primary purpose of the communication to be immediately apparent to the consumer.** For example, if an end of contract notice is given to a consumer via email, the subject line should make it clear that the primary purpose of the communication is to provide the prescribed information. This is to ensure the consumer immediately understands the purpose of the communication and increase the likelihood of them engaging with the information.

Questions

Question 24. To what extent do you agree with the regulatory proposals for end of contract notices?

- Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- Please provide the reasoning and any evidence behind your answer

7.3 Cooling-off notices

134. So that consumers are made aware of the fact they are entering a renewal cooling-off period and are informed of their rights to cancel the contract during this period, the DMCCA requires traders to send a cooling-off notice to consumers. For more information about the renewal cooling-off period and the consumer's cancellation rights, including proposals, see Chapter 2 (Cooling-off rights).
135. The cooling-off notice must contain specific information, including:
- that the subscription contract is continuing,
 - that the consumer has a right to cancel the subscription contract during the cooling-off period to which the notice relates, and how a consumer may exercise that right,
 - when the renewal cooling-off period begins and ends,
 - if the consumer may lose the right to cancel during this period, the circumstances under which that will happen,
 - the consequences of the consumer exercising the right, including
 - any refund the consumer may be entitled to,
 - any reason that refund might be diminished, and
 - in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader.
136. The cooling-off notice must be given to a consumer on the first day of the renewal cooling-off period or as soon as reasonably practicable after that day. This notice must also be given separately to all other information meaning that no other information (e.g. promotional material) can be given at the same time.

7.3.1 Proposed regulations on cooling-off notices

137. We expect to build on the above requirements in regulations and our policy proposal for doing this is by:
- **Requiring cooling-off notices to be given in writing and on a durable medium.** This is to ensure consumers can refer back to key information in these notices, and to more fully align with other notice requirements in the legislation.
 - **Clarify that the prescribed information includes information about the costs for the consumer of returning goods after exercising a renewal cooling-off right.** This is to ensure consumers are fully informed of their obligations if they cancel their subscription contract during a renewal cooling-off period.

- **Requirement for the primary purpose of the communication to be immediately apparent to the consumer.** This is to ensure the consumer immediately understands the purpose of the communication and increase the likelihood of them engaging with the information.

Questions

Question 25. To what extent do you agree with the regulatory proposals for cooling-off notices?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

8. Pre-contract Information

138. Consumers are not always aware of important details when they enter a contract. Key information, including the fact they are entering an auto-renewing subscription contract, can be in complex legal language and buried in long terms and conditions. Therefore, the DMCCA requires traders to provide certain information ('pre-contract information') clearly and prominently before the consumer enters a subscription contract. The purpose of the pre-contract information is to ensure the most important details are pulled out and clear for the consumer to understand and refer back to.
139. The DMCCA sets out specific requirements about what information is required and how it should be presented but does not provide detail on exactly how traders should comply. We do not anticipate further regulations are necessary and propose providing further detail in guidance. This Chapter sets out our expectations of what that guidance is likely to include.
140. The DMCCA requires two types of pre-contract information:
- **Key pre-contract information:** Critical for a consumer to know and understand before they enter a subscription contract. The full list of information that must be included is in Part 1 of Schedule 23 to the DMCCA. It includes information such as how often the contract renews, the frequency and cost of payments, and how a consumer can end their contract.
 - **Full pre-contract information:** Important additional information that must be understandable and accessible to the consumer pre-contract. The full list of information required can be found in Part 2 of Schedule 23 to the DMCCA. It comprises the Key pre-contract information, alongside additional information such as the trader's name and contact details and full details of a consumer's cooling-off rights. This additional information only needs to be provided to the extent that it is applicable to the contract and not already apparent from the context.
141. The Act requires that traders give the **Key pre-contract information**, in clear and plain language:
- Before the consumer enters the contract and as close as possible before the consumer commits to the contract (by clicking the order button or signing/verbally agreeing the contract).
 - All together as one set of information, and separately from the Full pre-contract information or any other information.
 - For contracts concluded:

- remotely online: in writing which is legible and in a way that the consumer is not required to take any extra steps to read it other than those needed to enter the contract;
- on the phone: verbally and in a way which is audible and comprehensible;
- in person (on or off the trader's premises): in writing, legibly, and on a durable medium (e.g. on paper).

142. The DMCCA also requires that traders must give, or make available, the **Full pre-contract information**, all together and in clear and plain language pre-contract and as close as possible before the consumer commits to the contract. However, in relation to a contract entered into in person, it must be given pre-contract to the consumer in writing and on a durable medium (e.g. email or paper). In other cases where the Full pre-contract information has not been given pre-contract in writing and on a durable medium, it must be given in this way as soon as reasonably practicable afterwards and before the supply of any products. In addition, if a consumer has signed a contract in person, they must be given a copy as soon as they have signed it.

8.1 Proposals for guidance

143. Generally, how traders comply with these requirements will depend on the product and the medium used to conclude a subscription contract. Broadly, we expect to provide guidance to reflect our view of the DMCCA's requirements including:
- in the case of online contracts, Key pre-contract information should be clearly and prominently visible in the location where the consumer will enter into the contract and is directly accessible without a need for the consumer to take any further steps to access and read it;
 - the Key pre-contract information should be provided separately from other information including the Full pre-contract information and should be more prominent than the Full pre-contract information and come before it;
 - the pre-contract information should not be obscured by the addition of other information which may compete for the consumer's attention;
 - all the pre-contract information should be easy for the consumer to understand; and
 - all the pre-contract information should be presented in such a way as to come to the consumer's attention to enable the consumer to easily identify and read the information; in an appropriate font, size, colour and position.

Questions

Question 26. Do you have specific operational concerns about the provision of pre-contract information?

a. Yes / No / Don't know

b. If yes, please provide the reasoning and any evidence behind your answer

Question 27. Is there anything else that you would like to provide comment or evidence on?

Questions

2. Cooling-off cancellation rights: refunds and returns

2.1 Approach for cooling-off return and refunds

Question 1. In developing the approach to cooling-off returns and refunds, we have sought to do the following (set out in paragraph 23):

- Ensure that the existing level of statutory rights for consumers in the CCRs is maintained – consumers should not lose a right they currently have, even if they gain rights elsewhere.
- Maintain the principle underlying the CCRs that if a consumer exercises a cooling-off right, neither they nor the trader should be unfairly out of pocket. For example, if a trader has already supplied a perishable product that cannot be resold and has therefore incurred non-recoverable costs, that is considered in calculating the refund.
- Take into account the nature of the subscription, including the type of product supplied, and whether or not the consumer has been supplied a product in the cooling-off period before exercising a cancellation right.
- In keeping with the intention of the DMCCA, ensure the consumer has the opportunity to reflect on whether they want to continue with a contract. This is because they will be liable for ongoing payments unless they take action to stop them.
- Where possible, streamline the operation of the rules to make the rules accessible to consumers and businesses.

Do you agree with the principles set out in this approach?

- a. Yes / No / Don't know
- b. Please provide the reasoning and any evidence behind your answer

Question 2. Please provide any evidence you have on the extent to which consumers cancel their contracts or take action to bring their subscription contract to an end within 14 days after:

- signing up for a subscription
- a subscription trial period ending and rolling over into a paid or higher cost subscription
- a long-term subscription (12 months or longer) automatically renewing

2.2 Refunds for goods

Question 3. We have taken the following factors into consideration (set out in paragraph 25) when developing refund and return policy proposals for goods:

- The extent to which it is possible and practical for the consumer to return the goods supplied under the subscription contract in the same condition they were received.
- Whether the goods have been dispatched by the trader, or whether they have been supplied/delivered to the consumer.
- How to fairly allocate responsibility and cost for returning the goods between the trader and the consumer.
- Whether goods have certain characteristics which require additional or different rules.

Do you agree with the factors that we have taken into consideration when developing the proposals for refunds for goods?

- a. Yes / No / Not applicable
- b. Please provide the reasoning and any evidence behind your answer

Question 4. To what extent do you agree with the regulatory proposal for returns and refunds for returnable goods (category 1 goods)?

- a. Strongly agree / Agree / Neither agree nor disagree/ Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer
- c. If you are a trader and provide a subscription contract for goods in this category, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide any evidence and explanation of costs where possible.

Question 5. To what extent do you agree with the regulatory proposal for refunds for perishable and bespoke goods (category 2, non-returnable goods due to their characteristics)?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer
- c. If you are a trader and provide a subscription contract for goods in this category, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide any evidence and explanation of costs where possible.

Question 6. To what extent do you agree with the regulatory proposal for refunds for sealed goods and inseparably mixed goods (category 3, non-returnable goods due to circumstances)?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer
- c. If you are a trader and provide a subscription contract for goods in this category, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide evidence and explanation of costs where possible.

2.3 Refunds for services

Question 7. In our proposals, we have taken into consideration (set out in paragraph 42) that:

- Due to their nature, services received by the consumer are not returnable to the trader.
- A consumer may have been supplied with the service before exercising a cooling-off right.
- By cancelling the contract, consumers should not be able to receive services for free during a cooling-off period.

Do you agree with the factors that we have taken into consideration when developing the proposals for refunds for services?

- a. Yes / No / Not applicable
- b. Please provide the reasoning and any evidence behind your answer

Question 8. To what extent do you agree with the regulatory proposal for refunds for services?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer
- c. If you are a trader and provide services under a subscription contract, please provide any estimates of implementation and/or ongoing costs you would incur because of this proposal. Please provide evidence and explanation of costs where possible.

2.4 Refunds for digital content

Question 9. In developing the proposals for digital content we have taken into consideration (set out in paragraph 49) that:

- Due to its nature, digital content is not returnable.
- A consumer may have been supplied with the digital content before exercising their cooling-off right.
- Consumers should not be able to receive digital content for free during a cooling-off period.

Do you agree with the factors that we have taken into consideration?

- a. Yes / No / Not Applicable
- b. Please provide the reasoning and any evidence behind your answer

Question 10. a. Considering the three options set out for how refunds could work for digital content, which approach would you recommend?

- Option 1 (proportionate refund for both initial and renewal cooling-off periods)
- Option 2 (waiver for initial cooling-off period and proportionate refund for the renewal cooling-off period)
- Option 3 (waiver for initial cooling-off period, and waiver for renewal cooling-off period)
- None of these
- Don't know
- Not applicable

- b. Please provide the reasoning and evidence behind your answer

Question 11. If you are a trader and supply digital content, please provide any estimates of implementation and/or ongoing costs you would incur because of each proposal. Please provide evidence and explanation of costs where possible.

- Option 1 (proportionate refund for both initial and renewal cooling-off periods)
- Option 2 (waiver for initial cooling-off period and proportionate refund for the renewal cooling-off period)
- Option 3 (waiver for initial cooling-off period, and waiver for renewal cooling-off period)

Question 12. To what extent do you agree with the following statement about Option 3 (waiver for initial cooling-off period, and waiver for renewal cooling-off period):

“Permitting the use of a waiver for digital content subscriptions for the renewal cooling-off period which is sought from the consumer at the start of relevant renewal period (as set out in Option 3) is impractical”.

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know / Not applicable
- b. Please provide the reasoning and any evidence behind your answer. If you don't agree with the statement, do you consider that there are ways of mitigating these?

2.5 Refunds for mixed contracts

Question 13. Do you think that there should be regulations for how mixed contracts work, or is guidance sufficient?

- a. Regulations / guidance
- b. Please provide the reasoning and any evidence behind your answer

2.6 Termination of ancillary contracts

Question 14. To what extent do you agree with the regulatory proposal for how ancillary contracts are treated?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

2.7 Extension of cooling-off periods

Question 15. To what extent do you agree with the regulatory proposal for the extension and operation of the cooling-off period if the trader does not comply with their duties to inform the consumer of their initial or renewal cooling-off right?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

2.8 Application of cooling-off rights

Question 16. Do you have any concerns with the proposed approach in relation to product categories (f) to (m)? *Please focus your answers on categories (f) to (m) as categories (a) to (e) were addressed in section 2.2.3 and 2.2.4 and questions 3, 5 and 6.*

- a. Yes / No / Not applicable
- b. If yes, please state each product category and your concerns, providing reasoning and any evidence for each

3. Cancellation remedies for breach of duties

Question 17. We propose that these principles (set out in paragraph 88) underpin the remedies when a consumer cancels because of a breach of the relevant implied terms provided for under the DMCCA:

- The remedies available to the consumer should be straightforward so they are easily understood by consumers and traders.
- The consumer should receive a sum which reasonably reflects the financial loss caused by the trader's breach.
- The trader should not be unfairly penalised. For example, the trader's liability to compensate the consumer should reflect the nature of the trader's breach and whether the consumer took reasonable steps to reduce their financial loss.
- The trader should bear any responsibility or cost for the recovery of returnable goods as they are in breach of their duties.

Do you agree with these principles?

- a. Yes / No / Don't know
- b. Please provide the reasoning and any evidence behind your answer

Question 18. To what extent do you agree with the regulatory proposal for refunds and treatment of goods, services and digital content (subject to refunds) if a consumer cancels because a trader has breached an implied term?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

4. Repayment of refunds

Question 19. To what extent do you agree with the regulatory proposal for how repayment of refunds work?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

5. Contractual terms for exiting a contract

Question 20. To what extent do you agree with the regulatory proposal for when the consumer can be made liable for a renewal payment?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

Question 21. To what extent do you agree with the regulatory proposal for when a consumer can exercise a contractual right to bring a subscription contract to end?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

6. Arrangements for exiting a contract

Question 22. Do you have any views on the proposals about arrangements to exit a contract? Please provide specific examples and evidence where possible.

7. Information notices

7.1 Reminder notices

Question 23. To what extent do you agree with the regulatory proposals for reminder notices?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

7.2 End of contract notices

Question 24. To what extent do you agree with the regulatory proposals for end of contract notices?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

7.3 Cooling-off notices

Question 25. To what extent do you agree with the regulatory proposals for cooling-off notices?

- a. Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / Don't know
- b. Please provide the reasoning and any evidence behind your answer

8. Pre-contract information

Question 26. Do you have specific operational concerns about the provision of pre-contract information?

- a. Yes / No / Don't know
- b. If yes, please provide the reasoning and any evidence behind your answer

Question 27. Is there anything else that you would like to provide comment or evidence on?

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