

Technical note: unfair commercial practices

4 April 2025

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1. Introduction

- 1.1 On 24 May 2024 the Digital Markets, Competition and Consumers Act (DMCC Act) received Royal Assent. The provisions in Chapter 1 of Part 4 of the DMCC Act prohibit unfair commercial practices, replacing and updating the Consumer Protection from Unfair Trading Regulations 2008 (CPUTRs).
- 1.2 This technical note provides:
 - (a) an overview of the legislative background to the provisions in Chapter 1 of Part 4 of the DMCC Act, including the transitional arrangements that determine when the CPUTRs cease to apply and the updated provisions in the DMCC Act come into force,
 - (b) a non-exhaustive summary of the changes made by the DMCC Act to the CPUTRs.
- 1.3 This note is intended to help legal advisers and enforcement authorities to understand the evolution of the law on unfair commercial practices. It supplements the Competition and Markets Authority's (CMA) guidance for traders – [Unfair commercial practices: CMA207](#).

2. Legislative background

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024: Protection from unfair trading

- 2.1 The provisions in Chapter 1 of Part 4 of the DMCC Act prohibit unfair commercial practices, replacing and updating the CPUTRs.¹
- 2.2 The CPUTRs originated as domestic regulations implementing the European Union's (EU) Unfair Commercial Practices Directive (UCPD) into UK law.² The CPUTRs modernised and simplified the UK's consumer protection framework by partially or wholly repealing provisions in 23 previously existing laws and providing similar or greater protection to these laws.
- 2.3 Following the UK's exit from the EU, the CPUTRs continued to have effect as a result of section 2 of the European Union (Withdrawal) Act 2018. This means that the common standard of consumer protection that applied across the EU immediately before the UK's exit from the EU at 11.00 p.m. on 31 December 2020 has continued to apply in the UK ever since.
- 2.4 The unfair commercial practices (UCP) provisions in Chapter 1 of Part 4 of the DMCC Act revoke and replace the CPUTRs and have the same core objective of protecting consumers from unfair commercial practices. They seek to achieve a high level of consumer protection. Any substantive changes made to the EU's consumer protection framework or by the DMCC Act and other domestic legislation since the UK's exit from the EU will result in divergence from the common standard of consumer protection that had been in place before 2021.³
- 2.5 Prior to the DMCC Act only a court could determine whether a commercial practice had been unfair within the meaning of the CPUTRs. After the DMCC Act's consumer law enforcement provisions come into force on 6 April 2025,

¹ Statutory Instrument 2008/1277.

² Directive 2005/29/EC.

³ The UCPD was amended in 2019 by Directive (EU) 2019/2161, which amended EU consumer protection rules on consumer rights, on unfair terms in consumer contracts and on indicating prices. In 2024, further rules were introduced by Directive (EU) 2024/825 in relation to practices associated with the early obsolescence of goods, misleading environmental claims ('greenwashing') and misleading information about the social characteristics of products or traders' businesses. The 2024 UCPD updates have no effect in the UK.

in addition to the courts, the CMA⁴ will also be able to decide whether a commercial practice is unfair within the meaning of the UCP provisions.⁵ The CMA's decisions will be appealable to the High Court in England and Wales or in Northern Ireland, or to the Outer House of the Court of Session in Scotland.

- 2.6 Details of potential enforcement action (civil and criminal enforcement by the CMA and others, as well as direct enforcement by the CMA only) can be found in the CMA's [Consumer protection enforcement guidance \(CMA58\)](#) and [Direct consumer enforcement guidance \(CMA200\)](#).

Transitional arrangements

- 2.7 Section 251 of the DMCC Act revokes the CPUTRs. The UCP provisions in the DMCC Act come into force on 6 April 2025⁶ and apply only in relation to commercial practices that take place on or after that date.⁷ The CPUTRs continue to have effect in relation to any act or omission which takes place before then.⁸
- 2.8 Consumers currently have private rights of redress for certain infringements of the CPUTRs. The DMCC Act provides for these to be replaced by new arrangements that will be detailed in a new statutory instrument. Until that new statutory instrument becomes law, consumers will continue to have the rights of redress set out in the CPUTRs, notwithstanding the coming into force of the UCP provisions in the DMCC Act.

⁴ The CMA is the UK's primary competition and consumer enforcement body. It helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. More information about the CMA and its powers can be found here: [About us - Competition and Markets Authority - GOV.UK \(www.gov.uk\)](#).

⁵ Sections 148 and 180 and Schedule 16 to the DMCC Act.

⁶ The commencement date is appointed by Statutory Instrument 2025/272.

⁷ Section 252(1) DMCC Act.

⁸ Section 252(2) DMCC Act.

3. Summary of changes made by the DMCC Act to the CPUTRs

- 3.1 The UCP provisions apply to the commercial dealings that traders have with consumers. Commercial practices encompass anything traders do that could affect consumers in some way before, during and after a contract is made or a transaction takes place.
- 3.2 The UCP provisions:
- (a) contain prohibitions of practices that are likely to cause the average consumer to take a different transactional decision as a result of a misleading action, misleading omission, aggressive practice, or a contravention of the requirements of professional diligence.⁹
 - (b) prohibit 32 specific commercial practices specified in Schedule 20 to the DMCC Act, the omission of material information from an invitation to purchase, and the promotion of unfair commercial practices in codes of conduct.
- 3.3 The UCP provisions seek to achieve a high level of consumer protection and maintain much of the scope and effect of the CPUTRs, with some amendments, including new or more detailed prohibitions of practices relating to fake consumer reviews and ‘drip pricing’.
- 3.4 The UCP provisions also streamline and/or remove certain tests from the CPUTRs in relation to assessing the unfairness of commercial practices. Most notably, it is no longer necessary:
- (a) to prove that the omission of material information from an invitation to purchase causes a consumer to take a different transactional decision. The omission of material information from an invitation to purchase is now unfair regardless of whether it is likely to impact a consumer’s transactional decision.
 - (b) to demonstrate that a contravention of the requirements of professional diligence ‘materially distorts the economic behaviour’ of the average consumer (or is likely to), meaning that it ‘appreciably impairs their ability

⁹ The concept of ‘average consumer’ is defined in section 246 and 247 of the DMCC Act. The concept of ‘transactional decision’ is defined in section 245 of the DMCC Act. Both concepts are explained in the CMA’s [Unfair commercial practices guidance \(CMA207\)](#).

to make an informed decision' thereby causing them to take a different transactional decision. For such a commercial practice to be unfair, it is sufficient to show that 'it is likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise'.

- (c) to show that a misleading action relates to any particular listed feature – it needs only to relate to a matter relevant to a transactional decision.
- (d) to demonstrate that an aggressive practice has caused or is likely to cause significant impairment of the average consumer's freedom of choice or conduct. It is sufficient to show that a practice uses harassment, coercion or undue influence and is likely to impact a consumer's transactional decision.

3.5 In addition, the DMCC Act clarifies the breadth of the definitions of 'commercial practice' and 'transactional decision'.

3.6 The table below provides a non-exhaustive summary of the changes made by the DMCC Act to the CPUSTRs. It should be read alongside the relevant legislation to which it refers. The contents of the table below, including the list of notable changes to predecessor provisions, are not a substitute for the law itself.

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
<i>Introduction</i>		
s.224 Overview	N/A	N/A
<i>Prohibition of unfair commercial practices</i>		
s.225 Prohibition of unfair commercial practices	<ul style="list-style-type: none"> • Regulation 3 • Regulation 4 	<p>Definition of ‘commercial practice’:</p> <ul style="list-style-type: none"> • Clarifies that it may be a single act or omission and that it has to be ‘relating to the promotion or supply of a product (rather than it having to be ‘directly connected with’ that promotion or supply) • Clarifies that where the practice relates to the supply or promotion of a consumer’s product, this can be to any person (not just to the trader) <p>Professional diligence:</p> <ul style="list-style-type: none"> • Removes the condition that a contravention of the requirements of professional diligence is unfair if it ‘materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product’, replacing this with the transactional decision test that a commercial practice is unfair ‘if it is likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise’ <p>Invitation to purchase:</p> <ul style="list-style-type: none"> • Removes the transactional decision test from the omission of material information when there is an invitation to purchase. The omission of material information from an invitation to purchase is now unfair regardless of whether it is likely to impact a consumer’s transactional decision

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
Schedule 20 Commercial practices which are in all circumstances considered unfair	Schedule 1	<ul style="list-style-type: none"> • The list in Schedule 1 to the CPUTRs has been rearranged. Most banned practices have not been changed substantially, even if the wording has been tweaked. • Drafting revisions have been made to the following banned practices: paragraphs 2, 4, 5, 7, 8, 9, 14, 16, 19, 20, 25, 27, 28, 30, 31, 32 of Schedule 20 to the DMCC Act. • Paragraph 13 of Schedule 20 to the DMCC Act introduces a new banned practice in relation to consumer reviews.
s.226 Misleading actions	Regulation 5	<ul style="list-style-type: none"> • Removes the detailed list of ‘matters’ relevant to transactional decisions and replaces it with ‘information relating to a product, trader or any other matter relevant to a transactional decision’ • Extends the scope of what is considered misleading action from a commercial practice that ‘contains false information and is therefore untruthful’ to ‘the provision of false or misleading information’ • Misleading actions relating to ‘codes of conduct’: <ul style="list-style-type: none"> ○ Changes the condition for a misleading action to occur to where a trader falsely ‘asserts that the trader acts in compliance with’ a code of conduct (as opposed to where a trader ‘indicates in a commercial practice that he is bound by that code of conduct’) ○ Changes the characteristics of codes of conduct to which the prohibition applies, namely the requirement (previously ‘commitment’) in the code no longer has to be ‘firm’, ‘capable of being verified’ and ‘no more than aspirational’. Instead, for the prohibition to apply the requirement in a

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
		code of conduct must be non-discretionary and compliance with it must be 'capable of being verified'
s.227 Misleading omissions	Regulation 6	<ul style="list-style-type: none"> • Moves the provisions for a commercial practice that is an invitation to purchase to a separate provision (see row for s.230) • A misleading omission can occur if the commercial practice omits information required under 'any other enactment', no longer just EU-derived law. <ul style="list-style-type: none"> ○ 'any other enactment' means any other legislative provision, including other sections of the DMCC Act ○ Information 'required under any other enactment' is limited to information which the trader is required to give to consumers (namely, it does not include information that must be given to traders)

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
s.228 Aggressive practices	Regulation 7	<ul style="list-style-type: none"> Removes the requirement for express consideration required of ‘all the features and circumstances of the commercial practice’ in assessing whether a commercial practice involves a misleading omission Removes the requirement to show that a commercial practice ‘significantly impairs or is likely significantly to impair the average consumer’s freedom of choice or conduct in relation to the product concerned’. Instead, it is sufficient to show that a commercial practice ‘uses harassment, coercion or undue influence’ and is likely to impact a consumer’s transactional decision. ‘Coercion’ also includes the threat of physical force (in addition to the use of such force). Exploitation of vulnerable consumers no longer requires consideration of the gravity of the misfortune, or trader’s awareness of whether it might impact the consumer. When determining whether a commercial practice uses harassment, coercion or undue influence, the factor in s.227(2)(f) on barriers to exercising rights (previously reg 7(2)(d)) no longer refers specifically to non-contractual barriers or to rights ‘under a contract’. The barriers may be contractual, as well as non-contractual, and the rights may be contractual or non-contractual.
s.229 Contravention of the requirements of professional diligence	Regulation 2	<ul style="list-style-type: none"> Standard of skill and care is no longer defined as ‘special’ skill and care It is no longer a requirement to show it ‘materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product’ Instead, it is sufficient to show that:

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
		<ul style="list-style-type: none"> ○ the commercial practice falls short of the standard of skill and care reasonably expected, and ○ it is likely to cause the average consumer to take a different transactional decision
s.230 Omission of material information from invitation to purchase	Regulation 6	<ul style="list-style-type: none"> ● Definition of 'invitation to purchase' clarifies that it occurs where it 'purports to enable' the consumer 'to decide whether to purchase the product or take another transactional decision in relation to the product' ● Removes the 'transactional decision' test for assessing whether a commercial practice involves the omission of material information when there is an invitation to purchase ● Requires that the total price of the product must be presented to consumers when there is an invitation to purchase (including any fees, taxes, charges or other payments which will be necessarily incurred) ● Requires that where the nature of the product means that there are mandatory charges that cannot be reasonably calculated in advance, information about how these charges will be calculated must be provided to the consumer and be such that it enables the consumer to calculate the total price of the product <ul style="list-style-type: none"> ○ Requires that any such information about how the total price will be calculated must be set out with equal prominence as the part of the total price that is calculable in advance ● The details about the trader that must be provided in an invitation to purchase now include: <ul style="list-style-type: none"> ○ the identity of any other person (not just a trader) the trader is acting for ○ the address for service (if different from the business address) of the trader and the business email address of the trader

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
		<ul style="list-style-type: none"> ○ the business address and business email address of any other person the trader is acting for (if the other person has them) and if different to the person's business address, the address for service of the person ● An invitation to purchase must specify where arrangements for payment, delivery, performance or complaints handling are different from what the trader has published (rather than where those arrangements are different from the requirements of professional diligence) ● An invitation to purchase must include any information which the trader is required under any other enactment to give to a consumer as part of an invitation to purchase
<i>Public enforcement</i>		
s.231 Public enforcement	Regulation 19	Substantially equivalent provisions
<i>Consumers' rights of redress relating to unfair commercial practices</i>		
s.232 Rights of redress	<ul style="list-style-type: none"> ● Regulation 27A ● Regulation 27B 	<ul style="list-style-type: none"> ● Consumers currently have private rights of redress for certain infringements of the CPUTRs. ● The DMCC Act provides for these to be replaced by new arrangements that will be detailed in a new statutory instrument.

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
s.233 Rights of redress: further provision	<ul style="list-style-type: none"> • Regulation 27E • Regulation 27F • Regulation 27G • Regulation 27H • Regulation 27I • Regulation 27J 	<ul style="list-style-type: none"> • Until that new statutory instrument comes into force, consumers will continue to have the rights of redress set out in the CPUTRs, notwithstanding the coming into force of the UCP provisions in the DMCC Act.
s.234 Enforcement of rights of redress	Regulation 27K	
s.235 Relationship between rights of redress and other claims relating to prohibited practices	Regulation 27L	
<i>Inertia selling</i>		
s.236 Inertia selling	Regulation 27M	Substantially equivalent provisions
<i>Offences relating to unfair commercial practices</i>		

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
s.237 Offences	<ul style="list-style-type: none"> • Regulation 8 • Regulation 9 • Regulation 10 • Regulation 11 • Regulation 12 	<ul style="list-style-type: none"> • Excludes the new banned practice in relation to fake reviews from the list of criminally enforceable offences • Makes the omission of information from an invitation to purchase a standalone offence
s.238 Defence of due diligence and innocent publication	<ul style="list-style-type: none"> • Regulation 17 • Regulation 18 	Substantially equivalent provisions
s.239 Offences: criminal liability of others	<ul style="list-style-type: none"> • Regulation 15 • Regulation 16 	Substantially equivalent provisions
s.240 Penalty for offences	Regulation 13	Substantially equivalent provisions
s.241 Time limit for prosecution	Regulation 14	Substantially equivalent provisions
<i>Miscellaneous</i>		
s.242 Powers to amend this Chapter	N/A	<p>New delegated power for the Secretary of State to:</p> <ul style="list-style-type: none"> • add, delete or modify commercial practices in Schedule 20 • extend the private rights of redress to unfair commercial practices to which redress rights currently do not apply or remove rights of redress that have been added • add, delete or modify descriptions in the list of categories deemed to be 'material information' in the context of an invitation to purchase

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
s.243 Crown application	Regulation 28	Substantially equivalent provisions
s.244 Validity of agreements	Regulation 29	Substantially equivalent provisions
<i>Interpretation</i>		
s.245 Meaning of “transactional decision”	Regulation 2	<ul style="list-style-type: none"> Decision must be ‘any decision...relating to <u>the purchase</u> [etc.] of a product, including whether to purchase...’. The CPUTRs definition is ‘any decision... concerning whether ... to purchase’
s.246 Meaning of “average consumer”: general	Regulation 2	<ul style="list-style-type: none"> Provides that the average consumer cannot be expected to know information that a trader hides from the consumer, even if the consumer might know the information from another source
s.247 Meaning of “average consumer”: vulnerable persons	Regulation 2	<ul style="list-style-type: none"> Tracks through the removal of the ‘material distortion of economic behaviour’ etc. test, replacing this with a direct ‘transactional decision not otherwise taken’ test Introduces the concept of ‘situational vulnerability’, namely provides that consumers could fit the ‘vulnerable persons’ definition for any reasons including by virtue of ‘the circumstances they are in’ (in addition to becoming vulnerable due to, among other things, their age, physical or mental health or credulity) A ‘group of consumers’ particularly vulnerable to a commercial practice no longer has to be ‘clearly identifiable’ The commercial practice does not have to be shown to influence the behaviour of only that vulnerable group

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
		<ul style="list-style-type: none"> • It is specified that the concept of being vulnerable relates to impact on transactional decisions • There is no longer any exclusion for ‘the common and legitimate advertising practice of making exaggerated statements that are not meant to be taken literally’
s.248 Meaning of “product”	Regulation 2	Substantially equivalent provisions
s.249 General interpretation	Regulation 2	<p>Definition of ‘business’:</p> <ul style="list-style-type: none"> • ‘trade, craft or profession’ includes non-monetary activities • extends scope of ‘trader’ to where purpose is an undertaking carried on for gain or reward • covers non-monetary trading (for example, supply in exchange for personal data) <p>Definition of ‘code of conduct’:</p> <ul style="list-style-type: none"> • Definition removes the exclusion of codes imposed by legal or administrative requirements.

Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024	The Consumer Protection from Unfair Trading Regulations 2008	Description of changes
s.250 Index of defined terms	N/A	The definition of 'goods' now includes immovable property, rights and obligations N/A
<i>Consequential amendments and transitional provision</i>		
s.251 Consequential amendments relating to this Chapter	N/A	<ul style="list-style-type: none"> • Revokes the Consumer Protection from Unfair Trading Regulations, subject to the transitional provisions in s.252 • Introduces Schedule 21
Schedule 21	N/A	Citations and references made to the CPUTRs in other pieces of legislation have been amended to reflect that those regulations have been revoked and their provisions replaced by those in the DMCC Act
s.252 Transitional and saving provision relating to this Chapter	N/A	<ul style="list-style-type: none"> • Sets out that Chapter 1 of Part 4 of the DMCC Act applies to an act or omission which takes place on or after the commencement date. The CPUTRs will apply to any act or omission which takes place before the commencement date • The private rights under the CPUTRs continue to apply, even after the commencement of the DMCC Act, until the relevant private rights SI made under section 233 comes into force. The effect of this is that consumers can secure redress, but applying the law as set out in the CPUTRs, rather than in the DMCC Act. Accordingly, the CPUTRs remain binding on traders for this purpose.

