UK Government

ANNEX B TO:

Government Response to the Consultation on the Implementation of the new Subscription Contracts Regime

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Annex B: Summary of question responses

This Annex provides stakeholders' responses to each question and provides more detail on the government's response to each proposal including describing the policy that the government will take forward. The questions and proposals have also been summarised. Please see Annex A for the full question and the consultation for the proposal detail. Where questions relate to similar themes and policy proposals, the government response is grouped.

Question 1: Do you agree with the principles we set out for how cooling-off returns and refunds should work in general?

The principles:

- 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 - the consumer has been supplied a product in the cooling-off period before exercising a cancellation right.
- Ensure the consumer has the opportunity to reflect on whether they want to continue with a contract, in keeping with the intention of the DMCCA – 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 them accessible to consumers and businesses.

46 out of 75 respondents (61%) answered Question 1. Of those:

- **34 (74%) agreed** with the proposed principles
- 10 (22%) respondents disagreed with the principles
- 2 (4%) responded ‘don’t know

A mix of stakeholder groups supported the principles, including all consumer advocacy organisations and enforcement authorities. Some businesses, trade associations and legal firms who agreed with the principles qualified their support and noted areas of concern, particularly how the cooling-off rules would apply to service contracts and digital content contracts. Cultural and heritage charities shared similar concerns.

The government considers these are an effective set of principles and will use them as a policy basis to inform the cooling-off regulations. The government believes that overall, they strike the right balance of supporting clarity for consumers while not creating disproportionate burden for business.

See questions 7 and 8 for the government's response to how the cooling-off refunds apply to service contracts (including cultural and heritage charitable memberships) and questions 9, 10, 11, and 12 for how they work for digital service contracts.

Question 2: Please provide any evidence you have about the extent to which consumers brought their contract to an end within 14 days of entering it, or after a 12 month+ or trial auto-renewed onto a new term.

There were 15 responses to this question which provided examples of consumer cancellation behaviour for particular products or sectors. The evidence shared was not sufficiently comprehensive to provide insights for individual sectors.

Question 3: Do you agree with the factors that we have taken into consideration when developing the proposals for refunds for goods?

The factors:

- 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.

32 out of 75 respondents (43%) answered Q3. Of those:

- **17 (53%) agreed** with the factors put forward in the consultation
- 3 (9%) disagreed
- 12 (38%) responded ‘not applicable’.

See answer to Question 4 for the government’s response.

Question 4: To what extent do you agree with the regulatory proposal for cooling-off refunds for returnable goods?

Summary of proposal for return and refunds of returnable goods that can be resold on return (see subsection 2.2.2, paragraphs 28 to 30 of the consultation for the complete proposal):

- Consumer receives a full refund. provided they return the goods after the contract is cancelled.
- The refund includes 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).
- It is usually the consumer's responsibility to arrange return of goods and cover the cost, but in some circumstances, it will be the trader's
- If a consumer breaches their responsibility to return the goods, or overly handles them, the trader should be appropriately compensated.

20 out of 75 respondents (27%) answered Q4. Of those:

- **11 (55%) agreed** with the proposal put forward in the consultation
- 3 (15%) disagreed
- 3 (15%) neither agreed nor disagreed
- 2 (10%) responded 'not applicable'
- 1 (5%) responded 'don't know'

Where respondents disagreed with the factors set out in Question 3, this was largely because they considered factors relating to perishable goods had not been adequately reflected. See Question 5 for our response on that issue.

In response to the proposal for returnable goods, feedback from stakeholders comprised mainly of technical operational queries. Some businesses and consumer advocacy organisations raised questions around how the refund of delivery fees worked, usually with opposing views. Some responses from businesses, trade associations and law firms questioned whether traders would be adequately protected if goods were over-handled or not returned.

The government will legislate to give effect to the proposal for returnable goods sold to consumers. We will reflect business feedback by ensuring

guidance clarifies how refunds of delivery fees will work in practice and the implications of over-handling or not returning returnable goods.

Question 5: To what extent do you agree with the regulatory proposal for cooling-off refunds for perishable goods and bespoke goods?

Summary of the proposal for refunds for perishable and bespoke goods (see subsection 2.2.3, paragraphs 31 to 36 of the consultation for the complete proposal):

- Where a contract is cancelled, 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 how things work in practice.
- If goods have not been dispatched when the consumer cancels they receive a full refund and the least expensive delivery fee.
- If goods have been dispatched when the consumer cancels, the trader is entitled to reduce the refund by the contract price of the relevant goods dispatched, and to reflect the delivery amount paid.

22 (29%) of 75 respondents answered question. Of those:

- **9 (41%) agreed** with the proposal put forward in the consultation
- 7 (32%) disagreed
- 4 (18%) neither agreed nor disagreed
- 2 (9%) responded 'not applicable'

Some sectors put forward arguments that additional types of products should be classed as 'non-returnable due to their characteristics'. Some consumer enforcement authorities stressed that the definitions of 'perishable' and 'bespoke' in the CCRs would benefit from clarification (preferably in legislation). We have noted the feedback from business, but do not consider there is justification to depart from the CCRs.

We will use the CCRs definition and scope for the categories of 'perishable' and 'bespoke' goods. Amending definitions only for subscription contracts regulated by the DMCCA but not those regulated by the CCRs risks creating confusion. This approach will ensure consistency for businesses and a

simpler regime. However, we note the feedback where more clarity on these definitions would be helpful and will provide more detail in guidance.

Some businesses, trade associations and law firms disagreed with the use of ‘dispatch date’ as a cut-off date for when a consumer could receive a refund. They argued that this would not adequately protect businesses as costs could be incurred before dispatch (e.g. procurement and logistical costs) and some highlighted that the dispatch date may not be known when the contract is entered. They made alternative suggestions, including that businesses should be able to determine, and provide for in the contract, a date before a scheduled delivery. If a consumer cancelled the contract after that date, they would need to pay for the scheduled goods. Some responses stressed the importance of clear guidance on what terms such as ‘dispatch’ mean.

We have reflected on business’ feedback and accept that point of dispatch may not be something that the business knows when the contract is entered into (as opposed to when goods will be delivered). This could cause operational challenges, for example they could not include this date in the pre-contract information. Therefore, we will not add a definition of ‘dispatch’ in the regulations as it is important that consumers understand how long they have to cancel the contract without incurring liability for goods.

We will legislate so that where goods sold are perishable or bespoke, a consumer will receive a full refund if they cancel before the goods are supplied. If they cancel after the goods are supplied, the trader will be entitled to reduce the refund by the amount of those goods.

We assessed the alternative proposals put forward by businesses but consider that they would not sufficiently preserve the protection of the cooling-off right. For example, by creating too narrow a window in which consumers could cancel the contract without incurring liability for goods they do not want. Therefore, the application of the cooling-off period will be based on when perishable or bespoke goods are ‘supplied’. This is already an established concept in consumer law, verifiable by the consumer, and will provide greater clarity for trader and consumer. In practice, this means that once the perishable or bespoke goods have been supplied, the consumer will need to pay for those goods as well as the cost of delivery.

We recognise that businesses raised concerns about the risk of wasted costs given the nature of perishable goods and bespoke goods. Therefore we will lay regulations

so that if the contract is for the supply of perishable goods or bespoke goods (but not other types of goods), the consumer can only exercise their initial cooling-off right within 14 days, not up to 14 days after the goods are received (as is the case with other types of goods). This will avoid the situation of an overly long cancellation window, which increases the risk of a trader incurring costs on preparing perishable or bespoke goods that are not supplied to the consumer.

We will legislate so that for contracts for the supply of perishable goods and bespoke goods (and not other goods sold to the consumer), the initial cooling-off cancellation right can only be exercised within a period that ends 14 days after the contract is entered (rather than up to 14 days after these goods are supplied).

Question 6: To what extent do you agree with the regulatory proposal for cooling-off refunds for sealed goods and inseparably mixed goods?

Summary of proposal for refunds for goods sold sealed or goods sold that become mixed inseparably with other items after delivery (see subsection 2.2.4, paragraphs 37 to 40 of the consultation for the complete proposal):

- If the contract is cancelled before the relevant goods are unsealed or inseparably mixed, the provisions for returnable goods apply (see subsection 2.2.2 of the consultation).
- If the goods have become unsealed or inseparably mixed after delivery, the trader can reduce the refund by the contract price of those goods.
- where the consumer has chosen a premium delivery option, the trader only needs to refund the amount of the least expensive cost of delivery.

20 (27%) of 75 respondents answered question. Of those:

- **11 (55%) agreed** with the proposal put forward in the consultation
- 2 (10%) disagreed
- 5 (25%) neither agreed nor disagreed
- 2 (10%) responded 'not applicable'

Some stakeholders questioned whether the scope was quite right for 'goods sealed for health and hygiene reasons', 'sealed audio/video recordings and computer software' and 'goods which have become in separably mixed'. Some suggested that where sealed goods were defined as not suitable for return by reference to health protection or hygiene reasons, that these purposes were too limited. They proposed that additional products should be included (e.g. trading cards which are sealed for commercial purposes). Others observed that changes in packaging styles could have an impact on scope (e.g. businesses using less plastic or making them easier to open). Regarding 'inseparably mixed' goods, some respondents suggested more guidance on what was in scope and gave some examples where clarity would be helpful.

The government will lay regulations to give effect to the proposal for the supply of sealed or inseparably mixed goods but have noted the request for more clarity and will provide further guidance.

We intend to use the CCRs scope by making provision for the supply of sealed goods which are not suitable for return due to 'health protection or hygiene reasons', for sealed audio, video recordings or computer software and those goods that become 'mixed inseparably (according to their nature)'.[1] This is to maintain current levels of consumer protection and to ensure contract regulations are as simple as possible for businesses and consumers. Amending the scope of these provisions only for subscription contracts regulated by the DMCCA but not those regulated by the CCRs risks creating confusion.

[1] See Regulation 28 of the CCRs

Question 7: Do you agree with the factors that we have taken into consideration when developing the proposals for refunds for services?

The factors are:

- 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.

40 (53%) of 75 respondents answered question. Of those:

- **23 (58%) agreed** with the factors taken into consideration
- 16 (40%) disagreed
- 1 (3%) said 'not applicable'

Both those respondents that agreed and disagreed, reflected a mix of stakeholder types (businesses, trade associations, law firms, cultural and heritage charities, consumer advocacy organisations, and enforcement authorities). Some suggested additional factors. For example, the nature of digital services compared with 'offline' services, or the nature of cultural/heritage charitable memberships which provide public benefit. We note the additional factors stakeholders suggested should be considered. Those relating to service contracts are addressed in the response to Question 8, and those to digital content in response to Question 10.

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

Summary of proposal for refunds for services (see subsection 2.3, paragraphs 43 to 46 of the consultation for the complete proposal):

If a service has been supplied during a cooling-off period, after the contract is cancelled, 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.

For example:

- A consumer takes out an annual subscription for a membership service at the price of £365 per year. The consumer exercises their initial cooling-off right on day 7 of the membership.
- Subject to certain safeguards being met, 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.

If the consumer cancels by exercising their cooling-off right and supply of service has not begun, the consumer receives a full refund.

40 (53%) of 75 respondents answered question. Of those:

- 13 (33%) agreed with the proposal
- **19 (48%) disagreed**
- 6 (15%) neither agreed nor disagreed
- 1 (3%) said ‘not applicable’
- 1 (3%) said ‘don’t know’

Stakeholders from a range of groups supported the proposal for service contracts. Of those who disagreed, around half were cultural and heritage charities, and half were businesses or trade associations.

Some digital service providers (particularly computer software and gaming companies) asked the government to clarify the distinction between a service and digital content. They argued that digital services were very different from ‘offline services’ like gyms and should be treated like digital content on the basis that

products such as computer software and gaming had high investment in terms of R&D and intellectual property rights, so are more akin to digital content than services.

We have noted businesses' feedback. However, the definition of digital content is established in the DMCCA, the CCRs and other consumer law. We expect that businesses are already familiar with these terms and applying them to their business models. In that context, we consider that legislative change within the subscription rules of the DMCCA would add unnecessary complexity for businesses, consumers, and enforcers.

The most common concern was how proportionate refunds worked for cooling-off periods. Many considered that the proposal introduced a new definition of 'pro-rata' and a requirement to always calculate 'pro-rata' refunds on the basis of time. They were concerned this would mean consumers could sign up, excessively use and benefit from a service for a few days, and then cancel for a nearly full refund. They argued this was unfair on businesses and could negatively impact their income, potentially leading to them providing more expensive and/or less attractive subscription packages.

Alternative suggestions were put forward. Some considered that refunds should be based on consumption/use of the product and the consumer should lose their initial cooling-off right once they started using the subscription. For example, after a consumer has accessed the gym or used a discount. Others considered that 'pro-rata' should be based on the price that the consumer would have had to pay for the value of what they received or experienced if they didn't have the subscription. For example, if a consumer cancelled after going to a paid exhibition where their membership allowed them free entry, the consumer should be charged the entry fee that a non-member would have paid. However, many respondents also described how hard it would be to monitor, assess and calculate value and/or use, particularly when subscriptions offered multiple benefits.

Respondents provided less detailed feedback in relation to the renewal cooling-off period, although some businesses emphasised that the proposal could lead to a reduction in the availability of trials as proportionate refunds effectively increase the length of a trial. Meanwhile, some enforcement authorities put forward the view that consumers should always get a full refund, particularly for the renewal cooling-off period, when it is more likely the consumer doesn't want the contract to continue.

We have considered this feedback carefully but do not believe that there is sufficient reason to diverge from our proposal. We consider it balances the rights of

consumers to be refunded for contracts they do not want, while businesses receive payment for the proportion of the contract delivered. The government is also committed to supporting clear and consistent consumer protections and our proposal achieves this through consistency with the CCRs.

We will legislate so that:

- **If a consumer cancels during a cooling-off period and supply of service has not begun, a consumer will receive a full refund.**

- **If supply of service has begun or is ongoing (e.g. during a renewal cooling-off period) and the consumer cancels, the consumer will receive a proportionate refund, which ensures that the consumer pays an amount in proportion to the part of the subscription contract performed during the cooling-off period calculated by reference to the total subscription contract price agreed for that service.**

In practice this broadly means that:

- If a trader has not started to supply the service under a cancelled contract, a consumer is entitled to a full refund of payments for that service. That might occur where, even though a subscription contract has been entered, the service to be supplied to the consumer under the contract do not begin until a later date.

- If a trader has started to supply services under a cancelled contract but has not yet completed that supply (e.g. where the trader has not yet performed all services for which the consumer has paid for) a consumer is entitled to a proportionate refund of that fee.

The calculation of the ‘proportionate’ refund depends on the terms of the particular contract and how much of the contracted services have been performed before cancellation. Where contracts offer unlimited supply of a service for a period of time in return for a fee, then the consumer’s liability is likely to be a pro-rated amount of that fee based on how long the contract has been provided for.

For example, if a consumer enters an annual gym membership for £365 per year (i.e. £1 per day) but cancels on day 4 of that membership, the consumer is liable to pay £4 to reflect that the trader had supplied services for four of the 365 contracted days. Alternatively, if a gym membership is charged at £50 per month entitling the

member to ten visits each month and a consumer cancels after visiting the gym twice, the consumer is liable to pay £10 to reflect that the trader has supplied services for two of the ten contracted occasions. This ensures the consumer pays for the services provided under the contract.

To note:

- A ‘proportionate’ refund is a minimum requirement and intended to ensure that businesses are paid for the proportion of the contract they perform. If businesses judge that it is too administratively burdensome to calculate and issue a proportionate refund, they can issue a full refund.

- However, where the subscription contract provides clearly for a separate fee in return for a one-off, additional service, this would not require traders to refund this fee where the consumer has expressly consented to this payment and to the service being provided during the cooling-off period.

- Some businesses and trade associations queried how refunds work where third parties charge business fees for using their platforms. They advocated that if a consumer received a cooling-off refund, third-parties should be required to reimburse the trader for their fees, otherwise the trader would have to absorb extra costs. The government considers that how such business-to-business fees are handled in the event of cancellation is determined by the contracts in place between the businesses.

Cultural and heritage charitable memberships

Charities offering cultural and heritage subscription memberships (e.g. to museums, galleries, heritage sites, performances) were concerned about refunds for the initial cooling-off period. They argued that consumers could visit multiple properties or sold-out exhibitions in the first two weeks of a subscription membership, cancel and get almost all their membership fee back. They considered this was particularly detrimental for their sector given their memberships supported their work to deliver public benefit.

The government appreciates the important and valuable work done by the cultural and heritage sectors to protect and provide access to the nation’s culture, landscapes, collections and historical places, and the wider societal benefit their works supports. We have reflected on their concerns about the impact of the subscription rules on their ability to deliver public benefit. The government is

committed to maintaining existing consumer protections but also recognises the public benefit delivered by cultural and heritage charities that offer in-person experiences.

We will legislate to exclude charitable memberships from the DMCCA. Broadly this will exclude contracts which are between a charity and a consumer and that allow consumers to attend performances, see collections, or visit places (eg. museums, galleries, historical properties, landscapes, wildlife, performing arts) which are related to their charitable purpose. This will mean that such memberships are not subject to additional regulation under the subscription regime.

Where a charity offers a membership which falls in scope of the exclusion, the charity will not need to comply with the new requirements for subscription contracts (including the provision of tailored pre-contract information, reminder notices, renewal cooling-off periods, and easy exit such as the ability to cancel online if you sign up online).

Question 9: Do you agree with the factors that we have taken into consideration when developing the proposals for refunds for digital content?

The factors are:

- 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.

37 (49%) of the 75 respondents answered this question. Of these:

- **31 (84%) agreed** with the factors put forward in the consultation
- 6 (16%) respondents disagreed with the factors

A mix of stakeholders agreed with the principles. Of those who disagreed, responses were mainly from the cultural and heritage charity sector on the basis that a similar waiver should apply to their memberships.

Question 10: Considering the three options set out for how refunds could work for digital content, which approach would you recommend? Please provide the reasoning and any evidence behind your answer.

Summary of options for refunds for digital content contracts (see subsection 2.4, paragraphs 51 to 61 of the consultation for the complete proposal):

Option 1 (Proportionate refund for both initial and renewal cooling-off periods) This aligns rules with those for service contracts. The consumer has a cooling-off right for both periods, and if they cancel, a proportionate refund is due, based on the proportion of the contract offer that has been supplied.

Option 2 (Waiver from initial cooling-off right and proportionate refund for renewal cooling-off period)
This retains the current CCRs waiver for the initial cooling-off period. In practice this means that where a consumer signs up for a digital content contract, once they have agreed for supply of digital content to start and waived their cooling-off right, they do not have a statutory right to cancel. Under this option, a consumer would still benefit from the renewal cooling-off right (14 days after a trial or 12 month+ contract auto-renews) and would receive a proportionate refund if they cancelled.

Option 3 (waiver from initial cooling-off right, and from renewal cooling-off right if consumer actively agrees at point of renewal)
This option replicates the mechanism of initial cooling-off period waiver (as described above) for the renewal cooling-off period. This means that at the point of auto-renewal after a trial or end of a 12 month+ contract, the trader would need to seek active consent from the consumer for supply to continue.

38 (51%) of the 75 respondents answered this question. Of these:

- 3 (8%) supported Option 1
- **15 (39%) supported Option 2**
- 11 (29%) supported Option 3
- 9 (24%) said ‘none of these’

Few stakeholders favoured Option 1. It was mainly supported by consumer advocacy groups and enforcers who considered aligning the rules for digital content with those for services was fairer, more consistent, and provided greater protection for consumers.

There was support for Option 2 from different groups, including some businesses, trade associations, cultural and heritage charities and their representative bodies, consumer advocacy organisations and enforcement authorities. Where businesses and trade associations supported Option 2, it was because it retained the existing waiver for the initial cooling-off period which they considered was a well-established practice and particularly important for digital content contracts. Where consumer advocacy groups and enforcement authorities supported this option, it was because it provided consistency on how refunds were treated in the renewal cooling-off period for digital content and services (although some argued consumers should get all their money back, not just a proportionate amount, on the grounds they did not want the contract to auto-renew).

Option 3 was supported by some businesses and trade associations. However, for the majority, their support was conditional – they said it would only be viable if the waiver of a renewal cooling-off right was changed from being secured by 'active, explicit and contemporaneous consent' to 'tacit consent' (discussed further below), and that there would be no requirement for the trader to pause supply of digital content to re-secure consent.

The general sentiment from most businesses and trade associations was that they did not like any of the options. They particularly disagreed with Option 1 as they considered that without a waiver for the initial cooling-off period, consumers could 'sign up, binge and cancel' for a nearly full refund, undermining their business model. They considered that Option 2 would also reduce revenue and be onerous to implement as it required refunds during the renewal cooling-off period and they do not currently calculate proportionate refunds. They also considered there was still a 'binge and cancel' risk of digital content after the renewal period.

As indicated above, many proposed an alternative to Option 3, where the explicit consent waiver for the initial cooling-off period was retained, but for renewal cooling-off period a waiver could be secured via 'tacit consent'. Under this alternative proposal, the business would have to inform the consumer in advance that if they consumed content during the renewal cooling-off period, they would lose their renewal cooling-off right. Traders argued that consuming content was a positive action, and that securing consumer's explicit agreement to this condition in the sign-

up process along with further warnings in the reminder and cooling-off notices would mean consumers would be appropriately informed. If the consumer did not consume content (or the trader did not adequately inform them of how they would lose their right) they would receive a full refund. Many businesses and trade representatives advocated for this approach. Some also suggested that businesses should be able to choose whether they implemented this alternative proposal, or Option 2 (proportionate refunds for the renewal cooling-off period), reflecting that not all businesses would want or be able to monitor consumption.

We appreciate the detailed responses put forward by stakeholders and have carefully assessed the alternative suggestions put forward. However, we do not consider that there was sufficient evidence of disproportionate burden or impact on businesses to justify moving away from the convention in consumer law that consumers should only be taken to have given up a statutory right where they agree to do so expressly. We also consider that implementing alternative models based on consumption, or giving businesses a choice of refund models, are likely to be complex, depart from existing law, or create legal uncertainty.

The government is committed to a regulatory framework for contracts which is as consistent and coherent as possible, protects consumers from undue auto-renewal payments, is based on active consent, and does not disproportionately impact businesses. We believe Option 2 best achieves this.

The initial cooling-off waiver is well-established mechanism under the existing CCRs and therefore it is appropriate to retain this. In relation to the renewal cooling-off period, we have reflected carefully on businesses' concerns about risk of abuse and operational complexity to implement. However, we are not persuaded that there is a substantial risk of 'binge and cancel' after a trial or 12 month+ contract auto-renews. Therefore, on balance, we consider that the overriding factor is that a consumer is able to recover their payment if they do not want the trial or 12 month+ contract to continue. Allowing for a proportionate refund, rather than requiring a full refund, ensures that the trader is paid for the proportion of the contract they have supplied. Applying the same renewal refund rules to digital content and service contracts will also provide a simpler, clearer regime for businesses, consumers, and enforcers.

We will legislate so that:

- **The initial waiver applies to digital content contracts, in a way that is consistent with the approach under the CCRs.**

- **If a consumer cancels a digital content contract during a renewal cooling-off period, the consumer will receive a proportionate refund – ensuring that the consumer pays an amount which is in proportion to the part of the contract performed calculated on the basis of the total price agreed under the subscription contract for that supply.**

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

Of the 75 respondents to the consultation, 7 (9%) provided an answer to this question. Respondents responded generally rather than per proposal. They provided examples of the type of areas they would expect to incur costs (for example, IT, legal, administrative, and consumer service costs) but did not quantify these. Some respondents suggested that there would be a negative impact investment in their sector.

Question 12: To what extent do you agree with the following statement about Option 3 (waiver for the 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, is impractical".

31 (41%) of the 75 respondents answered this question. Of these:

- **17 (55%) agreed**
- 5 (16%) disagreed
- 6 (19%) neither agreed nor disagreed
- 3 (10%) said 'don't know'

Of those who disagreed, while not desirable, some businesses did not think it impractical for traders to be able to set up the necessary processes to seek the consumer's express consent before supply of digital content continued in a relevant renewal period. Others challenged the presumption that explicit consent was needed and that if Option 3 were based on 'tacit' not 'explicit' consent it would not be impractical (their alternative suggestion is described in Question 10).

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

30 (40%) of the 75 respondents answered this question. Of these:

- 11 (37%) considered there should be regulations
- **19 (63%)** considered that guidance would be sufficient

Responses were mixed, with different types of stakeholders supporting either regulations or guidance. Some highlighted examples of complex contract arrangements where clarification would be helpful. For example, if a business offers multiple products, some of which are excluded from the subscription's regime (e.g. telecoms) and some in scope (e.g. TV/film streaming). We have reflected on stakeholders' feedback and consider that guidance on how the regulations apply to mixed contracts is desirable.

The government will provide guidance in relation to mixed contracts.

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

Summary of proposal for termination of ancillary contracts (see subsection 2.6, paragraphs 71 – 74 of the consultation for the complete proposal)

An ancillary contract is one which is related to the main subscription contract but subsidiary to it. Consistent with the CCRs, if a consumer exercises their cooling-off right during an initial cooling-off period, the ancillary contract would be automatically terminated.

19 (25%) of the 75 respondents answered this question. Of these:

- **11 (58%) agreed** with the proposal
- 1 (5%) disagreed
- 7 (37%) neither agreed nor disagreed

A small number of respondents, mainly business and law firms, sought clarification on the definition of an ancillary contract, how refunds would be calculated, and suggested scenarios where it could be problematic for an ancillary contract to automatically end. We have reflected on feedback and consider that maintaining consistency with how ancillary contracts are treated under the CCRs would simplify implementation for traders.

The government will legislate consistently in line with the CCRs to implement the proposal for ancillary contracts.

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 and/or renewal cooling-off right?

Summary of proposal for extension of cooling-off periods(see subsection 2.7, paragraphs 77 – 82 of the consultation for the complete proposal):

- If the trader fails to inform the consumer of their initial and/or renewal cooling-off rights, the cooling-off period will extend up to a maximum of 12 months. If the consumer cancels during this time, they are not liable to pay for non-returnable goods, services or digital content.
- The trader can limit their liability by sending the consumer the information about their cooling-off rights in writing and on a durable medium, and the cooling-off period will end 14 days after the consumer receives that information.

36 (48%) of the 75 respondents answered this question. Of these:

- **17 (47%) agreed** with the proposal
- 9 (25%) respondents disagreed
- 10 (28%) neither agreed nor disagreed

Generally, enforcement authorities and consumer advocacy organisations supported the approach. Some businesses and trade associations argued that the consumer receiving non-returnable goods, services and digital content free of charge during the extended cooling-off period was disproportionate and unfair on the trader. In particular, they queried the impact if a trader made a small error with what and how they gave the information about the consumers' cooling-off right. A few respondents also questioned how proof of notification would work. Cultural and heritage charities were concerned about the cost of postage or that events beyond their control (e.g. postal delays) could put them in breach.

We have reflected on these points but consider that the extension of the cooling-off period as set out in the proposal is an appropriate approach. If the trader breaches their statutory duty to inform the consumer of their initial or renewal cooling-off right, the consumer has been deprived of the appropriate information required to ensure that they can cancel the contract for no penalty. Therefore, they should continue to

have this opportunity through the extension of the cooling-off period. As it is the trader's error, not the consumer, it is reasonable that the consumer, who does cancel, is not required to pay for non-returnable goods, services or digital content supplied during the extended cooling-off period. We also consider that there are sufficient safeguards for business as they can limit their liability by correcting their breach and informing the consumer of their cooling-off rights. The proposal is also consistent with the CCRs which businesses should be familiar with.

We have noted the queries around timings of notices and how the trader proves they are compliant. Broadly speaking, in any dispute between a consumer and a trader about whether the trader has given information or notices to the consumer, the trader must prove that they have given the appropriate notices.[2] The DMCCA also sets out that where the trader gives information or notices by electronic communications (e.g. email), they are treated as being received by the consumer at the time the communication is sent.[3] Where post is used by the trader, for example to give the consumer a cooling-off notice, we do not consider that the information and timing requirements in the DMCCA would require the use of first-class post.

The government will legislate to implement the proposal for extending the cooling-off period. We will also provide relevant guidance to support businesses on some of the issues raised.

[2] Section 272(6) of the DMCCA
[3] Section 272(2) of the DMCCA

Question 16: Do you disagree with the proposed approach to refunds in relation to any of the contract types (f) to (m)? Please focus your answers on contracts (f) – (m) as types (a) – (e) were addressed in sub-sections 2.2.3 and 2.2.4 and questions 3, 5 and 6.

Contract types F to M are below. For these, we do not consider that exclusion is appropriate, or that specialist refund rules are necessary. Therefore, the relevant cooling-off return and refund rules (e.g. for goods, services or digital content) will apply. See section 2.8, paragraphs 83 to 84 of the consultation for more details.

- F. Supply of a newspaper, magazines or periodicals
- G. Passenger transport services
- 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
- I. Off premises contracts where the value is less than £42
- J. Where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance
- K. Public auctions
- 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
- 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

21 (28%) of the 75 respondents answered this question. Of those:

- **10 (48%) agreed** with the proposal
- **10 (48%) disagreed**
- 1 (4%) said 'not applicable'

Views from stakeholders were mixed. Some enforcement agencies and consumer advocacy organisations flagged the need for clear guidance to aid interpretation. A number of businesses, trade associations, law firms and cultural and heritage charities thought that contracts for magazines, newspapers and periodicals should be treated as non-returnable rather than returnable goods. This was on the grounds that they are relatively time limited so quickly lose their value and can't really be resold. Some representatives from specific sectors (vehicle rental and alcohol) queried the approach for their sector, and some argued that those contract types should be excluded from the cooling-off right.

The government has reflected on these points, but do not consider that the cooling-off right should be removed from these types of contracts. This is because:

- **Newspapers, magazines and periodicals:** The government is committed to maintaining existing consumer protections. In the case of newspapers, magazines and periodicals, if a consumer subscribes to them now, they have consumer protections under the CCRs. Therefore, the government will retain these.

- **Vehicle rental:** In respect of contracts for the hire of goods generally, we will ensure consistency with the CCRs approach for the supply of services without reproducing specific sector carve outs. We will also provide further guidance on how the rules apply when goods are hired.

- **Alcohol:** We appreciate that there may be specific use cases with alcohol, for example vintage wine which may need to be stored correctly. However, we consider that the existing provision for goods provides for anticipated scenarios. For example, the consumer must return the goods in order to receive a refund, and the 'diminished value' provision provides for circumstances where the goods are not appropriately handled.

Contract types F to M will remain in scope of the DMCCA. In respect of contracts for the hire of goods generally, we will ensure consistency with the CCRs approach the supply of services without reproducing specific sector carve outs. The government will provide guidance where necessary.

Question 17: Do you agree with the principles that will underpin remedies when a consumer cancels because of a breach?

The principles are:

- 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.

33 (44%) of the 75 respondents answered this question. Of those:

- **26 (79%) agreed** with the principles
- 3 (9%) disagreed
- 4 (12%) said 'don't know'

The government's response to this question is addressed in the answer to Question 18.

Question 18: To what extent do you agree with the regulatory proposal for remedies if a consumer cancels because a trader has breached an implied term?

Summary of proposal for remedies following cancellation for breach of an implied term (see subsection 3.1 paragraphs 89 – 90 of the consultation for the complete proposal):

- **Right to a refund:** The consumer is entitled to a refund where they became liable for one payment under the cancelled contract that they would not otherwise have become liable for.
- **Calculation of refund**: The consumer is presumed to be entitled to a refund of all payments made following the occurrence of a relevant event (as applicable to the trader's breach) until the consumer cancels the contract.
- **Safeguards for the trader:** There is a limitation of 12 months for the consumer to exercise this right. The trader can rebut the presumption that the consumer is entitled to all payments if they can establish (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
- **Return requirements:** Returnable goods are considered unsolicited gifts, but the consumer may agree with the trader to return them, at the trader's cost.

31 (41%) of the 75 respondents answered this question. Of those:

- **17 (55%) agreed** with the proposal
- 2 (6%) disagreed
- 11 (38%) neither agreed or disagreed
- 1 (3%) responded 'don't know'

Although there was general support across stakeholder groups for the government's approach, some individual businesses, trade associations and law firms did not think that the proposal was sufficiently nuanced in the case of a 'minor' breach, or if in good faith a trader made a mistake. They were concerned that in such cases the refund could be disproportionate in relation to seriousness of the breach or the harm

caused. Some suggested that it might be helpful to distinguish between 'minor' and 'major' breaches or to have more flexibility in how refunds were determined. There were also requests for guidance on what amounts to a breach and how to determine refunds.

In addition, consumer advocacy organisations made the point that where traders have not complied with the key pre-contract information requirements, consumers will not have the information they need to make informed choices and so should not be bound by the subscription contract and receive a full refund as applicable.

Both consumer advocacy organisations and enforcement authorities had concerns about the complexity of the proposal. In particular, the requirement for the consumer to prove the loss of a payment as a result of the breach, arguing that the power imbalance between trader and consumer meant it was likely the consumer would not secure any remedy. There was also a request for clear guidance that sets out the evidence a trader would need to provide in order to demonstrate that the consumer should have acted sooner in exercising their cancellation right and to ensure that where the consumer may agree to collection of the goods that the consumer does not bear any of costs of collection.

We have carefully considered concerns from businesses about whether 'small' breaches could be treated disproportionately. However, we believe there are sufficient safeguards against this. These include the refund provisions being triggered in certain circumstances only after the consumer has established that they have made one payment under the contract because of the breach and the 12 months limitation period. In addition, for all breaches, the trader can rebut the presumption that the consumer is entitled to all payments between the time that the breach is operative (to be defined in the regulations) and when the contract is cancelled if they can prove that the consumer unreasonably delayed in giving them the cancellation notification. Therefore, we consider our proposal for cancellation remedies sufficiently balances the rights of consumers and traders.

However, we have also listened to the concerns about complexity of the consultation proposals and the critique that the burden on the consumer is too great, which risks the remedies being underused. To address this, we intend to set out, in legislation, a list of acts or omissions, which are specific breaches of implied terms. For these, a consumer will not need to prove that they have suffered a financial loss as a result of the breach to fall within the refund regime and will be entitled to a refund of at least one renewal payment paid. This will be a minimum remedy – as it is presumed that

the consumer is not liable for all payments from when the breach is operative (to be defined in regulations) until the contract is cancelled.

The list will comprise of acts or omissions made in breach of certain implied terms where it is likely to be straightforward (based on the facts) that the term has been breached, giving rise to consumer detriment. We expect that the list will include:

- The trader failing to give the consumer, before the contract is entered, certain pieces of the key pre-contract information.[4]

- The trader failing to send the reminder notice or failing to include the information required by Part 3, Schedule 23 of the DMCCA.[5]

- The trader setting down in the key-pre-contract information an unreasonable period for when reminder notices will be sent. [6]

We will legislate for the proposal for cancellation remedies. The regulations will include a list of acts or omissions which are specific breaches of implied terms and where the consumer will automatically be entitled to a refund of at least one renewal payment paid. This will provide clarity, for both traders and consumers, about when a particular type of breach will result in a refund.

[4] Breach of the term implied by section 262(a) of the DMCCA, duty to give key pre-contract information.
[5] Breach of the term implied into a subscription contract by section 262(c) of the DMCCA, duty to give reminder notices.
[6] Breach of the term implied into a subscription contract by section 262(d) of the DMCCA, duty to specify in the Key pre-contract information a reasonable period for giving reminder notices.

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

Summary of proposal for repayment of refunds after a consumer has exercised a cancellation right under the DMCCA (see subsection 4.1 paragraphs 92 – 95 of the consultation for the complete proposal):

Where a consumer is due a refund because they exercised a statutory cancellation right, in the case of:

Cancellation during a cooling-off period

- Returnable goods supplied, where the consumer is responsible for the return of the goods, the refund is due no later than 14 days after the trader receives the goods (or the consumer provides evidence of sending them).
- In other cases: the refund is due no later than 14 days after the trader is notified of the consumer's decision to cancel the contract.

Cancellation for breach of an implied term

- Refunds within 14-day period

Refunds must be made using the same means of payment as the consumer used unless expressly agreed otherwise.

37 (49%) of the 75 respondents answered this question. Of those:

- **17 (46%) agreed** with the proposal
- 9 (24%) disagreed
- 11 (30%) neither agreed nor disagreed

Consumer advocacy organisations and enforcement authorities agreed with the proposal, and some suggested small technical suggestions for clarification. Some businesses and trade associations had concerns about meeting a 14-day timeframe. They queried exactly when the timeframe started and highlighted specific operational challenges, for example reliance on third parties or monthly billing cycles (e.g. if consumer is on a monthly billing cycle with a company for multiple products or is paying through a monthly phone bill).

As consumers already have the protection of a 14-day period, and businesses should be familiar with the operational processes required, we do not consider there were compelling arguments or evidence put forward for change. The government will legislate for how refunds work using as its baseline the standard 14-day timeframe.

Question 20: To what extent do you agree with the regulatory proposal for when the trader can take renewal payments?

Summary of proposal for when a consumer can be made liable for a renewal payment (see subsection 5.1 paragraphs 98 – 105 of the consultation for the complete proposal):

This proposal would protect consumers from becoming inadvertently trapped into a subscription contract by the trader imposing liability for a renewal payment earlier than the contract renewal date. Such terms can confuse the consumer, leading them to think they have missed the opportunity to exit their contract . If the trader relies on such a term in their contract, the consumer would be entitled to claim the relevant renewal payment back, protecting them from unwanted

35 (47%) of the 75 respondents answered this question. Of those:

- **21 (28%) agreed** with the proposal
- 3 (4%) disagreed
- 8 (11%) neither agreed nor disagreed
- 3 (4%) responded 'don't know'

Representatives from across stakeholder groups supported the proposal. Some additional questions were posed about whether specific operational scenarios would be permissible, and some stakeholders noted guidance would be useful. Of those who disagreed, this was on the grounds that businesses should have freedom of when they took payment. The government considers this is an important protection for consumers and did not receive compelling reasons not to take it forward.

We will legislate for this proposal and ensure there is adequate supporting guidance.

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?

Summary of proposal for when a consumer can end a contract (see subsection 5.2 paragraphs 106 – 112 of the consultation for the complete proposal):

Consumers should have the right to bring their subscription to an end at any time, preventing it from auto-renewing onto a new term. However, sometimes traders can add terms to their contract stating that consumers can only do this at particular times. For example, in a 12 month contract a consumer can only bring it to an end between 30 and 60 days before it auto-renews. Such provisions can lead to consumers being inadvertently trapped in a subscription they do not want.

This proposal would clarify this in law so that consumers have the right to bring their subscription to an end at any time.

33 (44%) of the 75 respondents answered this question. Of those:

- **23 (70%) agreed** with the proposal
- 4 (12%) respondents disagreed
- 6 (18%) respondents neither agreed nor disagreed.

Representatives from across stakeholder groups supported the proposal and some made suggestions for how long a minimum notice period could be. Some businesses, trade associations, and legal firms disagreed on the grounds of operational necessity or that the existing principles in the Consumer Rights Act 2015 were sufficient.

The purpose of the subscription rules are to ensure consumers do not get stuck in unwanted contracts. We do not think it is always clear to consumers that they can end the auto-renewal on their subscriptions at any time.

We will legislate to prevent the use of contractual terms which have the purpose or effect of making it disproportionately difficult for consumers to end auto-renewal ('exiting the contract').

This will provide more clarity to consumers and strengthen the existing principled based provisions in Part 2 of the Consumer Rights Act 2015.

In practice, this means that traders must allow consumers to bring the contract to an end at any point thereby stopping the contract from auto-renewing onto another term. Allowing consumers to exercise their right to bring a contract to an end at any time will not prohibit traders from including in the subscription contract terms which reasonably accommodate legitimate operational processes. However, these types of terms (like other contract terms) must comply with other consumer regulation, including Part 2 of the Consumer Rights Act 2015, which prohibits unfair contract terms in consumer contracts

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

We propose to clarify 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.

Of the 75 responses to the consultation, 27 respondents (36%) provided views, from a mix of all stakeholder groups. Most respondents were supportive of the approach and appreciated the clarification that businesses could make offers and seek feedback. However, some queries and suggestions were put forward.

Many businesses and some consumer groups sought more clarity on specific terms used in the proposals, including what 'reasonable' number of offers means and what 'short period of time' means in the context of consumers exiting.

In relation to online exit, some businesses queried the idea of exiting via the same online medium as was used to sign up and sought more flexibility – for example someone might sign up on a website but exit via an app. A number asked whether they would have to enable or require their customers to have online accounts to manage/cancel their membership. Some also sought clarity on whether cancellation

by email would qualify as online exit. There were also operational questions such as how traders could recover loaned equipment or outstanding arears payments. Cultural and heritage charities were particularly concerned about the cost of new systems as many currently don't offer cancellation online. Some asked if cancellation by email or cancelling a Direct Debit with the bank would count as online cancellation.

In relation to exit processes being straightforward, generally businesses supported an exit method which can be completed in a short period of time rather than a specified number of clicks or interactions. They also raised a number of specific scenarios. For example, some asked who the consumer should cancel with if there were third parties involved, or if businesses could direct consumers to other businesses to cancel (e.g. if a consumer pays for streaming service via their mobile phone contract).

In relation to offers, many businesses and trade associations sought more clarification on what an 'unreasonable' number of offers would be and what was meant by 'compulsory' and 'engagement with an offer'. Some asked if a business could both present offers and seek feedback, and others described specific scenarios and asked if they would be compliant. Some consumer groups suggested consumers should have to ask and accept if they wanted to receive offers or give feedback.

In addition to feedback on the proposals for guidance, some businesses also sought clarification of the requirement in the DMCCA which permits consumers to end a contract with 'a clear statement'.

The government has noted stakeholders' feedback on the guidance proposals and will provide additional clarification, particularly on the points below.

Online exit

In practice, 'online exit'[7] generally will mean that the consumer is able to exercise their right to exit (i.e. exercise a right to bring their contract to an end) via the same online medium that they used to sign up. This does not mean that there is a legal

[7] 'Exit' is when a consumer can bring a contract to an end. For example, it's when the consumer 'turns off' auto-renewal in order to stop the contract from auto-renewing onto a further contract period. The consumer should continue to receive goods, services or digital content during the period they have paid for, but the contract will stop at the end of that period. Therefore, ending or bringing a contract to an end is distinct from the statutory right to cancel which ends the contract and immediately stops the provision of goods, services or digital content.

requirement for the entry and exit mechanisms to be exactly the same. However, the exit process must be online, straightforward and not include unnecessary steps. The policy intent is that the online exit route reflects the same ease as the online sign-up process.

We expect online exit will largely be delivered through the trader's website or app. For example, a consumer could exit via:

- A clearly labelled button on a website or in an app.
- A clearly labelled button on the consumer's online membership page or account (Note: It is not mandatory for consumers to have accounts – other options can be used).
- A webform on the trader's website (Note: the trader should provide confirmation to the consumer that they have received the notification to end the contract in a durable medium that the consumer can retain and refer to e.g. an email).

For the purposes of the requirement to make arrangements for online exit:

- We consider that providing a trader's email address is unlikely to be a sufficient mechanism to comply with the requirement for a trader to make arrangements to enable the consumer to end the contract online. Email clearly introduces a risk of the consumer ending up in a protracted back and forth with a trader, unable to complete their exit without prolonged correspondence and obstacles.[8]

- Cancelling a Direct Debit with a bank is not an online exit mechanism. This is because by cancelling a direct debit, the consumer has stopped a payment from leaving their account, but they have not brought their contract to an end, and nor have they used arrangements put in place by the trader to the subscription contract.

Straightforward exit

An exit method is more likely to be considered to meet the requirements for 'straightforward' exit and without consumers having to 'take steps which are not reasonably necessary' to exit if it allows consumers to conclude their exit within a

[8] Note: this does not prevent email as a means by which a consumer can notify the trader (via a clear statement) of their decision to bring the contract to an end (see sections 260(2) and (6) of the DMCCA).

short period of time and the consumer does not have to contact the trader more than once.

Offers or requests for feedback

Any offers or requests for feedback should not prevent the consumer exiting quickly and easily.

Where offers are made, there should not be an unreasonable number of offers for the consumer to navigate through or listen to and offers should not unreasonably prolong the exit process or discourage the consumer from seeing it through and exercising their right to exit the contract.

Where feedback is sought, the legislative intent is that it cannot be compulsory for the consumer to provide this in order to exercise their right to exit. The consumer can be given the option to provide feedback during the exit process, or the trader can seek feedback after exit.

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

Summary of proposals for reminder notices (see subsection 7.1.1 paragraphs 127 of the consultation for the complete proposal):

- reminder notices are given to consumers in writing on a durable medium
- the purpose of the reminder notice must be immediately apparent to the consumer
- the prescribed information (set out 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.

44 (59%) of the 75 respondents answered this question. Of those:

- 16 (36%) agreed
- **17 (39%) respondents disagreed**
- 11 (25%) neither agreed nor disagreed

Many businesses stated that they did not want further prescription. A number raised operational concerns, such as what constitutes an acceptable format (e.g. in relation to in-app messaging); who is responsible if there are third parties involved; and whether additional information could be provided to the consumer with the reminder notice. Consumer advocacy groups and enforcement authorities were supportive of the proposals, emphasising they would improve the effectiveness of reminders so that consumers were more likely to see, understand and act on the information to avoid staying in unwanted subscriptions.

Cultural and heritage charities were particularly worried about the cost of fulfilling notices by post as many have a significant number of members without an email address provided. They also questioned how reminder notices might sit alongside other information they already send (such as Direct Debit notices or magazines), and whether these could be sent together.

On balance, we think it important that reminders are not overlooked by consumers and that they can refer to this information if needed. We don’t think this is a disproportionate burden and this approach will also provide consistency with how

other notices are delivered, making it easier for businesses to understand their duties.

We will legislate to require that:

- **reminder notices must be given to consumers in writing on a durable medium, and**
- **the purpose of the reminder notice must be immediately apparent to the consumer**

We considered carefully stakeholder feedback about avoiding unnecessarily prescriptive regulation. In relation to the proposal that information must be upfront for the consumer, we consider that there is already provision in the DMCCA to achieve this outcome.[9]

We will not bring forward legislation that requires that the prescribed information (set out in Part 3 of Schedule 23 to the DMCCA) to be given upfront so that it is the first information contained in the reminder notice that the consumer sees.

We have noted businesses' specific operation questions and guidance will cover commonly raised points including:

Third party responsibilities: Broadly speaking, the duties imposed on traders under Chapter 2, Part 4 are on the trader with whom the consumer enters a subscription contract for the supply of particular goods, services or digital content. However, we appreciate that it is common for businesses to enter into agreements with other businesses in relation to consumer-facing matters e.g. a third-party may provide payment or communication services. Whether that position is affected by arrangements between the trader and another business will depend on the facts and specific contractual arrangements in place in each case.

Meaning of 'durable medium': Section 280 of the DMCCA defines 'durable medium' as "paper, email or any other medium that — (a) allows information to be addressed personally to the consumer, (b) enables the consumer to store information in a way accessible for future reference for a period that is long enough for the purposes of the information, and (c) allows the unchanged reproduction of information stored". As such, we expect a written letter, email, SMS or WhatsApp

[9] Section 259(2)(b) of the DMCCA requires that a reminder notice must be given in such a way that the prescribed information is more prominent than any other information given to the consumer at the same time.

message would qualify, as long as the consumer could retain and retrieve it. However, an in-app message/notification which appears briefly but cannot be retained and revisited would not meet this criteria.

Post: Where post is used by the trader, we do not consider that the information and timing requirements in the DMCCA would require the use of first-class post.

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

Summary of proposals for end of contract notices (see subsection 7.2.1 paragraph 133 of the consultation for the complete proposal):

- 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.
- The prescribed information in these notices is to be given in a way that is more prominent than any other information given at the same time.
- The prescribed information is to be given upfront so that it is the first information that the consumer sees.
- The primary purpose of the communication is to be immediately apparent to the consumer.

37 (49%) of the 75 respondents answered this question. Of those:

- **21 (57%) agreed**
- 9 (25%) disagreed
- 7 (19%) neither agreed nor disagreed

Consumer groups and enforcement authorities were supportive of the proposals, whilst businesses generally urged that rules should not be prescriptive. They also raised operational queries about precise timelines, what certain terms meant, and asked whether specific scenarios would be permissible. On balance, we do not consider it is a disproportionate burden on business to ensure that the consumer can easily identify the purpose of the communication, and that the essential information is more prominent than any other information the trader may include.

We will legislate so that:

- **The prescribed information in these notices is to be given in a way that is more prominent than any other information given at the same time.**

- **The primary purpose of the communication is to be immediately apparent to the consumer.**

We have reflected on stakeholder feedback to avoid unnecessary prescription. We do not consider further regulation is needed about the upfront content and timing of end of contract notices is necessary. In relation to the former, after careful consideration, we consider that the prominence proposal will meet the policy objective that the prescribed information is given upfront, ensuing that it is not overlooked by the consumer.

We will not legislate to:

- **require that the prescribed information is to be given upfront so that it is the first information that the consumer sees.**

- **provide 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.**

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

Summary of proposals for cooling-off notices (see subsection 7.3.1 paragraph 137 of the consultation for the complete proposal):

- Require cooling-off notices to be given in writing on a durable medium.
- Clarify that the prescribed information includes information about the costs for the consumer of returning goods after exercising a renewal cooling-off right.
- Require the primary purpose of the communication to be immediately apparent to the consumer.

38 (51%) of the 75 respondents answered this question. Of those:

- **18 (48%) agreed**
- 15 (39%) respondents disagreed
- 5 (13%) respondents neither agreed nor disagreed

Businesses often felt the renewal cooling-off notice was not necessary given other reminders. They also argued against prescriptive requirements and advocated that businesses should have flexibility over the information included, when the cooling-off notice was sent, and the ability to combine them with other required notices (e.g. the reminder notice) or other information (e.g. marketing). Cultural and heritage charities were particularly concerned about the additional burden of a cooling-off notice on top of reminders and felt it was too many notices, which would increase costs, particularly where they could only send them by post as they do not hold email addresses.

We have reflected on stakeholders' feedback, but on balance consider it is important that consumers clearly understand they have a statutory renewal cooling-off period and what that means and do not think the requirements are a disproportionate burden on businesses.

We will legislate to:

- **Require that cooling-off notices must be given in writing on a durable medium.**

- **Clarify that the prescribed information includes information about the costs for the consumer of returning goods after exercising a renewal cooling-off right.**

- **Require the primary purpose of the communication to be immediately apparent to the consumer.**

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

We expect to provide guidance that:

- 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.
- 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.

35 (47%) of the 75 respondents answered this question. Of those:

- **23 (66%) said they did have specific operational concerns**
- 12 (34%) respondents said they did not

The majority of concerns came from businesses and trade associations who thought the requirements in the DMCCA were overly prescriptive. They felt strongly that the required information was too lengthy, which would be difficult to operationalise and create a risk of 'consumer fatigue' and customers ignoring the information. They also expressed concerns about their ability to present information in usable way, queried

the extent to which they could do things like use hyperlinks to link to information, and highlighted challenges such as devices with small screens (e.g. smartwatches). Points about cost of implementation and third parties were also raised.

The main concern for some cultural and heritage charities was the how the requirements applied to in-person memberships entered at their sites, particularly the ‘durable medium’ requirement and the operational and cost implications. Consumer advocacy organisations and enforcement authorities were supportive of the proposals.

The government has noted stakeholders’ feedback and will consider these points when preparing guidance.

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

Of the 75 respondents to the consultation, **17 (23%)** respondents provided an answer to this question. The main issue raised was that businesses needed a transition period before the regime commenced to understand and implement the new rules.

The government will provide a period of implementation for businesses to understand and prepare to operationalise the new regime.

Department for Business and Trade

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