

Government Response to the consultation on Smarter Regulation: Improving consumer price transparency and product information for consumers

1. Introduction

On 4 September 2023, the Department for Business and Trade launched its consultation on ‘Smarter Regulation: Improving consumer price transparency and product information for consumers’. The consultation concluded on 15 October 2023.

The consultation focused on five policy areas (display of pricing information, hidden fees and drip pricing, fake and misleading reviews, online platforms, and online interface orders) and a question on further changes to the list of commercial practices which are in all circumstances considered unfair and private redress in the Digital Markets, Competition and Consumers (DMCC) Bill.

Alongside the consultation, we also conducted a nationally representative consumer survey relating to the display of pricing information, to deliver quantitative insight into consumer perceptions, behaviour, and preferences.

We have considered all consultation responses carefully. The purpose of this document is a high-level overview of the main themes which arose in those responses. It aims to reflect the views offered by a diverse range of stakeholders, but it does not describe all responses in detail. On the open questions, we have undertaken a thematic analysis to identify the key issues raised. Some of the responses included issues which were not within the scope of the consultation therefore we have not addressed these directly in this Government response, although we have analysed and considered them. Where we took these issues into consideration, we have indicated that within this document.

This document sets out the Government’s response, policy decisions and next steps for each area of the consultation.

2. Executive summary

The responses received for each policy area were as follows:

- 214 individuals or organisations responded to our consultation questions on the display of pricing information. The majority of responses strongly agreed with the Government proposals. The responses to our questions on amending the exemption from unit pricing rules for small shops were mixed. The majority of respondents supported retaining the exemption, however, a minority of respondents suggested that the content of the exemption should be reviewed and a small number of those called for the exemption to be removed entirely.
- 203 responded to our consultation questions on hidden fees and drip pricing. The majority of responses agreed with the Government proposals.
- 177 responded to our consultation questions on fake reviews. The majority of responses agreed with the Government proposals.
- 33 responded to our consultation question about the statutory banned practices list, with 16 respondents wanting additional measures added.

- 143 responded to our consultation questions on online platforms. The majority agreed with the Government proposal to undertake work to ensure greater clarity about the responsibilities of online platforms to consumers, with a range of views provided about what that should include and how it should be achieved.
- 50 responded to our consultation question on extending rights of private redress to other unfair commercial practices, with many responses calling for an extension of private redress.
- 85 responded to our consultation questions on online interface orders. The majority of responses agreed with the Government proposal to extend the power to make applications to the court for online interface and interim online orders to additional enforcers.

In the light of these responses, the Government proposes to:

- Amend the Price Marking Order and associated guidance with respect to:
 - The use of consistent measures for unit pricing of products. We will explore further options on how this ought to be achieved which maximises clarity for consumers and ease of compliance for businesses, and whether there should be exceptions to this approach.
 - Clear legibility criteria for instore price labels.
 - Defining which types of promotional or loyalty scheme offers should be included within the scope of the Price Marking Order.
 - Making provision for the Deposit Return Scheme so the cost of the deposit is displayed separately on price labels. We will work with DEFRA, the Scottish Government, and the Welsh Government to develop the technical detail of this.

The Government's proposals substantially reflect the recommendations in the [Competition and Markets Authority \(CMA\) report of 20 July 2023 on unit pricing](#).

- Prohibit commercial practices related to fake reviews by adding these to the list of commercial practices that are considered unfair in all circumstances, making these subject to civil liability.
- Clarify the law on drip pricing by introducing new requirements in the DMCC Bill on drip pricing that require unavoidable ("mandatory") fees to be included in the headline price or indicated at the start of the purchasing process.
- Undertake further stakeholder engagement on what obligations platforms should be subject to with respect to consumer law, and how that should be publicly set out.
- Extend the power to make applications to the court for online interface and interim online orders to all public designated enforcers as listed in Part 3 of the DMCC Bill.
- Continue to explore the case for extending private redress rights to further unfair commercial practices.

3. Summary of consultation responses and Government Response

This section provides summary of the consultation responses and the Government Response on the following topics:

- Display of pricing information
- Drip pricing/ hidden fees
- Fake reviews
- Online platforms
- Adding to the list of banned practices
- Private rights of redress: prohibited practices
- Online interface orders

4. Display of pricing information:

4.1 Introduction

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

Building on the recommendations from the CMA's investigation into unit pricing, the consultation sought views on proposals to reform the PMO. In particular, to simplify requirements on unit pricing so it is more consistently applied, to clarify requirements on legibility and on how promotional pricing should be displayed, to review the "small shops" exemption, and to ensure the PMO enables the operation of proposed deposit return schemes.

We also conducted a nationally representative survey on the display of pricing information in shops, asking 2,007 consumers questions about their perceptions, behaviour, and preferences.

4.2 Findings

214 respondents answered questions relating to the display of pricing information. The respondents were comprised of a mixture of consumers, businesses (of all sizes), consumer representative bodies, enforcement bodies, and local and national government bodies and agencies.

The majority of the consultation responses were supportive of the proposals to amend the Price Marking Order 2004 (PMO) which were mostly derived from a CMA study of how unit pricing is applied in practice.

4.3 Unit pricing method

We proposed mandating a consistent use of units for unit pricing. For example, all products sold by weight would need to be priced per kilogram and all products sold by volume priced per litre. The current legislation includes a list of specified exceptions, for example raw meat is to be unit priced by kilogram whereas cooked meat is to be unit priced by 100g. This complexity can make the PMO difficult for businesses to comply with and makes it harder for consumers to compare prices of similar products.

94% of respondents agreed with our proposal. We asked whether exceptions to the rule on consistent use of units for unit pricing should be made or continue to apply. 75% of individuals and 68% of businesses indicated they should not.

Respondents had the opportunity to provide further evidence and feedback on how we could apply this proposal practically. Some responses highlighted that there could be grounds for exceptions to a blanket approach, for example where the items are of low weight and volume, which could make the labels less accessible or legible if there are too many decimal points. Some respondents also raised interactions between the PMO and other legislative requirements, in particular, weights and measures law. For example, respondents referred to inconsistent practice in the marking of semi-solid products (such as ketchup and mayonnaise), where manufacturers have the option to use on their product containers either weight or volume. This can make it harder for consumers to compare the unit price of similar items.

In our consumer survey, 46% of respondents reported that they considered the unit price of a product when making a purchasing decision. 80% agreed that unit pricing helps consumers get greater value for money and that consumers would use unit pricing more if the information was easier to read and understand. 84% of respondents agreed that comparability and consistency of unit pricing of similar items was important.

Having considered the responses to both the consultation and the survey, we will be taking forward our proposal to mandate the consistent use of unit pricing measures.

We will work with stakeholders to determine whether any exceptions should remain, e.g. for low weight/volume products. We will also consider in more detail the interaction between any proposed changes and other relevant legislative requirements such as weights and measures law.

4.4 Legibility and Prominence

Article 7 of the PMO requires that the selling price and the unit price are “unambiguous, easily identifiable, and clearly legible”. The CMA’s investigation of in-store practices found that there are issues around the legibility of unit pricing information. This includes the size of the font used by retailers, crowded or obscured shelf edge labels, and the use of additional decimal points, which make it harder for consumers to read the pricing information of products.

The consultation proposals considered whether and how the PMO could be updated to improve the display of pricing information. This could include giving more clarity on

requirements for how the unit price could be displayed in relation to the selling price. In particular, we proposed that when promotional prices are advertised toward particular groups, e.g. to members of loyalty schemes, that this information is not displayed any more prominently than the price that non-loyalty scheme members will pay.

78% of individuals who responded agreed there are examples of poor displays of pricing. Some of these respondents did not report specific issues but rather stated there could be opportunities to improve legibility. Some respondents stated that there were legibility issues, particularly in smaller or independent retailers. Some of the issues respondents raised appeared to be compliance issues with the PMO, which is an enforcement matter. However, by outlining clear criteria for legibility, we would simplify requirements and would therefore expect there to be an improvement to the levels of compliance.

Respondents had the opportunity to provide further evidence and feedback on how we could apply this proposal practically. Some common comments on legibility included:

- Information on price labels being too small or unclear (92% of respondents to the consumer survey favoured larger displays of unit pricing information).
- Incorrect or missing information.
- Cluttered shelf labels i.e. too many price labels, information about promotions, or advertising features on shelf edges which made it difficult to identify the cost of products.
- Difficulty in identifying the 'actual price' of an item i.e. the price a consumer would pay if they were not a member of a particular loyalty scheme.
- Whether technologies, such as electronic shelf edges, could aid legibility.
- Adopting guidance from the International Standards Organisation (ISO) on unit pricing.

Having considered the responses, we believe there is a need to set out clearer legibility criteria. We will work with retailers and enforcement bodies to improve legibility of price labels, which could include agreeing minimum font sizes for selling price and unit price. We will also consider whether this will be achieved through legislation, guidance, or both. By having clear expectations in place, this will help businesses, enforcement bodies, and consumers understand how pricing information should be presented.

4.5 Offers and promotions

The PMO currently requires certain promotional items to be unit priced but the legislation has not remained in step with current business practices where more extensive and sophisticated pricing and promotional models are now used. Currently there can be a multi-tier pricing system whereby the price consumers pay at the till depends on being a member of a particular scheme ('loyalty schemes'). The approach to unit pricing products offered in this way can be inconsistent, which can prevent the consumer from utilising unit pricing to their benefit. In our survey, 90% of

consumers said that it was important to find information on the discount or promotion.

93% of respondents agreed with our proposal to update the PMO to explicitly require unit pricing for products on promotion where it is practical to do so. 88% of respondents also agreed that the PMO should be updated to explicitly require the promotional selling price to be given alongside the non-promotional price. The proposed changes aim to help consumers understand what price they can expect to pay for an item, as well as compare like for like items, regardless of whether they are subject to special or promotional prices.

We also proposed that items currently exempt from the requirement to unit price should continue to be exempt, such as products discounted due to damage or deterioration.

Respondents had the opportunity to provide further evidence and feedback on how we could apply this proposal practically. This included examples of promotions or offers where it wouldn't be possible or helpful to provide a unit price for. Some examples include:

- Perishable items (items which are very near their sell-by date and may be available for one or two days before they are no longer saleable).
- Promotions involving 'grouped items' where the promotion applies when combining the purchase of products of different types. For example, 'meal deals' (i.e. a sandwich, a drink, and some fruit).

Additionally, some respondents cited a lack of clarity over the products included in a particular promotion. An example given was discovering that a product was not included in a promotional grouped offer, leading to the consumer paying a higher cost than expected.

Having considered the responses, which were supportive of requiring items on 'offer' or 'promotion' to be unit priced, we will carry out further work to understand which offers or promotions are practical to be included. Our intention is to update the PMO to do so.

4.6 Small shops

Small shops (defined as 'having a relevant floor area not exceeding 280 square metres') are exempt from the PMO unit pricing requirements. This reflects the Government's approach to minimising the burden of regulation and exempting small businesses from regulation where possible.

The consultation sought views on whether the exemption should be removed, reviewed, or whether an alternative threshold should be applied in place of the '280 square metre relevant floor area' rule.

Of the 176 respondents, 67% of businesses and 57% of individuals agreed the small shops exemption should continue to apply.

Respondents had the opportunity to provide further evidence and feedback. There was a mixed response with respondents arguing:

- The exemption should be fully revoked and all retailers should follow the same rules.
- Removing the exemption would likely result in challenges for enforcement bodies because there would be an increase in premises that need to be monitored for breaches of unit pricing requirements.
- The small shops exemption should continue to apply but small shops within national chains should not fall within the exemption – it was claimed that shopping in these stores could be more expensive and thus unit pricing could help consumers find the best deals.

On alternative thresholds for the exemption, regularly cited suggestions included nationwide annual turnover and nationwide staff numbers. Moving to such thresholds would likely have the effect of removing small branches of national chains from the scope of the exemption, whilst potentially extending the exemption to cover small online retailers.

The minority of respondents who sought to amend the exemption did not provide compelling evidence to revoke or amend the exemption. Some of the evidence provided related more to non-compliance with existing requirements made by the PMO, such as missing or incorrect information, which is unrelated to the unit price exemption.

Respondents to our consumer survey stated unit pricing is more important and helpful when shopping in a supermarket (87%), supermarket chain convenience stores (77%), and online (73%) than when shopping in specialty shops (65%) or small shops (63%).

Having considered the responses, we did not find a compelling rationale to change the small shops exemption and will retain it in its current definition ('not having a relevant area exceeding 280 square metres').

4.7 Deposit Return Schemes

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

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

We proposed to amend the PMO to include requirements for the proposed DRS.

In response to questions asking whether retailers should display the cost of the deposit separately, so consumers know how much money they will get back if they return the eligible item to a return point, 91% of respondents agreed.

In response to whether the unit price should be calculated exclusive of the deposit, 86% of respondents agreed.

In the consumer survey, when presented with different options on how the deposit should be displayed in practice, three in five preferred to see the selling price and deposit displayed separately.

Some respondents provided further feedback on other matters relating to the DRS:

- Consideration must be given to other, existing legislation which requires alcohol to be sold at a 'minimum unit price' in Scotland and Wales so consumers can make informed decision about their health i.e. the strength of the alcohol they are purchasing, as well as the cost of products when using the unit pricing information.
- Consideration should be given to whether the deposit information should be included on products where the selling price is printed on the container at the manufacturing and packaging stage.
- Some respondents argued that not all consumers will return their containers to the designated return point and reclaim their deposit. This could push up the cost of items.

Having considered the responses, particularly the agreement over displaying the cost of the deposit separately on price labelling, we will amend the Price Marking Order so that the selling price displayed excludes the deposit, while the deposit is clearly displayed separately, and the unit price is calculated excluding the deposit.

4.8 Next steps

The Government will engage stakeholders when developing the technical detail of the proposed amendments to the PMO. We intend to publish this information in spring 2024.

5. Hidden fees and drip pricing:

5.1 Introduction

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

Research we commissioned demonstrated that drip pricing is prevalent across the economy. Drip pricing can result in consumers being ‘baited’ into choosing a product because of its lower base price, but then ultimately paying more once further fees are added – particularly if those fees must be paid to complete the transaction.

The consultation sought views on whether and how the Government should approach the issue, and to identify drip pricing that may be grounds for future Government intervention or stronger guidance.

5.2: Findings

191 respondents answered questions relating to drip pricing. We consulted on the extent to which existing law protects consumers from detrimental drip pricing practices, and whether the law should be strengthened to address mandatory and optional dripped fees. The majority of responses agreed with the Government proposals.

5.3 Mandatory dripped fees

While 65% of businesses preferred to see new guidance that explains existing rules rather than new legislation, 60% of individual respondents, and all respondent consumer groups and enforcers, agreed that there should be new legislation to require traders to include mandatory fixed fees in the up-front price offered to consumers. The vast majority of individual respondents, as well as all consumer groups and enforcers, and 63% of businesses, also agreed that traders should be required to make clear the existence of mandatory variable fees, and how they are calculated, when they display the price of a product. Those in favour of these new requirements suggested that the fact that a purchase will be subject to a variable mandatory fee should be made clear at the start of the consumer journey.

In particular, the Competition and Markets Authority (CMA), Which?, Citizens Advice, and the Chartered Trading Standards Institute were in favour of the law being strengthened to address the consumer detriment associated with mandatory dripped fees. These consumer groups and enforcers consider that an explicit ban on mandatory fixed price elements being left out of headline prices would help to deter bad practice, make enforcement action simpler and swifter, and reduce consumer detriment.

Respondents had the opportunity to provide additional feedback on mandatory fixed fees. Some businesses and trade bodies stated that the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) already require traders to display all mandatory fees, or to make clear the existence of mandatory and variable fees, in

the headline price displayed to consumers. In some sectors, this is supported by guidance, codes of conduct, and sector specific legislation e.g., the 'Air Services Regulations' mandate the inclusion of all unavoidable and foreseeable taxes, fees, and charges, and states that the price shown must be available to the consumer.

The CMA and Citizens Advice also recommended strengthening or clarifying the law on mandatory variable dripped fees, as well as optional dripped fees (see below). Their view is that a comprehensive approach would reduce the risk of some traders being incentivised to create new variable mandatory and optional dripped fees to artificially lower headline prices. This could take the form of creating new 'add-ons' that had previously been included in the base price.

Some respondents flagged the risk of 'information overload' should traders be required to provide information on the existence of variable mandatory fees and how they will be calculated alongside the headline price. They suggested that consumers may experience too much pricing information up front. Some trade bodies also referred to app-based transactions being more constrained in format than webpages due to the smaller screen sizes of mobile devices, which could impact how much information can be displayed to consumers upfront.

5.4 Optional dripped fees:

165 responses were received to the question whether there are types of optional fees which cannot be presented to consumers early in the purchasing process. Around 75% of the responses were from individuals, consumer groups, and other public bodies. The remaining respondents were businesses and trade/business associations.

Most individual, consumer body, and enforcement respondents consider that the law should be strengthened to address optional dripped fees that are detrimental to consumers, however 75% of business respondents did not agree, with preferences instead for guidance that sets out how to present optional fees in a way that is fair, transparent, and lawful. Responses from businesses and trade bodies acknowledged that optional fees should be presented to consumers early in the purchasing process while highlighting that there is a significant level of variation in the use of optional fees, including how and why such fees are used, across different sectors.

Some businesses raised concerns about new regulations on optional dripped fees that may make booking processes more difficult for consumers. Airlines emphasised the benefits of unbundling optional products and services, and argued the freedom of consumers to choose which add-ons best suit their needs has resulted in lower fares and more competition. In other sectors such as food delivery, where there are a significant number of optional fees, trade bodies suggested that it would not be feasible to present all optional fees to consumers at the start of the purchasing process due to the large number of variations and combinations that would need to be shown.

We also asked if there are any features of products or services that are presented as optional fees but are in practice unavoidable for most, or certain groups of consumers. The most common themes identified were:

- Where there may be legal requirements for an optional fee to be paid for some, or all, consumers e.g., sitting parents and children together on a plane is already required of airlines for safety reasons.
- Where the majority of consumers pay for it e.g., travellers on long haul flights having a high likelihood of needing to check in luggage.
- Where consumers without a smartphone may need to access physical tickets for the service they purchase which requires an extra charge to print or collect tickets.

Consumer groups and enforcers provided views on how the law may be strengthened to address optional dripped fees that are detrimental to consumers. The CMA and Citizens Advice stated that where a cost is optional, traders should have regard to the behaviour of the average consumer when determining whether to include it in headline prices. For optional costs that are unavoidable to the majority of consumers, or it can be reasonably foreseen that most consumers will pay, they argued the cost should be incorporated into the headline price when it is displayed.

5.5 Next steps:

The Government is aiming to reduce the prevalence of dripped fees which i) undermine price transparency and make it difficult for consumers to make informed purchasing decisions based on the price of a product or service and ii) limit price competition insofar as traders compete on misleading headline prices rather than the price which consumers must pay in practice.

The Government will expressly prohibit presenting a headline price which does not:

- a). Incorporate in the price any fixed mandatory fees that must be paid by all consumers; and
- b). Disclose the existence of any variable mandatory fees and how they will be calculated.

Expressly setting this out in legislation will enable enforcers to take more effective and swifter action against those who exclude fixed mandatory dripped fees and the existence of variable mandatory dripped fees from the headline price displayed to consumers.

The Government expects its proposed course of action will reinforce the existing legal provisions which address misleading pricing practices currently provided by the Protection from Unfair Trading chapter of the Bill (Part 4 Chapter 1). Additionally, in re-stating the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) in the DMCC Bill, the Government has removed the 'transactional decision' test from the unfair commercial practice involving the omission of material information when there is an invitation to purchase. This will enable swifter enforcement action as enforcers will no longer have to prove that a failure to present the total price and the

existence of any variable fees will cause, or be likely to cause, the average consumer to take a different transactional decision.

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

Presenting a headline price to consumers is a commercial practice which means that traders must provide the 'total price', including all mandatory fees that consumers have to pay when the headline price is displayed to consumers. Variable mandatory fees (such as delivery fees) are also compulsory charges, but unlike fixed fees, cannot be reasonably calculated in advance. The new rules will clarify that traders that use variable mandatory fees must make clear, alongside the headline price, that additional variable fees will be added to the headline price. This should also include how such variable fees will be calculated.

The unfair commercial practice in the DMCC Bill of omitting material information from an invitation to purchase allows for consideration of 'any limitations resulting from the means of communication used in the commercial practice (including limitations of space or time), and any steps taken by the trader to overcome those limitations by providing information by other means.' Enforcers will therefore account for the medium by which pricing information is displayed to consumers when assessing whether there has been a failure to provide information on mandatory fees to consumers up front.

Government is not planning, at this stage, to legislate in relation to optional fees. However, we will give further consideration to the practice of optional dripped fees, including proposals to regulate such fees in a proportionate way that does not adversely impact specific sectors and allows for consumers to compare prices in a fair and transparent way across providers. We will also continue to assess whether this is best achieved through sector specific guidance, legislation, or both.

6. Fake reviews:

6.1 Introduction

UK consumers spent £224 billion in online retail markets in 2022 (Capgemini, January 10, 2023). Online retail spending in the United Kingdom (UK) from 2011 to 2022 (in billion GBP). Reviews play an essential role in online shopping, providing valuable insights and social proof that can help consumers make more informed decisions. Nine out of 10 UK consumers report reading reviews (Salience Search Marketing, February 19, 2021). Online product review reading behaviour among consumers in the United Kingdom (UK) in 2021).

As the number of consumers shopping online continues to increase, reviews will play an increasingly important role, making it crucial to ensure the authenticity of online reviews is protected. Whilst genuine consumer reviews can help consumers make better informed purchasing decisions, the growing prevalence of fake reviews can distort consumer purchase decisions, potentially leading consumers to choose poorer quality products (Jesper Akesson, Robert W. Hahn, Robert D. Metcalfe, and Manuel Monti-Nussbaum, "The Impact of Fake Reviews on Demand and Welfare," National Bureau of Economic Research Conference, 20 July 2022) and making it difficult for traders to operate on a level playing field.

The Government is committed to tackling fake reviews. The DMCC Bill establishes regulation making powers which could allow Ministers to add to a list of banned unfair commercial practices listed in Schedule 19 to the Bill. The consultation sought views on legislating to expressly prohibit the buying and selling of fake reviews, and a firm's failure to take reasonable and proportionate steps to ensure reviews displayed to consumers reflect genuine consumer experiences. How these rules will work in practice, and the standards expected of firms is important to get right. The consultation set out key definitional information that we propose underpins the new requirements.

6.2 Findings

171 respondents answered questions relating to fake reviews. We asked respondents if they agreed with adding the following practices related to fake reviews to the Schedule 19 banned list in the DMCC Bill:

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

Over 80% of respondents agreed that each of these proposed new practices should be added to the banned list.

Almost all respondents agreed that adding a practice related to the misrepresentation of consumer reviews in ways which are likely to mislead consumers to the banned list is sufficient to prohibit traders from:

- Deleting or suppressing negative reviews;
- Only publishing positive reviews;
- Applying different weightings to reviews based on the source consumer;
- Publishing or providing access to incentivised reviews that are not clearly labelled as such;
- Disabling the consumer from changing default sorting options; and
- Presenting reviews of a different product as relating to the product a consumer is considering (sometimes known as review hijacking, review merging, or catalogue abuse).

There was also strong support for guidance with over 90% of respondents agreeing that this should be published to help traders comply with the proposed requirements concerning reasonable and proportionate steps. All businesses that responded to this question agreed that guidance should be published on these steps. Over 80% of respondents were supportive of proposed measures on what 'reasonable and proportionate' steps may require for traders in scope, including having:

- Proactive detection processes in place to identify suspicious reviews;
- Procedures for removing and preventing consumers from encountering fake reviews;
- Sanctions for users and businesses in response to fake reviews;
- Processes for assessing the risk that fake reviews will appear on their websites;
- A reporting mechanism that allows people to report suspicious activity; and
- Regular evaluations of the effectiveness of these systems.

Some concerns were expressed over whether the definition of a fake review should require a consumer to have bought or used the relevant product or service. Many respondents felt that this requirement would be problematic because there may be situations in which a consumer reviews a good without having purchased it. For example, a consumer may review a gift purchased by a friend, which should be considered a genuine review. Also, a consumer may not have 'used' the product but can still provide a genuine opinion. For example, a consumer may leave a hotel room and choose not to stay because they felt unsafe when they arrived, or if it was not clean enough, and should be able to submit a review that reflects their genuine experience of the relevant product or trader.

Most respondents agreed with the proposal regarding incentivised reviews and agreed that all forms of incentivisation should be included. The consultation proposed that for reviews which had been incentivised to be defined as genuine, their content should represent a genuine experience and traders (including online

platforms) publishing or providing access to such reviews should clearly label where reviews had been incentivised.

74% of the respondents supported making the new proposed banned practices on fake reviews criminal offences. Some views provided by respondents in favour of this approach were:

- Most of the practices (29 of 31) on the banned list are currently subject to criminal sanctions and any new practices related to fake reviews should not be treated differently.
- Failing to make the proposed banned practices subject to criminal enforcement risks sending the message that they are less serious and could reduce the deterrent effect of adding them to Schedule 19.
- The commercial practices associated with fake reviews that the Government is seeking to prohibit distort consumer decision-making and pose a threat to the well-functioning of consumer markets.

Some businesses and trade bodies suggested that civil liability would be sufficient to achieve enforcement and deterrence. These responses raised concerns regarding how broad the current proposed wording is for the new banned practices and suggested that this could create legal uncertainty. Methodological challenges were also raised, including the use of third-party groups that help to moderate reviews on platforms, and where liability would lie if a significant number of fake reviews appeared on a platform using third-party review moderation. Other businesses suggested that the misrepresentation of reviews is already covered by the existing unfair commercial practices regime which carries criminal liability.

6.3 Next steps:

The Government will add the proposed banned practices on fake reviews to the list of banned practices in Schedule 19. This reflects the strong support these proposals have received from stakeholders to address practices related to fake reviews. In doing so, the Government will work with the Office of the Parliamentary Counsel to ensure the wording of the new banned practices are as clear as possible for businesses to understand and follow. However, after considering the representations received in consultation about the fake review banned practices attracting criminal liability, these new banned practices on fake reviews will be subject to civil liability only.

The Government will work with the CMA to publish guidance to explain the law and set out what 'reasonable and proportionate' steps traders are expected to take to remove and prevent consumers from encountering fake reviews; and to prevent any other information presented on the platform that is determined or influenced by reviews from being false or in any way capable of misleading consumers. The CMA will consult on this guidance before it is finalised and published. This will be in addition to the continuing work of Local Authority Trading Standards who will be able to use the guidance as a reference in their enforcement action.

7. Online platforms:

7.1 Introduction:

The Digital Markets, Competition and Consumers Bill states and updates consumer law which sets out rules around unfair trading. These include the responsibilities of online platforms (and all other commercial actors) to act with professional diligence in relation to consumer transactions promoted or made on their platforms.

Consumers buy an increasing volume of products and services online, including from online platforms. Despite the UK having a strong set of core consumer rights, it is sometimes unclear how those rights should be applied in relation to online platforms.

The consultation sought views on whether and how the Government should better define or build on the existing definition of professional diligence. The aim would be to ensure online platforms and consumers have greater clarity over their respective rights and responsibilities.

7.2 Findings:

143 respondents answered questions relating to online platforms. The respondents were a mixture of businesses/ business trade bodies, individuals, consumer and charity groups, and other public bodies.

Concern was expressed about a range of different harms occurring on online platforms, with significant focus on the following discrete harms:

- Fake reviews
- Sale of dangerous, counterfeit, or stolen products
- Manipulation of consumer decision-making through the design of user interfaces (including drip pricing and subscription traps)
- Other fraud or scams

More broadly, there was widespread concern that consumers on online platforms do not experience consistently high transparency of information concerning the status, location and contact details of sellers. Respondents emphasised that this leads consumers to purchase products or services under the impression that they can easily receive customer support or compensation if things go wrong, only later to discover that the company is not contactable or does not recognise UK consumer rights.

In relation to the specific legal obligations which arise from the requirement of professional diligence, respondents were supportive of the principles-based approach of the provision with its flexibility and cross-sector applicability cited as significant positives. Around 60% of respondents stated that the application of the professional diligence requirements is well understood. Just over half the respondents stated that the current definition of professional diligence is an appropriate part of the current legislative toolkit for regulating online platforms. However, there was a strong consensus from respondents across the spectrum, including representatives of platforms, that it would be helpful to have more clarity about what the professional diligence requirements entail for online platforms in

practice. Moreover, some respondents felt that the professional diligence requirements are not as well understood, and this area should be dealt with in primary legislation.

Many respondents identified areas in which they consider online platforms have obligations under the requirements of professional diligence. Some of the most frequently mentioned were:

- Conducting strong due diligence around the identity and legitimacy of sellers operating on their platform, to ensure that only sellers that are compliant with consumer protection law can sell to users and that users can obtain redress swiftly and easily if issues arise.
- Ensuring that interfaces are designed so that a seller's status (as either a trader or consumer) and location are clearly visible to a consumer.
- Providing frictionless reporting mechanisms for enforcement agencies and users to flag illegal content, supported by swift removal of that content and appropriate sanctions against serious or repeat offending traders.
- Implement monitoring and detection systems for detectable fraud or scam content.
- Designing systems and interfaces in good faith, so that consumers can take decisions according to their best interests without being influenced by behavioural biases (in other words, avoiding dark patterns).
- Proactively addressing systemic risks and taking appropriate mitigation measures.
- Establishing swift and effective internal dispute resolution procedures.

As to the means by which further clarity should be achieved, some respondents were open to different options, while others preferred the provision of Government guidance. Some respondents emphasised that this was not an appropriate area for self-regulation and recommended that mandatory guidance be supported by sanctions. Several respondents emphasised the need to support guidance with strong enforcement.

Across the spectrum of responses, the complexity and variety of online platforms and the markets in which they operate was acknowledged, and many respondents referenced the need for government to consult broadly and in detail on any proposed guidance or other public code.

The Government welcomes the broad support for further clarity in this area but acknowledges the need for further engagement. The Government will therefore undertake further work with stakeholders, including platforms, other business stakeholders and consumer groups, to identify the scope and content of further guidance in this area and how this work should be best communicated and set out. Following this consultation, a number of the most significant platforms have already agreed to work collaboratively with the Government to share best practice and drive-up consumer protection.

7.3 Next steps:

In the meantime, many of the specific harms reported by respondents are already being addressed by several Government initiatives. Fake reviews and drip pricing measures are addressed above, while the DMCC Bill introduces reforms to subscriptions traps that include reminders for consumers and making cancelling subscriptions more straightforward.

The sale of unsafe and non-compliant products is being addressed as part of the Product Safety Review (PSR). The recently closed PSR consultation set out proposals to modernise responsibilities for online marketplaces so that products bought online are as safe as those bought on the high street. This will protect UK consumers from unsafe and non-compliant products and create a fairer playing field for law abiding businesses. The PSR consultation closed on 24th October. We are currently analysing these responses and will use these to inform the policy development of the consultation proposals and plans for legislation.

Regarding online fraud more generally, the Online Safety Act will take time to fully come into force, so the Government is working collaboratively with the tech sector to agree a voluntary Online Fraud Charter. This is a voluntary agreement with the largest companies in the tech sector, to deliver a much quicker and more targeted response to online fraud. The Charter will focus on ambitious actions for industry and Government to work together on protecting users and improving reporting flows. It will be published soon.

8. Adding to the list of banned practices

8.1 Introduction:

The Government also sought views about any other improvements to Schedule 19 we should consider. The practices currently listed there largely reflect those set out at Schedule 1 of the CPRs which came into effect in the UK in 2008.

8.2 Findings:

33 responses were received on this question in total, with 16 responses wanting additional practices added to the list. Where comments were left, 3 responses included adding fake reviews, 4 included drip pricing and 7 responses mentioned a range of other areas, such as car odometer tampering, paid-for advertisements and substandard work carried out by traders.

The CMA, Which? and Consumer Scotland raised the potential of adding “greenwashing” to the list, however this was not a widespread concern amongst respondents.

We are minded that misleading consumers about the environmental qualities or impact of goods and services so that it causes or would likely cause them to take a different decision is already against the law.

8.3 Next steps:

The Government will continue to work with the CMA to ensure the law is understood and set out the reasonable and proportionate steps traders are expected to take to ensure all claims about the environmental impact and efficacy of ‘green’ products and services are truthful, accurate and do not mislead or prevent consumers from making informed choices.

It is appropriate for us to keep these existing, non-legislative interventions under review, in line with the requirements of the Better Regulation Framework, before committing to any further action. We will also keep the banned practice list under review and add to it if necessary.

9. Private rights of redress: prohibited practices

9.1 Introduction:

At present, the CPRs provide for consumers to exercise private rights of redress, under certain circumstances, where they have been the victim of a commercial practice that is a *misleading action* or an *aggressive practice*. This is replicated in the DMCC Bill. On the other hand, consumers who have suffered detriment as the result of a *misleading omission*, a *breach of professional diligence* by a trader or a *banned practice* in Schedule 19 do not have any private rights of redress currently under the CPRs or in the DMCC Bill.

Clause 240(3)(a) of the DMCC Bill provides a power for the Secretary of State to extend the existing rights of redress to unfair commercial practice or practices which do not attract such rights currently. The Government sought views on whether we add further commercial practices that are unfair under Part 4, Chapter 1 to the list of prohibited practices which attract private rights of redress.

9.2 Findings:

A total of 50 responses were received to this question, with responses from a mixture of consumers, businesses, and representative bodies. 38 respondents wanted private redress rights extended. Within this, many of the respondents wanted private redress rights extended to all practices listed in Schedule 19 of the DMCC Bill, with the remainder specifically mentioning practices such as fake reviews and misleading omissions.

Some respondents (primarily consumers) noted that the rights are complex to understand, therefore are not likely to be used, and associated litigation would be expensive.

Of the 12 responses received in favour of maintaining the current position, the comments provided focussed on the current rights being expansive enough to cover the most serious cases, and any extension could inundate traders with spurious claims.

9.3 Next steps:

The Government will continue to consider the evidence for extending private redress rights to additional practices, taking into account whether it would be effective and proportionate to do so. Should it be necessary, the Government is proposing to take delegated powers through the DMCC bill which will allow for the extension of private redress rights in the future.

10. Online interface orders:

10.1 Introduction:

With online shopping becoming the norm for shoppers across the UK, “online interfaces” such as websites and apps give consumers access to an array of products, including some that are falsely described or substandard.

While enforcers like sector regulators and local authority trading standards services already have powers that can address online consumer harms, the Competition and Markets Authority (CMA) has an additional, targeted power to seek court orders to, inter alia, modify or remove online content that infringes consumer law.

The Government sought views on whether to extend this power to apply to court for online interface orders (OIOs) and interim online interface orders (IOIOs) to additional enforcers to enable them to tackle online conduct that may not be adequately covered by their existing powers.

10.2 Findings:

85 respondents answered questions related to Online Interface Orders.

Overall, 71 respondents (approximately 82%), mainly individuals, consumer groups, enforcement bodies and some trade bodies, were in favour of extending the power to make applications to the court for online interface and interim online interface orders to additional enforcers.

Some of these respondents thought an extension of this power would enable tackling a higher volume of illegal online content as enforcers with relevant expertise would be able to apply to court to address issues that the CMA may not be able to prioritise. Others shared their views that it would help taking action promptly against illegal online content, reducing the risks of harm to consumers.

Several of the respondents who were in favour of extending the online interface powers to additional enforcers also considered enforcers should use this power to tackle scams (such as fake websites) and misleading or dangerous products displayed online.

Further, many of the supportive respondents considered that enforcers should use this power when facing difficulties to engage with traders directly. This could be when the traders, in the UK or overseas, purposefully hide their identities to try to evade compliance with UK law or refuse to cooperate with enforcers.

When engagement with traders is unsuccessful, some respondents also suggested that enforcers should turn to third parties, such as website hosting platforms, to remove, restrict or modify illegal content. It was argued that where illegal content originates outside the UK this power can help prevent rogue traders from reaching UK consumers by blocking their website or preventing their products from appearing in search results.

However, a minority of respondents (mainly businesses and some trade bodies) were opposed to extending this power to additional enforcers. Concerns they raised included:

- The lack of evidence on the effectiveness of this power as it has not been used to date,
- That applications for such orders could inflict serious reputational damage on businesses, whether or not the court ultimately grants these orders,
- The risk of duplicated work by enforcers due to a lack of coordination amongst them,
- The application process being too laborious for enforcers who lack experience and resources,
- The lack of resources faced by courts that could be exacerbated by an increased volume of applications.

When asked which enforcers the power should be extended to, a slight majority of relevant stakeholders (39 respondents) said it should be given to both public and private designated enforcers. Some stated that empowering private designated enforcers would support further scrutiny of problematic commercial practices and swifter action by devoting additional resources to this work.

However, 30 respondents, including all businesses, several trade bodies, a consumer group, and an enforcement body, considered that the power should only be extended to public designated enforcers. They considered that public designated enforcers are better placed to utilise such a significant power thanks to their experience and sophisticated enforcement policies and governance processes to ensure due process and procedural fairness.

Several of these stakeholders strongly emphasised that it could be problematic for private designated enforcers to be given this power despite the court ultimately deciding whether to make these orders. Some were concerned that private designated enforcers may not exercise this power objectively or impartially due to their own paid consumer-facing content or ties with commercial partners. Others suggested that the fact that the one existing private designated enforcer has never used its current enforcement powers to apply for court orders to stop or prevent consumer law breaches means giving it an additional enforcement power may not be merited or make any difference.

The Government welcomes respondents' general support for this proposal. It recognises the benefits of enforcers having access to this power, subject to the oversight and final say of the court, to create a safer online experience for consumers by deterring and tackling unlawful online practices.

10.3: Next steps:

After giving careful consideration to the consultation responses, the Government intends to extend the power to make applications to the court for online interface and interim online interface orders to public designated enforcers (as specified in clause 150(1) of the Digital Markets, Competition and Consumers Bill (as introduced in the

House of Lords: <https://bills.parliament.uk/publications/53073/documents/4037>). Please see Annex 2 for a full list of public designated enforcers). This will help to ensure that these enforcers have the powers they need to tackle problematic online practices effectively. The Government does not intend to change conditions that need to be met before an enforcer can apply for, and a court can make, an interim or final online interface order. However, where necessary, the Government intends to apply relevant statutory enforcer coordination mechanisms to this extended power to avoid duplication of enforcement activity.

The Government does not consider that there is a strong case for also giving this application-making power to private designated enforcers (private designated enforcers are specified in clause 150(2) of the DMCC Bill. Currently only the Consumers' Association (also known as Which?) is a private designated enforcer). In particular, in the Government's view it is not yet clear if and what unlawful online practices may not be sufficiently or effectively addressed by the extensive network of public enforcers, to warrant additional action by private bodies. Therefore, the Government has decided not to extend the power to apply to court for interim and final online interface orders to private designated enforcers at this time.

11. Analysis of responses

In total there were 372 responses to the consultation, including:

- 303 responses received through Qualtrics; and
- 69 responses received via email.

Annex 1 – List of organisations that responded to the consultation

Annex 1 is a list of organisations that responded to the consultation. Respondents who asked for their response to be anonymous or those that did not respond to the questions have not been included on the list.

- ABTA – The Travel Association
- Airlines UK
- Airlines for America
- Air Passenger Rights
- AHCOT Limited
- Anstey Mills Cottages
- Bartley Mill British Soft Drinks Association Leicestershire County Council
- British Beer and Pub Association
- Basel Cottage Holidays
- Bossington Hall Ltd
- Citizens Advice
- Competition and Markets Authority (CMA)
- Consumer Scotland
- Fornsidge Farm Cottages
- Galvanize
- Higher Wiscombe Ltd
- LIVE (Live music Industry Venues & Entertainment)
- National Franchised Dealers Association (NFDA)
- Norfolk Holiday Cottages
- On the Beach Ltd
- Pasabi
- Premier Cottages
- Professional Association of Self-Caterers (PASC)
- Quince Investments
- Sainsbury's Supermarkets Ltd and Argos Limited
- Scottish Wholesale Association
- Scottish Grocers' Federation
- Tesco Stores Limited
- The Tourism Alliance
- The Warren
- TLT LLP
- Torridge House Cottages
- UK Finance
- Varis Holiday House
- Which?
- Yr Hen Stablau

Annex 2 – List of public designated enforcers under Part 3 of the Digital Markets, Competition and Consumers Bill

- The CMA;
- Every local weights and measures authority in Great Britain;
- The Department for the Economy in Northern Ireland;
- The Civil Aviation Authority;
- The Financial Conduct Authority;
- The Gas and Electricity Markets Authority;
- The Department of Health in Northern Ireland;
- The Department for Infrastructure in Northern Ireland;
- The Northern Ireland Authority for Utility Regulation;
- An enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);
- The Information Commissioner;
- The Maritime and Coastguard Agency;
- The Office of Communications;
- The Office of Rail and Road;
- The Office for the Traffic Commissioner;
- The Secretary of State;
- The Water Services Regulation Authority.