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# UK Crackdown on Subscription Traps: Government Reveals New Proposals for Incoming Subscription Contracts Regime Under DMCC Act

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In **our last update** on the Digital Markets Competition and Consumer Act (DMCC Act), we outlined some of the key consumer protection enhancements set to come into force in the UK. In particular, the DMCC Act sets out new rules for traders offering subscription contracts. These rules aim to protect consumers from unwanted subscriptions and ensure they have clear rights and easy methods to exit contracts.

The UK government recently published a **consultation paper** offering more detailed insight into the precise measures it is proposing to introduce, either in the form of new regulations or guidance, in order to implement this new subscription contracts regime which is not expected to enter into force before spring 2026. The government is particularly seeking feedback on its proposals from key stakeholders, such as ecommerce and other digital platforms.

In light of the above and recognising that in-scope businesses will need to proactively review and adapt their subscription contract practices, we are breaking down the key regulatory proposals from the government's consultation.

## 1. Pre-contract information

The DMCC Act outlines specific requirements for pre-contract information that traders must provide to consumers, ensuring clarity and accessibility. It distinguishes between key pre-contract information, which is critical for consumers to understand before entering a subscription contract (e.g., information on renewal frequency and payments), and full pre-contract information, which includes additional details, such as cooling-off rights, that must be provided in a clear and accessible manner.

The government is not proposing to regulate in this area; however, it does expect to provide guidance on how traders should comply with these information requirements, notably:

- For online contracts, key pre-contract information must be clearly visible where the consumer enters the contract, without extra steps to access it.
- It should be separate from and more prominent than the full pre-contract information and should appear before it.
- Pre-contract information should not be obscured by other information which might compete for a consumer's attention.
- All pre-contract information must be easy to understand.
- It should be presented in a way that draws the consumer's attention, using appropriate font, size, colour and position.

## 2. Information notices

Under the DMCC Act, traders are required to send the following notices:

- **Reminder notices** to remind consumers of upcoming renewal payments and their right to exit.

- **End of contract notices** to acknowledge a consumer's decision to exit or cancel a contract.
- **Renewal cooling-off notices** at the start of the renewal cooling-off period, informing consumers of their right to cancel.

## Reminder notices

In order to comply with the DMCC Act, traders must in practice:

- For monthly auto-renewing contracts, send a reminder notice a reasonable period before the sixth renewal payment and every sixth payment thereafter (two notices per year).
- For contracts that auto-renew every 12 months, send two reminder notices a reasonable period before the first renewal and every renewal thereafter (two notices per year).
- For contracts with a concessionary period, send an additional reminder notice a reasonable period before the concessionary period ends.

The 'reasonable period' should be stated in the key pre-contract information. However, it is up to traders to determine what is a 'reasonable period', allowing the consumer sufficient time to decide whether they want to exit the contract and take the necessary exit steps if they so wish.

In addition to the above, the government is now proposing the following regulatory requirements:

- All reminder notices need to be given in writing and prominently, on a durable medium.
- The purpose of the communication needs to be immediately apparent to the consumer (e.g., from the subject line of the email) so as to increase the likelihood of engagement.
- The prescribed information (i.e., the list of information required by the DMCC Act) must be given up-front so it is the first information the consumer sees.

Similar such requirements would apply to end of contract and cooling-off notices under the government's proposals.

## End of contract notices

Under the DMCC Act, these must be given within 24 hours (for online cancellations) or three working days (for other cancellation methods).

The government is also seeking to clarify, via regulations, that these prescribed time frames only begin once the trader agrees that the consumer has the right to cancel the contract due to a breach of the trader's implied duties. This ensures traders have enough time to confirm the breach while still following the rules.

## Cooling-off notices

These must be given on the first day of the renewal cooling-off period and must be separate from all other information, meaning that no other information (e.g., promo material) can be given at the same time.

## 3. Cooling-off cancellation rights: Proposals for returns and refunds

As a reminder, under the DMCC Act, consumers have a right to cancel a subscription contract within 14 days of entering into it (initial cooling-off period), and they also can cancel within 14 days from the day after they become liable for a renewal payment. On cancelling the contract, consumers may be entitled to a refund.

## Refund policies

The government’s proposed refund and return policies depend on whether the cancellation relates to a subscription contract for goods, services or digital content.

#### a) Refunds for goods

For goods subscription contracts, the government has proposed three separate refund policies which we have summarised in the table below.

| Category of goods | Description | Return | Refund |
|---|---|---|---|
| **Category 1: Returnable goods** | Examples: Books, clothing, IT hardware<br><br>Goods where it is possible for a consumer to return the goods to a trader and they can be resold. | Trader can recover the goods.<br><br>Consumer will generally be responsible for arranging return and paying return costs. | Full refund if consumer returns goods within 14 days of cancellation. |
| **Category 2: Non-returnable goods (due to characteristics)** | Examples: Perishable goods, bespoke goods | N/A | If not dispatched, full refund.<br><br>If dispatched, refund can be reduced by the price of dispatched goods. |
| **Category 3: Non-returnable goods (due to circumstances)** | Examples: Sealed goods unsealed after delivery (e.g., hygiene products, software)<br><br>Goods inseparably mixed with other items after delivery. | If cancelled **before** unsealing or mixing: Returnable (Category 1).<br><br>If cancelled **after** unsealing or mixing: No return. | If returned **before** unsealing or mixing: Full refund (Category 1).<br><br>If cancelled **after** unsealing or mixing: Refund can be reduced by the contract price of the affected goods (Category 2). |

**b) Refunds for services**

Under the current proposals, consumers would be entitled to a full refund where the contract is cancelled during the cooling-off period but before the service is supplied. However, if the service is already being supplied, consumers would be entitled to a proportionate refund only (calculated on a pro rata time basis).

**c) Refunds for digital content**

Like services, digital content cannot be returned. The government has proposed three options for refunds:

1. **Proportionate refund for both initial and renewal periods.** Here, the consumer would be liable to pay a proportion of the contract price for the part of the digital contract performed.
2. **Waiver for initial period and proportionate refund for renewal period.** Before the trader starts to supply the digital content in the initial period, the trader must obtain the consumer’s express consent to waive their initial cooling-off right. If the trader supplies the content but fails to obtain the consumer’s express waiver, the consumer is not obliged to pay for the digital content supplied during the initial period.
3. **Waiver for both initial and renewal periods.** Under this option, traders would need to secure a waiver from the consumer at the start of each relevant renewal period. Where the consumer does not consent to the waiver, the trader would be required to delay supply of the digital content at the start of the renewal period until the 14-day cooling-off period is over. This is considered to be the least practical option by the government on the basis that it risks pauses to contractual performance and interruption of supply which is liable to result in detriment to both consumers and businesses alike.

## Trader’s payment of refunds

Note, before a trader is entitled to make any reduction to a consumer’s refund (in the ways described above), the trader must have complied with the DMCC Act by giving the prescribed pre-contract information about the consumer’s initial cooling-off right and/or by giving the consumer a cooling-off notice for the renewal period, as applicable.

Furthermore, traders must refund consumers without undue delay and typically within 14 days of cancellation or return of the goods. Refund payments should be made using the same payment method unless otherwise agreed.

## 4. Cancellation remedies for traders’ breach of duties

Under the DMCC Act, traders are required to comply with certain implied duties. Failure to do so, even where the breach is minor, will give rise to a consumer’s right to cancel the subscription contract altogether. The relevant duties under the DMCC Act are:

- To give the key pre-contract information.
- To give reminder notices.
- To specify (within the key pre-contract information) a reasonable time for giving reminder notices.
- To provide for a consumer’s easy exit of the contract.

If a trader breaches these implied duties, a consumer can cancel the contract and is presumed to be entitled to a refund of all payments made following the occurrence of the relevant breach event up until the consumer cancels the contract.

The relevant breach event will depend on the nature of the implied duty:

- **For key pre-contract information requirements**: When the contract is entered into.
- **For reminder notices (including specifying reasonable periods)**: The last day after the reminder notice should have been issued.
- **For easy exit requirements**: The last day on which the consumer would have exited the contract had the trader been in compliance.

To ensure that consumers exercise this cancellation right appropriately, the government has proposed the following safeguards:

- A 'use it or lose it' limitation period of 12 months following the breach event in which the consumer must exercise their cancellation right.
- An ability for the trader to rebut the presumption that the consumer is entitled to a full refund, where the trader is able to show that the consumer took an unreasonable amount of time to exercise their cancellation right thereby increasing their financial loss.

## 5. 'Easy exit' rights and requirements

As outlined in our last update, consumers must be able to easily terminate a subscription contract with a clear statement to the trader and without undue barriers. The key legal requirements on exit arrangements are set out in the DMCC Act; however, the government is proposing to supplement and clarify the legislation through guidance.

In particular, the guidance would clarify that:

- For online contracts, consumers should be able to exit via the same online medium that they used to sign up.
- An exit method is more likely to be considered 'straightforward' under the DMCC Act if it allows consumers to exit the contract quickly and without the consumer having to contact the trader more than once.
- Offers or feedback requests during the exit process should not be compulsory.

In addition to traders making operational changes to facilitate easy termination, traders must not seek to include subscription contract terms which either (a) make the consumer liable for a renewal payment unduly early or (b) unduly restrict when the consumer can exit the contract.

In respect of (a), the government is proposing regulations which would invalidate any term of a subscription contract seeking to impose liability for a renewal payment before the official contract renewal date.

Regarding restrictions on the timing of exits (b), the government's view is that consumers should be able to exit contracts at **any time**, including immediately after entering or renewing, subject to a reasonably short period of time necessary for the trader to process the exit. The government plans to implement regulations to ensure that this is always possible.

## Next steps

The government is keen to receive feedback on the above proposals and is particularly welcoming views from individual traders, as well as representatives and businesses that support traders to deliver their subscription services, such as ecommerce platforms.

Interested parties can submit their responses online. The deadline for responses is **10 February 2025**.

*Cooley associate Olivia Anderson also contributed to this alert.*

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## Key Contacts



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|---|---|
| Caroline Hobson<br>London | chobson@cooley.com<br>+44 20 7556 4522 |
| Claire Temple<br>London | ctemple@cooley.com<br>+44 (0) 20 7556 4170 |
| Leo Spicer-Phelps<br>London | lspicerphelps@cooley.com<br>+44 (0) 20 7556 4334 |