

Insights

THE DMCCA: TAKING A CLOSER LOOK AT THE IMPACT ON SUBSCRIPTION CONTRACTS

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SUMMARY

The Digital Markets, Competition and Consumers Act 2024 (**DMCCA**) has recently received royal assent, following the announcement of the July General Election. [We examine the key developments in our previous article.](#) One very significant area of focus in the DMCCA (following the UK Government's 2021 consumer protection consultation and the earlier [Penrose report](#)) is subscription contracts. Subscription contracts are big business, with estimated consumer spending in the UK on subscriptions said to be between £28 billion and £34 billion a year across multiple sectors, with 8 in 10 UK consumers having at least one subscription. The reforms in the DMCCA were prompted by concerns that consumers may be spending as much as £1.8 billion per year on subscriptions they do not think are good value for money and can find difficult to exit when they no longer require the relevant goods/services. The new rules are expected to come into force towards the end of 2024, once regulations are passed.

TACKLING SO-CALLED SUBSCRIPTION TRAPS

The UK now has a standalone regime governing subscription contracts, prescribing:

- the information which is to be given or made available to a consumer pre-contract (the 'key' pre-contract information and the 'full' pre-contract information);
- requirements for reminder notices to be sent at prescribed intervals during the term;
- user-friendly means for consumers to end or cancel a subscription contract;
- a cooling off period during which the consumer can cancel, both following the initial term and in each subsequent renewal period.

This regime replaces, for subscription contracts, the information provision regime in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations. Traders offering

subscription contracts will need to comply with these new requirements, whilst the CC(ICAC) Regulations will continue to apply to all other consumer contracts.

EXCLUDED CONTRACTS

Certain categories of contract are outside the scope of these new rules (typically those which are already subject to specific sector regulation, such as contracts for utilities, insurance and financial services, health care professionals, package holidays, timeshares, but also contracts for rental of residential accommodation, food delivery by unincorporated traders, childcare and gaming).

INFORMATION PROVISION

As under the CC(ICAC) Regulations, there is a list of information which must be provided to the consumer pre-contract, with the new rules requiring that certain 'key' information must be given in writing and in one place, separately from the 'full' pre-contract information: (i) for in person contracts, in a durable medium; and (ii) for online contracts, it must be available in such a way that the consumer is not required to take any steps to read the information, "other than the steps the consumer must take to enter into the contract". Information will only have been considered to have been made available to the consumer if the consumer can reasonably be expected to know how to access it and be able to access it in practice. For online contracts, the trader must ensure that the final step which the consumer is required to take to enter into the contract involves the consumer expressly acknowledging that the contract imposes an obligation on the consumer to make payments to the trader. If this is not done, the consumer is not bound by the subscription contract.

To increase transparency, a trader must indicate whether there are any restrictions on delivery of the goods, services or digital content and which means of payment it accepts.

The information to be provided as part of the 'key pre-contract information' is:

- the duration of the contract;
- any minimum period that must elapse before the consumer can bring the contract to an end and a statement that the consumer will continue to incur liabilities until the contract has ended;
- details of the charges which will apply at the end of any free trial / discounted period;
- the date from which the consumer will be charged, the frequency of payments and the minimum amount that the consumer will become liable for on each occasion;
- the minimum total amount for which the consumer will become liable under the contract (and details of any changes to the frequency or the amounts of payments that the consumer will

become liable for and any ability of the trader to change the frequency and amount of payments); and

- details of how the consumer can end the contract (including any notice period) and details of the right to cancel during the initial cooling-off period and any subsequent renewal cooling-off period, and the fact that further details about rights are set out in the full pre-contract information.

The '*full*' pre-contract information which, like the '*key*' pre-contract information, must be given, or made available, together, includes the above information and details of the main characteristics of the relevant goods/services/digital content, the identity of the trader, details of delivery charges and complaint handling process and any details about the possibility of recourse to an alternative dispute resolution mechanism (to the extent there is an applicable mechanism).

REMINDERS

Traders must send reminder notices at prescribed intervals, and the rules also mandate the content of these notices, which must include, amongst other things, a statement that the consumer will become liable for the renewal payment to which the notice relates unless the consumer takes steps to bring the contract to an end, the date on which the consumer will become liable for the renewal payment and its amount, and the amount of the previous renewal payment which was due under the contract. Notices must be sent prior to each cancellation date, within a reasonable period (for the purposes of informing the consumer that they will soon become liable for the renewal payment to which the notice relates and so that the consumer can decide whether to bring the subscription contract to an end before incurring the renewal payment).

Where a subscription contract does not include a concessionary period (where the consumer pays a discounted rate or receives the supply of goods, services or digital content free of charge for a specified period), the trader must give to the consumer a reminder notice in respect of each renewal payment that relates to the end of a relevant six-month period, beginning with the day on which the contract was entered into, and also each subsequent six month period starting from when the consumer last became liable for a renewal payment. Where a subscription contract does include a concessionary period, the trader must give the consumer a reminder notice in respect of the first renewal payment the consumer will be liable for and each subsequent renewal payment that relates to the end of a relevant six-month period. There is also a requirement to send two reminder notices for contracts where the renewal payment is not due until after the end of a 12 month period, e.g. annual mobile phone contracts, or where no further renewal payment is due, but the contract continues beyond the end of a 12 month period. This is designed to facilitate consumer switching and tackle the loyalty penalty issue, whereby auto-renewing contracts operate to keep consumers locked into a particular contract. The DMCCA also directs how information needs to be provided, as a trader must ensure the renewal information is given in a way that is more prominent than any other information given to the consumer at the same time.

CANCELLATION

Consumers must be able to end a subscription contract by making a clear statement setting out their decision to bring the contract to an end – and contracts entered into online must be capable of being ended online (with instructions as to how to do so easily accessible for consumers). The rules also grant a right to cancel all subscription contracts (whether entered into online or otherwise) during an initial cooling-off period – this is a 14 day period from the date the contract was entered into, and also a right to cancel during each subsequent renewal cooling-off period, which is also a 14 day period, beginning with the day on which the contract renews, for each subsequent renewal period. Traders are also obliged to provide each consumer with a cooling-off notice, setting out the consumer's right to cancel the contract.

REMEDIES AND SANCTIONS

The Act provides that a trader's compliance with the information duties, the requirement to send reminder notices and the arrangements for termination/cancellation of the contract are implied terms in every subscription contract, with the consequence that, where a trader does not comply with the requirements, a consumer will have the right to cancel the contract for breach of the implied terms. Consumers are also entitled to claim damages for breach. In addition, failure to comply with the pre-contract information requirements relating to initial cooling-off rights for subscription contracts entered into off-premises is a criminal offence. These new rules are also underpinned by the CMA's proposed enhanced enforcement powers to issue turnover-based fines (of up to 10% of turnover) and award compensation to consumers.

NEXT STEPS

Businesses offering subscription products should revisit their suite of subscription terms, to take account of the new rules. At the same time, businesses should review the online architecture and processes underpinning subscription offerings to ensure they will be compliant with the new requirements.

RELATED PRACTICE AREAS

- Retail & Consumer Products
- Regulation, Compliance & Advisory
- Commercial Contracts
- Technology Transactions
- Antitrust

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