DMCC Act in Focus
Consumer Protection Guide

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Introduction

The Digital Markets, Competition and Consumers (**DMCC Act** or **the Act**) Act resets the landscape for consumer law enforcement in the UK. It significantly ups the ante on penalties for non-compliance, introduces sweeping new statutory requirements and overhauls the existing rules under the (now repealed) Consumer Protection from Unfair Trading Regulations 2008 (**CPUT**). The Competition and Markets Authority (**CMA**) will also gain sweeping new powers both in terms of its ability to impose penalties up to 10% of global turnover and its ability to order companies to hand over sensitive internal documents during investigations.

There will be a phased implementation process, with the bulk of the consumer law changes (including the CMA's new enforcement powers) coming into force from Spring 2025. Read on to find out what this means in practice.

In this guide, you will find out more about:

The CMA's new consumer enforcement powers

Changes to existing consumer law framework

New subscription contract rules

New rules requiring action to combat fake reviews

> The Act significantly ups the ante on penalties for non-compliance with consumer protection laws. It also introduces sweeping new statutory requirements.

1 New consumer enforcement powers

How are the CMA's enforcement powers changing?

Some sector regulators, for example the Financial Conduct Authority and Ofcom, already have the power to impose hefty fines when regulated firms engage in practices that harm consumers.

However, until now, the CMA has lacked the power to enforce consumer law against companies that operate in non-regulated sectors (for example retailers and FMCG brands). In practice this means that the CMA tended to focus on compelling non-compliant businesses to change their behaviour, either via voluntary undertakings or by obtaining an enforcement order in the High Court.

Trading Standards can also investigate and prosecute businesses for consumer law breaches, but such action is rare given the budgetary constraints on local authorities and, in any event, the fines have tended to be relatively low (in the tens or hundreds of thousands).

That will all change under the new regime. Under the Act, after the CMA has conducted its own investigation and satisfied itself that a consumer law breach has occurred, it can unilaterally impose a penalty of **up to 10% of a company's global turnover** without going to court. It is expected that penalties will be on a par with competition law enforcement where fines are rarely below the million-pound mark.

A monetary penalty can be appealed in the High Court. But as businesses that have been on the receiving end of a large CMA fine for a competition law infringement will know, appealing a fine already imposed is very different experience to defending a prosecution.

Are the CMA's investigatory powers also changing?

Yes. While the CMA already has broad statutory powers to issue Information Notices ordering companies to hand over relevant internal documents and data during investigations, if there is a dispute over the relevance of a particular document (or if the company in question simply refuses to comply) it generally needs to take companies to court to obtain disclosure of the document. For example, in its anti-virus software investigation it had to issue court proceedings against Norton following a dispute in relation to disclosure of research on how consumers responded to website information on auto-renewal and pricing.

However, under its new powers, the CMA can impose a **penalty of up to 1% of global turnover** on companies that fail to provide documents requested in an Information Notice without reasonable excuse. It may also impose a daily **penalty of up to 5% of global daily turnover** for continuing breaches. Again, these penalties can be imposed by the CMA unilaterally without going to court. This will significantly alter the balance of power in the event of a dispute over whether or not sensitive internal documents are within the scope of the CMA's investigatory powers.

Which consumer law offences will the CMA's powers apply to?

Based on the CMA's recent consumer enforcement cases, its new powers are most likely to be used in enforcement cases that involve "unfair commercial practices", which are now defined under Part 4 of the Act. These can apply to a wide range of behavioural practices and give the CMA significant leeway to take enforcement action in cases when traders treat consumers unfairly. For example, they may apply to:

- Misleading pricing and promotions;
- "Greenwashing" and misleading environmental claims (in breach of the Green Claims Code). The CMA is currently investigating green claims made in the FMCG and green heating sectors; and
- Manipulating consumer decision making through online choice architecture (so-called "dark patterns") – including misleading "urgency" claims and countdown clocks. The CMA is currently looking at these practices in its investigations into the online bed retailer Emma Sleep and the daily deals website, Wowcher.

However, as noted, it is vital to be aware that the definition of unfair commercial practices under Part 4 of the Act is broad and businesses should not assume that penalties will only be imposed in cases that involve overt or egregious misleading sales practices. For example, in recent years the CMA has taken enforcement action against Apple for failing to disclose the impact that its iOS update would have on battery life and car rental intermediaries for failing to take steps to ensure that third party prices they displayed on their websites were accurate.[1]

It is also important to note that the CMA's new powers are not limited to a breach of consumer law in the Act itself. For example, the CMA may use its powers to conduct investigations about a breach of the following legislation (amongst others):

- Consumer Rights Act 2015;
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013;
- Business Protection from Misleading Regulations Marketing Regulations 2008;
- Package Travel and Linked Travel Arrangements Regulations 2018; and
- Price Marking Order 2004.

We await further guidance on how the CMA will approach enforcement in these cases, particularly given that some of the legislation referred to in Schedule 14 of the Act (for example, the Consumer Rights Act) was drafted more to empower consumers with civil rights than setting out regulatory "offences" that are punishable with fines.

Either way, the CMA will want to use the new powers at its disposal to tackle a wide range of consumer law breaches.

1 Note, both cases related to alleged breaches of the Consumer Protection from Unfair Trading Regulations 2008. The relevant provisions have now been recast in Part 4 of the Act

Are these powers available to other regulators?

The powers referred to above are special powers reserved for the CMA, although as noted many sector regulators (for example Ofcom and Ofgem) already have similar powers.

However, under changes introduced under Part 3 of the Act, certain designated "public enforcers" will have new powers to apply to the court to impose a monetary penalty. These build upon the existing powers that many regulators have under the Enterprise Act 2002. Such powers are currently limited to the court stopping the relevant infringement and imposing enhanced consumer measures. The Act goes further than this and states that an application for an Enforcement Order can also can also require the respondent to pay a monetary penalty – for up to 10% of the company's global turnover.

In practice this means that other enforcers such as local authority trading standards could also apply to the High Court and request for a fine to be imposed on a company once it has concluded its investigation. Crucially this would be a civil penalty, so it would remove the need for the regulator to prosecute via the criminal courts to impose a fine. Local authorities occasionally investigate and prosecute consumer law breaches in the criminal courts although it remains to be seen whether these new civil enforcement powers will be more appealing.

> The CMA can use these new powers to enforce a wide-range of consumer protection laws, including the rules on unfair commercial practices.

It is also important to note that while the CMA's powers to directly impose fines are limited to a small sub-set of consumer protection law, application for Enforcement Orders can be made in respect of a much wider list of regulatory offences that are not limited to consumer protection legislation.

CMA consumer enforcement powers in summary:

- CMA can now impose penalties up to 10% of global turnover on business that breach consumer law without going to court. These new powers apply to a wide-range of consumer protection laws.
- The CMA is also getting much tougher powers to force companies to hand over sensitive internal documents during consumer protection investigations.
- Other public enforcers, including local authority trading standards, will also have the ability to apply to the court to impose civil penalties for breach of consumer law.

2 Changes to existing consumer law framework

The existing Consumer Protection from Unfair Trading Regulations 2008 (CPUT) framework has been repealed and recast within Part 4 of the Act.

For the most part the law is restated, subject to some substantive changes in certain areas (see below), but the process of elevating CPUT from secondary legislation to primary legislation within the Act is itself telling and speaks to the importance placed on it by the government and the CMA.

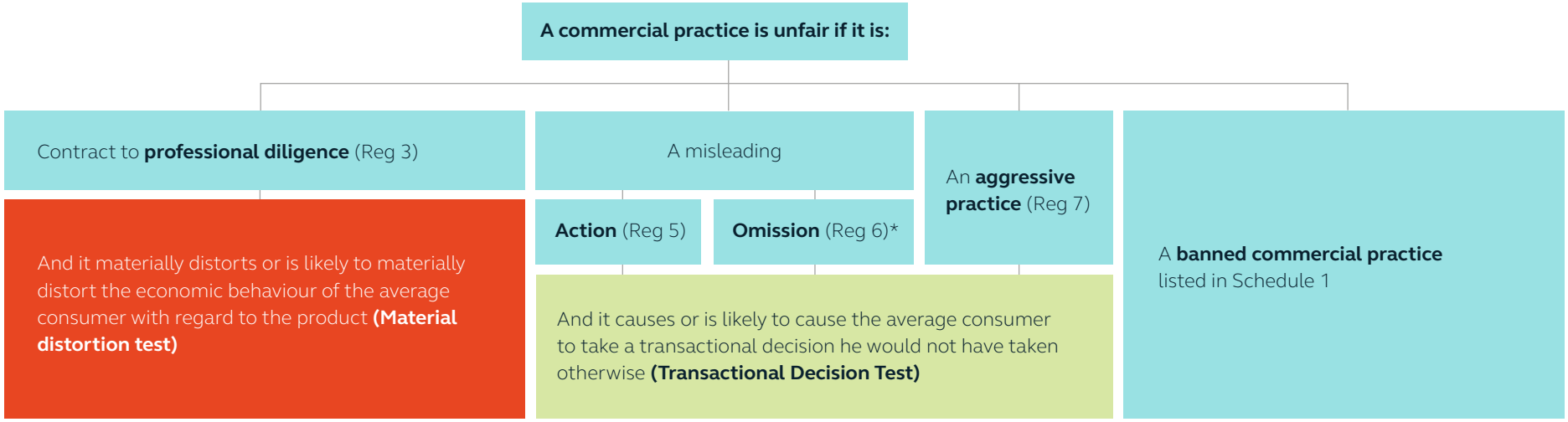
It is important to note that in the process of recasting the CPUT Regulations in the Act, the government has fine-tuned the legislation in a number of ways, which has resulted in some material changes. For example:

- **Vulnerable consumers**. The definition of has been widened from the existing definition (which refers to age; physical or mental health or credulity) to any "circumstances" the consumer is in. The Explanatory Notes as the Act passed through Parliament give examples of being in mourning, going through a divorce, or losing a job as 'circumstances' that could make a consumer vulnerable.
- **Drip pricing**. The ban on "omitting material information from invitations to purchase" has been expanded to make it easier for the CMA to enforce the rules concerning "drip pricing'. Under the Act, any invitation to purchase must include the "total price of the product". The Department for Business and Trace (DBT) has been clear that the rules prohibit presenting a headline price that does not:
  - Incorporate in the price any fixed mandatory fees that must be paid by all consumers; or
  - Disclose the existence of any variable mandatory fees and how they will be calculated.
- **Invitations to purchase**. Building on the above, the offence of omitting material information from an invitation to purchase has been amended so that it is no longer a requirement for enforcers to show that the omission of information would impact the average consumers transactional decision. This is significant as there is an extensive list of information considered to be "material" for each invitation to purchase under the Act, including pricing information (see 'drip pricing' section). Invitations to purchase are defined very broadly – they potentially capture any practice involving the provision of information to a consumer that indicates the characteristics of a product and its price, and which enables (or purports to enable) the consumer to decide whether to purchase the product or take another transactional decision about a product.
- **Professional diligence test**. The "professional diligence" test has been reformulated under the Act to bring it in line with other unfair commercial practices. Previously the test required the trader's failure to "distort the economic behaviour of consumers". It now requires the failure to be likely to "*… cause the average consumer to take a transactional decision that the consumer would not have taken otherwise*". There is a general recognition that restating the provision in this way will make it simpler for the CMA to enforce (it was previously disconnected from the core unfair commercial practices) and reflects the importance the CMA places in this wide-ranging obligation to treat consumers fairly.
- The definition of "average consumer" for the purposes of the unfair commercial practices provisions has been amended slightly under the Act, now stating that the average consumer is presumed not to be aware of information that has been "concealed" by the trader (even if the average consumer might know the information from another source). While it is assumed that to "conceal" information is a higher bar than "omitting" it, the Act and Explanatory Note provides little further clarification and therefore this may have the effect of reducing the average consumer's assumed level of knowledge where a trader has deliberated concealed information from consumers. We await further guidance on how this amended statutory definition works alongside the existing rules on misleading omissions.
- The banned commercial practice relating to time-limited offers has been amended; the CPUT Regulations previously banned practices which involved traders falsely stating that a product would only be available (or available on particular terms) for a "very limited time" but, under the Act, the ban has been widened to now capture those for a "limited time" (with "very" having been removed). The CMA has taken recent enforcement action against **Emma Sleep** and **Wowcher** in relation to the use of time-limited promotions such as urgency claims and countdown clocks, and this widening of the banned practice will make it easier for the CMA to crackdown on these kinds of practices.

Finally, it is also important to note that the Act serves as a clear fork in the road regarding the divergence between UK and EU consumer law. The CPUT Regulations originally implemented (and remained aligned with) the EU Unfair Commercial Practices Directive 2005/29/EC, which has itself undergone a series of recent changes. UK and EU consumer regimes are now increasingly following different paths. For example, the EU Unfair Commercial Practices Directive has recently been updated to add a number of provisions related to misleading environmental claims. Despite pressure from the CMA, the UK government declined to add misleading environmental claims to the list of banned practices in Schedule 20 of the Act.

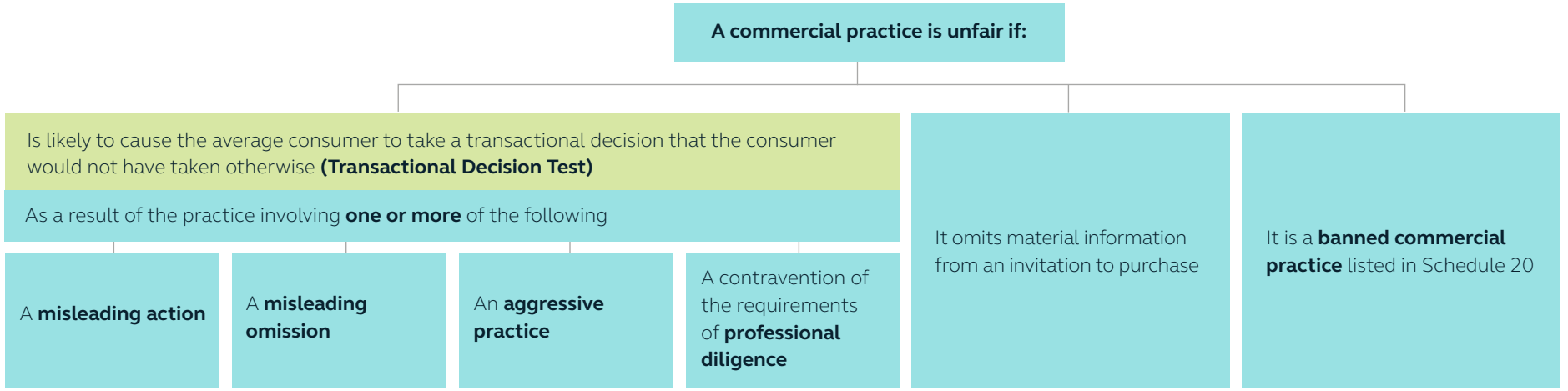
How the unfair commercial practices test has been reformulated in the Act

Previous position under CPUT Regulations



*Includes omissions from invitations to purchase

New position under Part 4 of the DMCC Act



3 New subscription contract rules

Due to the increased popularity of subscription services such as food boxes, streaming and online gaming services, there have been calls in recent years for a more robust legal framework to regulate unwanted "subscription traps" that are easy to sign-up for, but much harder to get out of. This includes free trials that roll over into paid subscriptions.

The CMA has already conducted extensive enforcement in this area as part of its investigations into **online video games** and **anti-virus software**, with undertakings accepted from Microsoft, Nintendo and Norton in recent years. Regulatory enforcement in this area has also been closely linked to online choice architecture and "dark patterns" (also a key focus area for the CMA), which involves traders deliberately structuring their websites and apps to make it more difficult for consumers to exit subscriptions.

The new rules are designed to target these issues. Traders that offer subscription services should therefore be in no doubt that this remains high up on the CMA's enforcement agenda. As noted above, the CMA will have the power to impose **penalties of up to 10% of global turnover** on businesses that fail to comply with these new rules.

What are the new requirements?

Under new, highly prescriptive rules introduced by the Act, traders will be required to:

- Provide consumers with key information about the subscription before they enter the contract, including how it will operate, how much it will cost after any free or discounted trial period, the frequency of payments and how to exit the contract. This **key pre-contract information** must be provided separately from any other information, in writing, as close in time to entering the contract as is practicable and without the consumer having to take any extra steps to read the information – this means no hyperlinks or attachments.
- Send consumers **reminder notices** before renewal payments are due. These must be sent a "reasonable period" in advance of the last date on which a consumer could cancel without being liable to pay, and that "reasonable period" must be outlined in the key pre-contract information. The notice must specify when and how much they will be charged and how they can cancel before they are liable to pay, as well as other details such as the amount of any increase from the previous payment. As a general rule, these must be sent in advance of one payment within every six-month period and, for contracts with free or discounted trial periods, before a consumer's first full payment is due. An extra notice will also need to be sent before renewals of 12-month+ contracts. The Act does allow the Secretary of State to disapply these rules for certain types of trader/contract by way of further regulations, so we may see some exceptions made for certain types of subscriptions in the future.
- Introduce a **14-day renewal cooling-off period** following the expiry of a free or discounted trial period when the consumer starts paying the full price of the contract, and again on renewal of a 12-month+ subscription contract. This will mean that as well as a free trial period, consumers may get to benefit from an extra 14 days of the subscription without being liable to pay if they decide to cancel. That said, there is provision in the Act for the Secretary of State to make regulations giving further detail and guidance on the consumer's right to cancel in these circumstances, which the Act specifically states may include provision that a consumer may lose the right to cancel a subscription contract during a cooling-off period where they choose to be supplied with digital content or services under the contract during that period. Any such provision, though required to be made through future secondary legislation, would bring the subscription rules in line with general consumer protection rules.
- Inform consumers of their 14-day cooling-off rights and how to exercise them by sending them a **cooling-off notice** when their free/discounted trial is about to expire or their 12-month+ contract is about to renew. This is another provision which requires traders to remind consumers of ways in which they can exit their subscription; a theme that runs through the whole chapter.
- Make sure consumers can **exit their subscription easily**, in a way which is straightforward with no unnecessary steps, as well as by making a clear statement to the trader that they are bringing the contract to an end. On a plain reading of the Act, and without further guidance, this statement could be made via any communication channel it has with the trader, so traders will need to consider all points of contact they have with their consumers and ensure any such cancellation statements are registered. Once the consumer cancels the contract, there is also a requirement to send them a **cancellation notice** to confirm this.

Contracts for utilities, financial services and childcare are expressly excluded. However, the definition of a subscription contract under the DMCC Bill is extensive so it is reasonable to expect that most auto-renewing contracts will be captured. Consumers will be able to cancel their contracts without penalty and with immediate effect if traders fail to meet a number of these requirements, including if they're not sent a reminder notice or given the ability to exit the contract easily. Any terms that contravene the rules will also be unenforceable.

Implementing a compliance solution

While the government has indicated that the new rules will not take effect until **Spring 2026**, the new rules will require extensive changes to subscription terms and conditions, and front- and back-end processes to facilitate reminder notification and additional cancellation rights (amongst other things).

Our team of experts can help support you with any changes required to bring your subscription products in line with the requirements of the Act before the new laws kick in.

Subscription contract rules in summary:

To comply with the new rules, traders will be required to:

- Provide consumers with "key pre-information" about the subscription before they enter into the contract;
- Send consumers "reminder notices" in advance of renewal at defined periods;
- Ensure consumers can exit the contract easily and send them a "cancellation notice" to confirm; and
- Incorporate new 14-day cooling off rights into subscription contracts and send consumers "cooling-off notices" to make them aware of such rights and how to exercise them.

> The new rules will not just require businesses to make extensive changes to subscription terms and conditions. They will also have to update front- and back-end processes to facilitate reminder notification and additional cancellation rights (amongst other things).

4 New rules requiring action to combat fake reviews

The CMA has long considered the integrity of online product reviews as a key focus area given the important role they play in consumer decision making. While it has carried out some limited enforcement action in this area under the old consumer protection framework, the Act gives the CMA much tougher and more targeted powers. This includes the creation of a new prohibited practice that could expose retailers, online marketplaces and digital platforms to the risk of breaching of the Act if they fail to take "reasonable and proportionate steps" to prevent consumers encountering false or misleading reviews.

This does not just ban the outright sale (or purchasing) of fake reviews. It also effectively operates as a "failure to prevent" offence and subjects businesses that host consumer reviews on their websites to wide-ranging obligations. In particular, the Act creates the following new banned offenses:

- Submitting, or commissioning another person to submit or write –
  a. a fake consumer review, or
  b. a consumer review that conceals the fact it has been incentivised.
- Publishing consumer reviews in a misleading way.
- Publishing consumer reviews, without taking such reasonable and proportionate steps as are necessary for the purposes of:
  a. preventing the publication of:
     i. fake consumer reviews,
     ii. consumer reviews that conceal the fact they have been incentivised, and
     iii. consumer review information that is false or misleading.
  b. removing any such reviews or information from publication.

"Fake consumer reviews" are defined broadly under the Act as any consumer review that purports to be, but is not, based on a person's genuine experience.

The new rules have been added to the list of "banned practices" under Schedule 20 of the DMCC Act. This makes it easier for the CMA to evidence a breach as there is no requirement to show that failure to comply could cause the average consumer to enter into a transaction that they would not have entered into otherwise.

> The new rules subject businesses that host consumer reviews on their websites to wide-ranging obligations.

The CMA is expected to publish formal guidance setting out what it expects traders to do to comply with this obligation. But this new requirement will likely involve policies and processes for regularly and proactively assessing risk, detecting suspicious reviews, removing fake reviews, and sanctioning those who facilitate or post them. Online retailers, platforms and marketplaces will therefore need to reflect carefully on the policies and procedures that underpin their product reviews – including content moderation. This is particularly important if AI tools are used to screen and filter reviews that don't comply with the site's terms of use.

Fake review rules in summary:

- Submitting, publishing or commissioning a fake (meaning non-genuine) review is now a banned practice.
- This also applies to publishing consumer reviews in a "misleading way".
- Businesses are also liable if they publish fake reviews without taking reasonable and proportionate steps to reduce the risk of consumer encountering fake or misleading consumer reviews.

Alternative Dispute Resolution and other changes

Alternative Dispute Resolution:

- In circumstances where consumers and traders are unable to come to a solution for a problem that has arisen between them, Alternative Dispute Resolution (ADR) can be an effective tool which is less formal, less confrontational and cheaper than going to court. ADR for consumer disputes was previously regulated by the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015, but these have now been revoked by the Act, with Part 4 of the Act now dealing with this instead.
- While many of the rules remain the same as in the previous regulations, new requirements for ADR introduced by the Act will help to strengthen the consistency of service provided to consumers across the market, which has been found to vary significantly depending on which providers are used.
- In particular, ADR providers will now be required to obtain accreditation and approval before they are able to provide ADR services which is intended to increase consistency or service, transparency and impartiality across the market.

Consumer savings schemes:

- The Act gives new protections to consumers who use consumer savings schemes to make advances payments for things like Christmas presents etc. In order to ensure consumers' money is safe and protected, the Act has introduced new requirements for these kinds of schemes, in particular requiring payments to be protected via trust arrangements or insurance.
- The Act also introduces information requirements, requiring providers of these schemes to provide consumers with information about the measures in place to protect their payments.
- There are some kinds of contracts which have been excluded from the new rules, including financial services activities which are already regulated by the Financial Conduct Authority, as well as arrangements for the supply of utilities.

When will the changes come into force?

The DBT has confirmed there will be different commencement orders for different parts of the Act to allow for varying business familiarisation periods. While there is still scope for a general election to cause some disruption to the implementation timescales, DBT currently estimates that the commencement dates will be as follows:

CMA's new enforcement powers (see section 1): **Spring 2025**

General changes to the rules in relation to unfair commercial practices (see section 2) and fake reviews (see section 4): **Spring 2025**

New subscription contract rules: **Spring 2026**

TLT's consumer experts

Step 1 – DMCC Impact Assessment

We will prepare a RAG impact assessment to help you identify which changes in the Act will have the biggest impact on your business.

Step 2 – Consumer Compliance Project Plan

We will clearly explain how you can address any key compliance risks. Our prioritisation matrix will help you decide which compliance risks to prioritise.

Identifying the compliance solution that works for you

We offer a wide-range of targeted compliance solutions to help you manage compliance on an ongoing basis. This includes the following:

- **Consumer law compliance policy framework**
- **Integrated staff training modules**
- **User-friendly guidance documents on consumer rights**
- **Health check of terms and conditions**
- **Full audit of consumer touchpoints**
- **Targeted thematic reviews of pricing, AI and other key risk areas**

Recent experience

Market-leading experience in CMA consumer protection investigations. Advised **boohoo** on the CMA's first ever "greenwashing" consumer enforcement case and **TUI** on the CMA's package travel investigation during the Covid-19 pandemic.

Regularly advise **major brands** on complex behavioural consumer law matters, including pre-sales disclosure requirements and implementing policies for dealing with consumers suspected of fraudulent behaviour.

Advised **a global tech firm** on its consumer law compliance policies, B2C terms and conditions, pricing wireframes and the use of automation and algorithms in its complaints management systems.

Advised various **large motor dealership groups and OEMs** on consumer law compliance in relation to terms of sale, website disclosures, cancellation policies and consumer law compliance training modules.

Advised a **FTSE 100 supermarket chain** on its policies for substantiating **green claims** for clothing and other consumer products.

Advised various **large tech platforms** on the application of consumer law to digital platforms, including advising a leading listed fashion brand on the policies and terms of use for an innovative "C2C" online marketplace.

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