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Submission via input to Department for
Business & Trade portal

Consultation on the implementation of the new subscription contracts regime

About us

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. The Act defines consumers as individuals and small businesses that purchase, use or receive in Scotland goods or services supplied by a business, profession, not for profit enterprise, or public body.

Our purpose is to improve outcomes for current and future consumers, and our strategic objectives are:

- to enhance understanding and awareness of consumer issues by strengthening the evidence base
- to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
- to enable the active participation of consumers in a fairer economy by improving access to information and support

Consumer Scotland uses data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer

perspective through the application of the consumer principles of access, choice, safety, information, fairness, representation, sustainability and redress.

Consumer principles

The Consumer Principles are a set of principles developed by consumer organisations in the UK and overseas.

Consumer Scotland uses the Consumer Principles as a framework through which to analyse the evidence on markets and related issues from a consumer perspective.

The Consumer Principles are:

- Access: Can people get the goods or services they need or want?
- Choice: Is there any?
- Safety: Are the goods or services dangerous to health or welfare?
- Information: Is it available, accurate and useful?
- Fairness: Are some or all consumers unfairly discriminated against?
- Representation: Do consumers have a say in how goods or services are provided?
- Redress: If things go wrong, is there a system for making things right?
- Sustainability: Are consumers enabled to make sustainable choices?

We have identified information and fairness as being particularly relevant to the consultation proposal that we are responding to.

Our response

Cooling-off cancellation rights: returns and refunds

Question 1a. Do you agree with the principles set out in this approach to cooling-off returns and refunds?

Yes.

Question 1b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland agrees with the principles set out by DBT and consider that they represent a fair outcome for both consumers and traders. We welcome the stipulation that consumers won't lose any rights they currently have and efforts to ensure they will have the opportunity to properly reflect on the subscription contracts they are entering into. We also welcome any work to streamline the operation of the rules to make the rules accessible to consumers and businesses.

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

Yes.

3b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland agrees that the proposals set out by DBT represent a fair returns process for both consumers and traders. The factors outlined take in to account the different kinds of goods and services which may be received via a subscription, and how, in each case, traders and consumers respectively may be at risk of suffering loss or becoming liable for products and services that the consumer ultimately did not want or use. The practical success of these proposals is dependent, however, on the effective implementation of the Regulations on information standards and contractual terms outlined elsewhere in this consultation.

4a. To what extent do you agree with the regulatory proposal for returnable goods (category 1 goods)?

Agree.

4b. Please provide the reasoning and any evidence behind your answers.

Consumer Scotland agrees with most of the details of the regulatory proposal for category 1 returnable goods. The Regulations ensure that consumers will only pay for goods they receive and use beyond relevant cooling off periods, so long as the consumer is provided with all relevant information clearly.

There may be a case for further consideration of cancellation procedures. The Regulations state that:

“Where it is the consumer’s responsibility to return the goods, they must be returned not later than 14 days after the consumer:

- cancelled the contract, or
- has provided evidence that they have cancelled the contract”

There may be a case for requiring traders to acknowledge cancellation of the subscription contract, so that where it is the consumer’s responsibility to return any good(s), they must be returned no later than 14 days after the trader’s acknowledgment of the cancelled subscription. This may allow consumers more certainty that the cancellation process has been successful, while providing the trader with another opportunity to specifically direct the consumer on how to return the good(s), making it more likely they receive them back in a timely manner.

5a. To what extent do you agree with the regulatory proposal for perishable and bespoke goods (category 2, non-returnable goods due to their characteristics)?

Strongly agree.

5b. Please provide the reasoning and any evidence behind your answers.

We agree that, with regards to category 2 (perishable or bespoke goods), traders should seek the consumer’s express consent to dispatch the goods before doing so in the initial cooling-off period. This will help protect consumers from receiving non-returnable goods they do not want, and also traders from unnecessary losses of perishable stock.

We welcome the requirement for traders in such goods to provide consumers with precise dates of dispatch and an understanding of their rights under the cooling-off period. Providing this information in a clear and prominent way will minimise the risk of consumers receiving and being liable for the cost of unwanted bespoke or perishable items. Overall, these Regulations should ensure appropriate and fair protections for both consumers and traders.

6a. To what extent do you agree with the regulatory proposal for goods that are non-returnable due to circumstances (category 3)?

Strongly agree.

6b. Please provide the reasoning and any evidence behind your answers.

The principles behind the Regulations suggested for category 3 goods largely match those for category 2 goods. Similar factors apply in relation to the trader’s ability to recoup loss on non-returnable items and the need for consumers to be protected from being charged for

goods they did not want or intend to buy. The only difference is that the point where the liability for cost changes is when the goods are unsealed or inseparably mixed as opposed to when they are dispatched. Given that category 3 goods can feasibly be re-sold if returned to the trader if unsealed or unmixed, this seems an appropriate distinction to make. This also affords consumers a degree more protection than if they became liable upon dispatch.

One comment we would add, however, is that the wording of the Regulation for category 3 goods does not set out clearly, as it does for category 2 goods, the standard of information that traders must share in order to help inform and protect consumers. As with category 2 products, which state that consumers will be liable for the cost of the goods upon dispatch (and also state the date dispatch will take place) traders should be required to share with consumers prominently and clearly that they will only be eligible for full refunds if the product remains unsealed or is not inseparably mixed.

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

Yes.

7b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland agrees with the principles set out for refunds for services during cooling-off periods. As the services are considered non-returnable, it is fair that traders are protected from consumers receiving access to a service without paying. Conversely, the consumer's right to exercise their cooling-off right without having to pay for services they have not yet received should also be protected, as it is in the proposed Regulations.

We would recommend, however, that consideration is given to specifying a more robust definition of what constitutes a service for the purposes of these Regulations. The examples provided by DBT (gym memberships, heritage sites, theme parks) all suggest a subscription or season pass to a physical service or attraction, but this is not explicitly stated. If this description is an accurate one, it should be more clearly described in Regulations or any accompanying Guidance. If a wider definition is intended, explanations and examples of different kinds of services that would meet the definition in this section should also be provided. This extra level of detail would help provide more clarity for both traders and consumers.

8a. To what extent do you agree with the regulatory proposal for refunds for services?

Agree.

8b. Please provide the reasoning and any evidence behind your answer.

Overall, Consumer Scotland agrees with the regulatory proposals for refunds for services. Following the principles as laid out, they should mean in practice that consumers do not have to pay for services they do not receive if they exercise their cooling-off rights, while

traders would be paid for any services they do provide up until such cooling-off rights are exercised.

The DMCCA requires traders to provide information to consumers to ensure they are well-informed of their rights regarding subscriptions for services. For a similar reason to that given in our answer to question 7b, however, we recommend that the wording of the guidance under paragraph 44 and examples used, should be further clarified. In the section about obligations during the initial cooling-off period, it is stated that, “Before the trader starts supplying the services, they must seek the consumer’s request that the services be supplied in the initial cooling-off period.”¹ For services such as access to gyms, heritage sites, or theme parks, however, it is not clear what this would look like in practice. It may be useful to also provide examples of the kinds of services that do not require physical attendance, in the Regulation and accompanying guidance.

9a. Do you agree with the factors that we have taken into consideration in developing the proposals for digital content?

Yes.

9b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland agrees with the considerations outlined in the proposals, recognising that digital content is non-returnable, and that it essentially loses its value to the trader once consumed. In this context, the consumption of any digital content during a cooling-off period may fairly be charged for by the trader. We do, however argue, that a proportional charge for accessing digital services during a cooling-off period should not preclude the consumer having an ongoing right to cancel their contract during this period, remaining liable for any content consumed.

10a. Considering the three options set out for how refunds could work for digital content, which approach would you recommend?

Option 1: proportionate refund for both initial and renewal cooling-off periods

10b. Please provide the reasoning and any evidence behind your answer.

It is Consumer Scotland’s view that this option provides the greatest consistency with the rest of the proposed Regulations by maintaining consistent expectations around cooling-off periods, protecting consumers from paying for services they may not want, and protecting traders from providing services without payment. While we recognise the issues for traders of ‘binge and cancel’ behaviours from consumers,² we consider that the removal of a guaranteed cooling-off period would undercut the levels of protections for consumers that are preserved for other subscription products.

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

Regulations.

13b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland suggests that in order for all subscription contracts to be regulated consistently, mixed contracts should also be covered by regulations. If mixed contract subscriptions are only subject to guidance, we would be concerned that consumers of mixed contract subscriptions may enjoy less robust protections or have less clarity about their rights should they wish to exercise their cooling off rights.

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

Strongly agree.

14b. Please provide the reasoning and any evidence behind your answer.

Though ancillary products are for more secondary products than the goods and services included in mixed subscription contracts, ultimately, ancillary products can be treated in a similar way, as a separate part of a single subscription contract. Consistent with proposals for single goods, services or digital content, the principle that traders should be paid for any services provided while consumers should only pay for goods and services they want, both the primary and the ancillary products should be subject to consistent regulation for their respective category of goods or service. This appears to be consistent with the Regulations proposed. However, we recommend that worked examples should be provided in any guidance, setting out how this would work in practice.

15a. To what extent do you agree with the regulatory proposal for the extension and operation of the cooling-off period if the trader does not comply with their duties to inform the consumer of their initial or renewal cooling-off right?

Strongly agree.

15b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland recognises that the proposed extension of cooling off periods where the trader does not provide appropriate information about the nature of the cooling-off is designed to protect consumers from detriment. If traders fail to provide full and clear information to consumers about their rights to cooling-off periods, then they should bear that risk, consistent with existing Consumer Contracts Regulations.

We also agree that traders should be able to address and correct their failure by providing the information at any point in the extended period, resetting the cooling-off period back to 14 days from when the consumer receives this information. This encourages traders to provide the correct information while providing more certainty for consumers regarding their rights.

16a. Do you have any concerns with the proposed approach in relation to product categories F to M? Please focus your answers on categories F to M as categories A to E were addressed in sections 2.2.3 and 2.2.4 and questions 3, 5 and 6.

No.

Cancellation remedies for breach of duties

17a. Do you agree with the principles that underpin our proposals for how the refund and return provisions in the case of a breach of implied terms should work?

Yes.

17b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland agrees with these principles and the importance they place on the consumer principle of information. The stated principles reflect what is consistent throughout the proposals as written, that consumers should not be liable to pay for products and services they did not want, and that traders should not be unfairly penalised when a consumer has used products they have supplied. If consumers are not provided with accurate, timely information about a subscription contract they have entered into, we agree it would not be fair for them to be liable for the cost of goods delivered to them in that context.

18a. To what extent do you agree with the regulatory proposal for refunds and treatment of goods, services and digital content (subject to refunds) if a consumer cancels because a trader has breached an implied term?

Agree.

18b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland largely agrees with the regulatory proposals for refunds and treatment of goods and services where the trader has breached an implied term. The Regulations follow the principles stated in the proposal and strongly incentivise traders to provide consumers with full and clear information about the subscription contract they are entering in to. Where traders do not do that, we agree that it is fair they are liable to provide refunds for goods or services that may be unwanted or unsolicited.

We also recognise that, especially in cases where physical products are delivered to the consumer as part of a subscription, it is reasonable to conclude that the consumer will be made aware of any subscription contract mistakenly entered into, and should be able to cancel the contract at that stage. Therefore, we agree that in cases where goods or services continue to be sent to and accepted by the consumer, the trader should only be liable to provide refunds for the initial and first payment made under the subscription contract.

Repayment of refunds

19a. To what extent do you agree with the regulatory proposal for how repayment of refunds work?

Strongly agree.

19b. Please provide the reasoning and any evidence behind your answer.

These regulatory proposals add further detail to the requirements for traders to provide refunds to consumers in the event they cancel an unwanted subscription within the cooling off period. The requirement will add confidence to the consumer experience when seeking refunds while also increasing clarity on the process for both consumers and traders. The proposals, in general, seem to be consistent with the rest of the regulatory proposals in this consultation.

Contractual terms for exiting a contract

20a. To what extent do you agree with the regulatory proposal for when the consumer can be made liable for a renewal payment?

Strongly agree.

20b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland recognises that the Regulations, as proposed, for when consumers can be made liable for subscription payments, provides extra and comprehensive protections for consumers that will help them to avoid unwanted subscription transactions and services due to the timing of their payment schedule. We are comfortable that these proposals should not lead to any adverse consequences for traders.

21a. To what extent do you agree with the regulatory proposal for when a consumer can exercise a contractual right to bring a subscription contract to end?

Strongly agree.

21b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland agrees that the different lengths of subscription contracts in practice could potentially make specific regulations for each contract duration overly complicated for both consumers and traders.

We agree that there is no practical reason why traders need to significantly restrict consumers' rights to exit a contract, with the exception of the example provided by DBT where a consumer doing so would not leave enough time for the trader to stop the renewal payment being taken. Aside from that, we welcome the proposal that consumers should be able to exercise their contractual right to exit a subscription contract at any time, including

as soon as it begins or renews. This is both a very clear and understandable over-arching rule for both traders and consumers - and provides consumers with more flexibility and safeguards from inadvertently entering into a subscription contract they do not want.

Arrangements for exiting a contract

22. Do you have any views on these proposals about arrangements to exit a contract?

Consumer Scotland agrees with the proposals. Both the principles listed for what consumers should experience when exiting a contract, and the specific proposals reflect the need for consumers to not be deliberately frustrated when trying to exit a subscription contract. We are confident that these proposals are not unfairly harmful to traders as they only seek to protect consumers from being stuck in unwanted subscription contracts.

We welcome the clarification offered for what constitutes a 'straightforward' exit method without steps that are not 'reasonably necessary', as this will provide clearer guidelines for traders to adhere to and for consumers to be aware of. The guidance on the number of offers that can be made to consumers as they attempt to exit a subscription contract are, we consider, less clear. The guidance states that "There should also not be an unreasonable number of offers made." We consider that this is potentially too open to subjective interpretation from traders and so could leave some consumers open to too many offers and notices as they try to leave a contract.

Research into so-called 'dark-patterns' in online retail have shown that there is an average of seven steps required of consumer to unsubscribe from a subscription contract.³ We would recommend the development of a measurable standard for what constitutes an unreasonable number of offers or feedback requests made to consumers, to be set out in guidance for traders, as opposed to the Regulations themselves.

An alternative option would be to provide consumers with the option to either cancel their subscription with one click or otherwise seek their explicit consent to see offers from traders before exiting the contract. This would support traders to try and retain customers in a way that does not frustrate attempts to end a subscription, and may be beneficial to consumers who may consider an offer made to them to be acceptable.

Information Notices

23a. To what extent do you agree with the regulatory proposals for reminder notices?

Strongly agree.

23b. Please provide the reasoning and any evidence behind your answer.

The regulatory proposals on reminder notices will help ensure consumers are reminded of their obligations arising from subscription contracts at regular and appropriate intervals,

while not being too onerous for traders to share, as they should be able to issue such reminders in a fairly standardised and automated fashion.

This will allow consumers to remain well informed about their financial obligations from subscription contracts without overwhelming them too much with information, and without adding too onerous a responsibility on traders to send more frequent reminders. The details added to the regulations that reminder notices must be in a durable medium, upfront, and immediately apparent to the consumer will make it more likely that consumers will receive, understand, and be able to act on this information.

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

Agree.

24b. Please provide the reasoning and any evidence behind your answer.

Consumer Scotland agrees with the regulatory proposals for end of contract notices, as they will ensure timely notices are sent to consumers, allowing clarity and confidence that they have been successful in exiting the subscription contract. The Regulations also aim to ensure consistency in relation to the prominence and clarity of information throughout these regulatory proposals.

We agree with the requirement that traders “must also set out the date in which the contract came to an end or will come to an end, or the day it was or will be cancelled,”. We also consider that there could be a case for requiring traders to inform consumers of any obligations they must perform under the new regulations in order to obtain refunds. This may be more relevant in mixed product subscriptions or subscriptions with ancillary elements. It is important that consumers are made aware in a clear, prominent and timely way of their obligations in order to receive any refunds they may be entitled to, and could be included in the information traders are obliged to send out as part of end of contract notices.

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

Strongly agree.

25b. Please provide the reasoning and any evidence behind your answer.

The proposed information in cooling-off notices covers everything consumers would need to know in order to exercise their rights and understand their liabilities relating to the subscription contract. Provision of this information, in a timely manner, and with the clarity and prominence required by the proposed Regulations should be effective in helping consumers avoid unwanted or unused subscriptions contracts that continue beyond a cooling off period.

¹ Department for Business and Trade (2024), Consultation on the Implementation of the New Subscription Contracts Regime, available at [Consultation on the implementation of the new subscription contracts regime \(web accessible version\) - GOV.UK](#)

² Harvard Business Review (2023), Tackling the Problem of Subscribers Who Binge... Then Bail, accessible at [Tackling the Problem of Subscribers Who Binge... Then Bail](#)

³ [Dark Patterns and Cancellations Report - EmailTooltester](#)