Digital Markets, Competition and Consumers Bill (the "Bill")
House of Commons Public Bill Committee
Taylor Wessing LLP Evidence Submission
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Taylor Wessing is an international law firm supporting innovative businesses and people. The firm has a particular focus on the technology and media sectors and represents digital content and other online subscription service clients who are amongst the most impacted by the Bill. We therefore focus our observations on Part 4, Chapter 3 of the Bill, on subscription contracts, and are grateful for the opportunity to make this submission to the House of Commons Public Bill Committee. Views represented in this document are those of the firm and are not to be attributed to any client or other organisation.

The key themes arising out of our analysis of the Bill are concerns around:

(i) the Bill's extra-territorial reach, which could result in UK-established businesses being at a competitive disadvantage when conducting business overseas;
(ii) the detrimental and uncertain impacts of the extension of cooling-off periods, including the absence of safeguards against subscriber misuse;
(iii) the requirements to send repeated notices to users which place both a significant administrative burden on service providers and could create 'communication fatigue' on the part of users, such that they lose their value; and
(iv) the need for more clarity in the drafting of the Bill, for example, the summary pricing element of key pre-contractual information, the 'single communication' requirement for cancellation of a subscription contract, the timing of reminder notices, and the applicability of the subscription requirements to existing subscriptions that are 'renewed'.

We explore these themes in more detail below, where we set out our commentary alongside extracts from parts of the Bill relevant to our comments.

We would welcome further engagement with the Public Bill Committee and/or the Department for Business and Trade to provide further input on the impact of the Bill on subscription services.

Enquiries should be directed towards Adam Rendle (Partner) and Oz Watson (Senior Associate) at a.rendle@taylorwessing.com and o.watson@taylorwessing.com.

Part 3 (Enforcement of consumer protection law), Chapter 2 – Relevant infringements

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140-141 – Relevant infringements and The UK connection condition		
140 (Relevant infringements) and 141 (The UK connection condition)	140(1) A commercial practice is a relevant infringement for the purposes of Chapter 3 or 4 if it— … (b) meets the *UK connection condition* (see section 141) 141(1) A commercial practice meets the UK connection condition for the purposes of section 140 if at least one of the following conditions is met— (a) the trader has a place of business in the United Kingdom; (b) the trader carries on business in the United Kingdom; (c) the commercial practice occurs in the carrying on of activities by the trader that are, by any means, directed to consumers in the United Kingdom. (2) It is immaterial for the purposes of subsection (1)(c) whether the activities are carried on in the United Kingdom or elsewhere.	These sections create an extra-territorial effect for the enforcement of the Bill, which will extend to UK-established businesses even if they have no customers in the UK. The Committee should be aware that the UK has been an attractive jurisdiction in which to establish regional headquarters of international subscription services. From the UK they operate services which have no customers in the UK and are exclusively available in countries other than the UK. The effect of sections 140 and 141 is that the DMCC would still capture and apply to these ex-UK services, even though there is no impact on the public in the United Kingdom. UK-established businesses would therefore be at a competitive disadvantage relative to domestic (or ex-UK) operators in those countries who are not subject to the Bill. Not only would they need to comply with the UK regime, they would also need to comply with local legislation in the country(ies) in which the services are made available. In some cases (e.g. in certain EU countries), the compliance requirements can be extensive and will be different to those in the UK. Services would therefore have to work out how (if at all) to operate a combined approach, which may not be possible because the requirements may contradict or be inconsistent with each other. This could make the UK a less attractive jurisdiction in which to invest for companies who operate these services, and otherwise creates a regulatory burden with no benefit for UK consumers. The CMA's function and the intention of the Bill should be to protect UK consumers. Indeed, the explanatory notes to the Bill state that

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		one of the Bill's aims is to protect competition in markets within the UK and UK consumers. Therefore, at least in respect of subscription contracts, only condition (c) should apply in order for a commercial practice to meet the UK connection condition.

Part 4 (Consumer rights and disputes), Chapter 2 – Subscription contracts

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245-247 - Introduction		
246 (Meaning of "subscription contract")	(1) For the purposes of this Chapter, a subscription contract is a contract between a trader and a consumer— (a) for the supply of goods, services or digital content by the trader to a consumer in exchange for payment by the consumer, (b) to which either or both of subsections (2) and (3) apply, and (c) which is not an excluded contract (see section 247).	The definition of a 'subscription contract' and types of digital services offered by providers caught by the new subscription contracts element of the Bill are very broad. Nevertheless, it is important that the Bill remains applicable only to paid-for services. It should be clarified, to avoid doubt, that payment is limited to monetary, or equivalents of monetary, payments and does not include, for example, provision of data or content in exchange for the good, service or digital content.
248-253 – Duties of traders		
248 (Key and full pre-contract information) and Part 1 of Schedule 20	(1) Before a trader enters into a subscription contract with a consumer, the trader must— (a) give to the consumer the information set out in Part 1 of Schedule 20 ("key pre-contract information"), (3) Key pre-contract information must be given under subsection (1)(a) in accordance with the following requirements—	A lot of information (as set out in Schedule 20) will need to be communicated by services close to the subscribe/purchase button (and possibly on a separate page). The Committee should carefully consider whether it is necessary to communicate all of this information at this stage in the sign-up flow, and consider whether it would be more proportionate and a more straightforward customer experience for some of it to be communicated at a different/later stage. As presently drafted, there is a material risk of information fatigue and increased friction at sign-up. That creates a negative

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	(d) in relation to a contract entered into online and remotely (but not orally), it must be given in writing and 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 **Part 1 of Schedule 20** 4 The frequency with which the consumer will become liable for payments under the contract and the minimum amount that the consumer will become liable for on each occasion, or how that amount is to be calculated if the amount cannot reasonably be calculated in advance. 5 If different to the information referred to in paragraph 4, the amount that the consumer would become liable for each month if payments under the contract fell due monthly. 6 The minimum total amount for which the consumer will become liable under the contract. 7 Whether the contract provides for— (a) any changes to the frequency or the amount of payments that the consumer will become liable for under the contract, or (b) any option under the contract for the trader to change the frequency or amount of those payments, and if it does, the detail of those changes or that option. 8 The steps that the consumer must take to bring the contract to an end including any address (including a website or email address) or other	outcome for both customers (who would find it more difficult to spot and understand the most important information) and traders (who are put at risk of customers not signing-up as a result of this information overload). The Committee should also consider clarifying the requirement in clause 248(3)(d) about how and when the key pre-contract information is to be provided. For example: • As provided for in paragraph 5 of Schedule 20, does a customer really need to be told what the monthly equivalent fee to an annual fee would be? If they were interested in the monthly equivalent when signing up for an annual subscription (which may be unlikely in itself given the decision to sign-up for an annual subscription), it would be straightforward to calculate it. In any case, typically the annual subscription price would work out cheaper per month than the standard monthly price, so it is not clear what benefit there is for the consumer in being presented with this information. • In paragraph 7, detail about the ability to change the amount and frequency of payments (in addition to the fact of being able to change), could be very cumbersome to provide, especially for those services who set out the reasons for why changes can be made. • In paragraph 8, being told *how* to cancel at the point of sign-up seems redundant provided consumers are told *when* they can cancel (e.g. at anytime), because they won't return to the sign-up page. Likewise, in paragraph 10(b), being told about the right to cancel during a *renewal* cooling-off period seems unnecessary at this point in the sign-up flow, especially as the consumer will in any event be reminded of their rights later on. • Can the information be provided in a pop-up following clicking on an option necessary for sign-up, on a separate/prior page to the sign-up page and/or only on the sign-up page alongside a

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	contact details the consumer may need in order to take those steps. 9 The amount of notice that the consumer must give to bring the contract to an end. 10 A summary of (a) the consumer's right to cancel the contract during the initial cooling-off period (or if the consumer may lose that right, that information), and (b) any right the consumer has to cancel during a renewal cooling-off period, and the fact that further details about the rights are set out in the full pre-contract information.	sign-up button? How would the requirements interact with discount/coupon codes which enable subscribers to alter their subscription price at checkout e.g. would they need to be entered an earlier stage in the sign-up flow than they normally are (i.e. on the checkout page)? The Committee should be aware that creating this additional friction for consumers and requiring extra steps to be taken in a sign-up flow, will likely impact conversion of consumers to paying subscriptions. With every additional click required, there is a risk that a customer will drop out of the flow. This, in turn, will lead to loss of revenue for the service and therefore reduce investment in the content on the service (and elsewhere) and product development. The requirement in clause 248(3)(d) seems to have been drafted with desktop/laptop/tablet devices in mind, which provide a lot of space in which this information can be provided. However, services can also be signed up for on mobile or connected TVs where space is much more limited. The Bill could therefore usefully recognise that there will be interfaces where it will be impractical and clunky for customers to have all of this information presented to them when signing up. Otherwise, services risk creating unattractive customer experiences which discourage sign-ups and/or services may decide not to allow customers to sign-up on mobile or connected TVs, which reduces choice for them. If the requirements lead to services creating text boxes with all of the information in them, subscribers would have to scroll through them which is a poor customer experience and not user-friendly, especially for those with accessibility needs. Where users are presented with too much information on screen at one time, particularly if the text is condensed for mobile or connected TV use, they are more likely to ignore the information. More clarity is required in the description of the key pre-contract information, for example:

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		• In paragraph 6, how can a minimum total amount for which the user will become liable under the contract be calculated for a recurring monthly subscription service? By definition, the subscription is rolling and no service could predict a customer's lifetime spend. • In paragraph 7, how much detail is required? • In paragraph 8, what level of description of the steps to be taken to cancel is required?
249 Pre-contract information: additional requirements	(2) 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.	The Bill requires services to ensure that, as a final step before sign-up, a customer should expressly acknowledge that the contract imposes an obligation to pay. More clarity is required on what is meant by "express acknowledgement". The wording of the Bill is similar to regulation 14(3) of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the "**CCRs**") (which requires a trader to acknowledge explicitly that placing an order implies an obligation to pay). However, the CCRs helpfully include the following provision as well, which clarifies how this should be interpreted in the context of a button (the normal way for services to conclude the contract: (3) The trader must ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay. (4) If placing an order entails activating a button or a similar function, the trader must ensure that the button or similar function is labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.

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		It is unclear why the Bill does not restate the above provision on labelling the payment button nor whether continuing to label the payment button clearly will continue to be sufficient. If it is caused by a desire to change the requirements in the CCRs because they implement EU law (article 8(2) of the Consumer Rights Directive 2011/83/EU), it is suggested that that is not a good reason. The different wording in the Bill creates avoidable uncertainty for services and a cross-border double-compliance burden, without improving the position for consumers. If the intention of the Bill is to require services to provide for a separate tick-box, that would create a significant compliance burden. Tick-boxes require heavy development work to implement, and they are difficult to support on certain types of devices such as connected TVs. The Bill should therefore be clarified to ensure that this is not what it requires. The effects of getting this wrong are severe, creating another reason why the Bill should be amended to make it clearer and easier to comply with. The effect is that the subscriber is not bound by the contract i.e. it is as if the contract did not exist and so a full refund would be required even after the subscriber has started their subscription and consumed several days or months of content.
250 (Reminder notices)	(1) Where a trader enters into a subscription contract with a consumer, the trader must give to the consumer a notice (referred to in this Chapter as a "reminder notice") in respect of— (a) the first renewal payment for which the consumer will become liable under the contract, and (b) each subsequent renewal payment to which subsection (2) applies.	Traders must give to consumers a series of reminder notices through the duration of the subscription contract (in addition and separate to the requirement to send cooling-off period notices). This imposes a not insignificant new administrative burden to deliver the reminder notices and calculate, for each individual consumer, when they must be delivered (including because of the need to send them 3-5 or 10-14 *working days* before a relevant date). For consumers, especially those with multiple subscriptions (as many consumers have), they will receive a barrage of reminder emails. That email traffic is incremental to the emails services already send e.g. informing

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	(2) This subsection applies to a renewal payment— (a) if it is the last (or only) renewal payment for which the consumer will become liable during the period of six months beginning with the relevant day, or (b) if the consumer will not become liable for any renewal payment during that period, if it is the first renewal payment for which the consumer will become liable after the end of that period. (3) In subsection (2), "the relevant day" means the day on which the consumer became liable for the last preceding renewal payment, before the renewal payment mentioned in that subsection, in respect of which a reminder notice was required to be given under subsection (1). (4) In this Chapter, a "renewal payment", in relation to a subscription contract, means a payment for which the consumer could avoid liability by exercising a right to bring the contract to an end.	customers about the content on or benefits of the service or dealing with housekeeping issues such as payment methods. Services may also already send emails which effectively function as reminder notices (e.g. confirming an activity being carried out pursuant to a subscription such as a regular delivery). The Bill should not disincentivise such communications, which are plainly in consumers' interests, by crowding them out through the mandated notices. The Bill should also allow traders to combine reminder notices required under the Bill with those notices traders otherwise send which are for an equivalent purpose of proactively notifying consumers of the continued existence of their subscription and a reminder of how to cancel. Those emails will not, in any event, be as useful for consumers as their account pages available on the services' websites. Services already provide a lot of the content of reminder notice emails on those pages, and it is easier for both the consumer (who has everything in one place where it is updated in real time should consumers e.g. change their plans) and for the service (who are able to plug in information from the various systems and display it conveniently in their own environments, rather than having to export it all to emails) for services to use these portals rather than email for their communications. There needs to be some balance here as to the volume of notices that consumers are meant to receive. An overload of information ultimately leads to consumers ignoring the emails, as has been observed with e.g. cookie notices. Services risk being treated as spam by email providers given the amount of communications that the Bill requires traders to provide, including reminder notices and reminders of cooling-off rights.

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		Clause 250(2) is very unclear. The explanatory notes help but drafting improvement is required. We think it means that, for example, for a monthly subscription service it requires a reminder notice every six months after the first payment is taken. However, we acknowledge that different views have been expressed. We encourage the Committee to look again at this drafting to make it clearer (if this is the intention) that reminder notices are required (i) for the first payment and either (ii) for every six-monthly payment thereafter or (iii) if payments are less frequent than six-monthly, ahead of each such payment. However, as cautioned above, reminder notices even every six months could still be too frequent and over-bearing. We also caution that, in respect of annual payments, requiring two reminder notices (as clause 251(5) currently requires) could also be too frequent.
252 (Arrangements for consumers to exercise right to end contract)	(1) A trader must make arrangements to enable a consumer to exercise a right to bring a subscription contract to an end— (a) in a single communication, (b) without having to take any steps which are not reasonably necessary for bringing the contract to an end. (2) A consumer may, alternatively, exercise a right to bring a subscription contract to an end by notifying the trader in accordance with subsection (6) that the consumer is bringing the contract to an end. (3) A consumer may exercise a right to bring a subscription contract to an end at any time permitted by regulations under section 269(1)(c). (4) In relation to a subscription contract entered into online, arrangements under subsection (1) must—	More clarity is needed on what a "single communication" in clause 252(1)(a) is and how it relates to clause 252(1)(b). "single" suggests "one" communication but (b) appears to recognise that more than one step can be taken to bring the contract to an end, provided those more than one steps are "reasonably necessary". For example, does the combination of the two sub-sections mean that there has to be a single "click here to cancel" button but that it can follow steps which are reasonably necessary to access that button such as logging in, navigating to a "manage my account" section of an account settings area and reading information about what cancellation means? There are only limited circumstances in which a "single communication" itself will bring a subscription to an end. For example, to cancel online would still require the consumer to log into their account first (and then browse to the cancellation process) so the trader can identify the consumer and bring about the cancellation. It needs to be clarified whether requiring logging in to cancel (and then some navigation around the account page/settings) prevents

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	(a) enable a consumer to bring the contract to an end online, and (b) ensure that instructions for doing so are displayed online in a place or places that a consumer seeking to end the contract is likely to find them. (5) Arrangements under this section must comply with any other requirements specified in regulations under section 269(1)(c). (6) A notification under subsection (2)— (a) may be given by any means, but (b) must be sufficiently clear for the purpose of informing the trader that the consumer is bringing the contract to an end.	that cancellation process from being a single communication. It should be permitted because cancelling through the consumer's account is more favourable to them (even though it could be classed as a multi-step process) as the cancellation would be effective immediately. A consumer who attempts to cancel via a "single communication" such as email would require the service provider to engage in an identity review process before the cancellation can be effected, which would delay the cancellation. It's also not clear what steps might be considered "reasonably necessary" in order for a consumer to bring their contract to an end. Some guidance is needed on this point and how it interplays with services that gives users the option to 'downgrade' their paid subscription to a free version. There appears to be some misalignment with the Explanatory Notes, which refer to a cancel button being "clear and prominent", but that does not obviously follow from the drafting of the Bill. Likewise, the Bill refers to making "instructions" on how to cancel easy to find, without directly requiring that the *process* for cancelling be easy to find. The ability for users to cancel using any means and a single communication is very impractical. For example, does it mean users could tweet to the handle of a service's account to affect a cancellation? That would be very impractical, including because it could be difficult for a service to spot and then difficult to match a Twitter handle to a subscriber's account. Much more than a "single communication" would be required in these circumstances, which would not be a good customer experience, and purporting to enable customers to cancel using a notice "by any means" when that notice would not of itself lead to cancellation would create disappointment for consumers. Assuming traders comply with the requirements in clause 252(1) (albeit clarified as noted above), that should achieve

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		the objective of enabling straightforward cancellation for consumers, without needing to provide for this separate, burdensome process. In addition, it should never be possible for users to request the end or cancellation of their subscription via social media (as currently seems to be envisaged by clause 252(4)(a)). This would mean that all of services' social media accounts globally, across all products would need to be monitored manned by customer support teams, which would be impossible.
256-258 – Cooling-off rights		
256 (Right to cancel during cooling-off periods)	(1) A consumer has the right to cancel a subscription contract during— (a) the initial cooling-off period, and (b) any renewal cooling-off period. (2) The right conferred by subsection (1)— (a) is exercisable in any circumstances, and (b) may not be subject to any conditions other than those set out in or under this Chapter.	There are significant concerns about the impacts of the cooling-off periods. As mentioned below, it doesn't seem necessary to provide a cooling-off period during a free trial. Where services choose not to offer a free trial, or where their free trial is under seven days, the Bill effectively forces them to offer a 14-day free trial. During that period subscribers could derive significant value from the service but without having to pay for it. For example, a subscriber to a VOD service could watch the tentpole movie/TV show for free and, on the face of the bill, there is no way for the service to receive any value for this consumption. Providers of subscriptions for digital content will therefore be disproportionately affected if they are obliged to offer a full refund in the cooling-off periods. The potential for misuse and cynical reliance on cooling-off rights is obvious. The Bill should, on its face, allow for pro-rata refunds to be issued in some circumstances, such as cooling-off periods when there is no free trial and where amounts of non-*de minimis* consumption have been made (provided such amounts are notified to consumers). While we recognise that more information about treatment of refunds will be issued under regulations from the Secretary of State, it should be a requirement in the Bill that those regulations allow for pro rata refunds. The detrimental effect of the Bill's approach is reinforced by making the cooling-off right unwaivable. This contrasts with the current

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		position, where consent to immediate delivery of digital content combined with an acknowledgement that the cancellation right is lost, enables services to avoid the risks of subscribers being able to enjoy the content, for free, during a 14-day period. This waiver is justified in part because it recognises that subscribers will start enjoying the benefits of the service immediately. The Committee should consider whether refunds and/or making the cooling-off period unwaivable would avoid these significant commercial downsides on services. Without the ability to secure waiver of cooling off rights, subscribers will be able to stream content and binge-watch/listen their favourite shows, movies or other content before requesting to cancel within the cooling off period. On cancellation, whilst it appears that only a partial refund will be required (albeit subject to confirmation in the regulations), any refund of the initial subscription price will mean that a subscriber will only end up paying a fraction of the true cost of the content they have enjoyed. By way of example, a customer wishing to watch a tentpole movie can sign up to a monthly subscription at £XXX/month, watch it on the first day and exercise their cooling off rights on day 2. If a partial, pro-rata refund is required to reflect the cost of the remainder of the subscription being cancelled, this customer will pay just a fraction of the current pay-per-view price. In some circumstances, this might not even go far enough, such as where the customer consumes the "highest value" content from behind the paywall and then cancels their subscription. If a pro rata refund were to be offered, would service providers be able to 'price' their content in order to determine the value of the pro rata refund, such that the amount of the refund could reflect the value of the content consumed for 'free' from behind the paywall? This could be based on the cost to produce the relevant

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		content, or any available a la carte pricing, which can vary hugely for tentpole features as against regular content. Even more concerningly, cooling off rights apply to each subscription; a customer can sign up and cancel multiple times while watching only specific content released at different times of the month/year for a fraction of the price. This is of serious concern both to the services and their content providers. If the cooling-off periods are not to be made waivable, safeguards for preventing abuse should be included e.g. for each service, the subscription can only be cancelled once for each customer during a cooling-off period. There will also be additional manpower required on an ongoing basis to manually assess and process each relevant cooling off right request, and the related refund. To offset the risk of loss of revenues, streamers may need significantly to increase their prices and avoid offering customers free trials or discounted offers (given that cooling off rights also apply on first renewal after a concessionary period). They may also change their business models entirely, offering premium content only on a pay-per-view basis (with an underlying basic entry subscription), which could radically change the content streaming service landscape as we know it. This would all be significantly detrimental to customers, reduce their choice and force a change to consumption habits.
257 (Meaning of "initial cooling-off impacts period" and "renewal cooling-off period")	(1) In this Chapter, the “initial cooling-off period”, in relation to a subscription contract, means the period— (a) beginning with the day the contract is entered into, and	For subscriptions with free trials, the initial cooling-off period creates a double right to cancel which creates an unnecessary administrative burden. The normal commercial position is that free trials can be cancelled at any time during the trial period to avoid the first renewal payment, so it is unclear why a cooling-off period during a free trial is needed at all. The burden is even higher for those services whose

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	(b) ending— (i) in the case of a contract under which goods are supplied, at the end of the period of 14 days beginning with the day after the day on which the consumer receives the first supply of goods under the contract; (ii) in any other case, at the end of the period of 14 days beginning with the day after the day on which the contract is entered into. (2) In this Chapter, a "renewal cooling-off period", in relation to a subscription contract, means a period— (a) beginning with the day on which a relevant renewal of the contract occurs, and (b) ending at the end of the period of 14 days beginning with the day after that day. (3) A "relevant renewal" of a subscription contract occurs for the purposes of subsection (2)— (a) when the consumer becomes liable under the contract for a first renewal payment following the end of a concessionary period, or	free trials are shorter than 14 days: consumers will have the ability to cancel the free trial after it has expired but will also have an overlapping right to cancel. To avoid this danger, it should be considered whether service providers that offer free trials of 30 days or more are exempt from the requirement to give the second 14-day cooling-off period. There is a danger that the burden imposed on services could make it less likely that they offer free trials or shorten the free-trial period. That would create a worse outcome for consumers as services that withdraw their free-trial would automatically start the paid-for subscription and take payment up front before a customer cancelled 14 days later. Converting the cooling-off period into a mandatory 'free-trial' period with an up-front payment.
258 (Cooling-off notice)	(1) In relation to each renewal cooling-off period, a trader must give the consumer a notice (referred to in this Chapter as a "cooling-off notice").	The need for a cooling-off notice adds to the notice burden on both service providers and users.
264-269 – General and miscellaneous provision		
267 (Application of this Chapter)	(3) This Chapter does not apply in relation to subscription contracts entered into before section 246 comes into force.	It is not clear whether a renewal of an existing subscription contract will be deemed to be a 'new' subscription contract for the purposes of section 246. The distinction will also be difficult to determine for users who are on a free trial on the date the Bill comes into effect, whose paid subscription commences after the date it is in force. The Bill should clarify what it means to have entered into a contract before section 246 comes into force. For example, may it mean that where

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		any contract has been previously entered into and is current at the date of the section coming into force, then it would not be covered by the Bill?