

Digital Markets, Competition and Consumers Bill

AMENDMENTS TO BE MOVED ON REPORT

Clause 6

LORD OFFORD OF GARVEL

Clause 6, page 4, line 3, leave out subsections (2) and (3)

Member's explanatory statement

This amendment would remove the power for the Secretary of State to amend the conditions in subsection (1) by statutory instrument.

Clause 11

LORD OFFORD OF GARVEL

Clause 11, page 6, line 34, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish an SMS investigation notice rather than a summary of the notice.

LORD OFFORD OF GARVEL

Clause 11, page 6, line 35, leave out “statement” and insert “notice”

Member's explanatory statement

This amendment would require the CMA to give a copy of an SMS investigation notice, rather than a summary of the notice, to the FCA, OFCOM, the ICO, the Bank of England and the PRA.

BARONESS JONES OF WHITCHURCH

Clause 11, page 6, line 36, at end insert –

“(c) give a copy of the statement to challenger firms, in accordance with section (Procedure relating to SMS investigations: challenger firm access to information).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

After Clause 11

BARONESS JONES OF WHITCHURCH

After Clause 11, insert the following new Clause –

“Procedure relating to SMS investigations: challenger firm access to information

- (1) The CMA must, within the period of three months beginning with the day on which this Act is passed, implement a system which allows those undertakings that have not been designated as having SMS but that believe they are most directly affected by any given CMA case (“challenger firms”) to request and access detailed information about that case.
- (2) The system under subsection (1) must –
 - (a) allow challenger firms to register with the CMA their interest in one or more case,
 - (b) provide a means for the CMA to securely provide relevant information on relevant cases to challenger firms, in a timely manner, and
 - (c) allow the CMA to take such steps as it deems appropriate to redact or protect –
 - (i) personal data,
 - (ii) commercially sensitive information, or
 - (iii) any other information the CMA believes should not be accessible to challenger firms.
- (3) The CMA may, if it deems it appropriate –
 - (a) share different levels of information about the same case (or cases) with different challenger firms, and
 - (b) provide different levels of information to challenger firms in relation to different cases.”

Member's explanatory statement

This new Clause would require the CMA to introduce a system for the registration of and sharing of information with challenger firms, enabling them to gain access to information about the cases being considered by the regulator. The amendment would allow the CMA to redact information as appropriate, and afford a degree of discretion as to how much information is shared in each case.

Clause 12

LORD OFFORD OF GARVEL

Clause 12, page 7, line 9, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a notice under clause 12(2) rather than a summary of the notice.

BARONESS JONES OF WHITCHURCH

Clause 12, page 7, line 9, at end insert –

“(5) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must give a copy of the notice to challenger firms, in accordance with section (Procedure relating to SMS investigations: challenger firm access to information).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 14

LORD OFFORD OF GARVEL

Clause 14, page 7, line 36, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish an SMS decision notice rather than a summary of the notice.

BARONESS JONES OF WHITCHURCH

Clause 14, page 7, line 36, at end insert –

“(5A) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must give a copy of the notice to challenger firms, in accordance with section (Procedure relating to SMS investigations: challenger firm access to information).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 15

LORD OFFORD OF GARVEL

Clause 15, page 9, line 5, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a revised SMS decision notice rather than a summary of the notice.

BARONESS JONES OF WHITCHURCH

Clause 15, page 9, line 6, at end insert –

“(7) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must give a copy of the notice to challenger firms, in accordance with section (*Procedure relating to SMS investigations: challenger firm access to information*).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 26

LORD OFFORD OF GARVEL

Clause 26, page 15, line 24, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a conduct investigation notice in full rather than a summary of the notice.

BARONESS JONES OF WHITCHURCH

Clause 26, page 15, line 25, at end insert –

“(7) As soon as reasonably practicable after giving a conduct investigation notice, the CMA must give a copy of the notice to challenger firms, in accordance with section (*Procedure relating to SMS investigations: challenger firm access to information*).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 28

LORD OFFORD OF GARVEL

Clause 28, page 16, line 2, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a statement under clause 28(2) in full rather than a summary of the notice.

BARONESS JONES OF WHITCHURCH

Clause 28, page 16, line 2, at end insert –

- “(5) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must give a copy of the notice to challenger firms, in accordance with section (*Procedure relating to SMS investigations: challenger firm access to information*).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 30

LORD OFFORD OF GARVEL

Clause 30, page 16, line 32, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a statement under clause 30(1) in full rather than a summary of the notice.

BARONESS JONES OF WHITCHURCH

Clause 30, page 16, line 32, at end insert –

- “(4A) As soon as reasonably practicable after giving the notice, the CMA must give a copy of the notice to challenger firms, in accordance with section (*Procedure relating to SMS investigations: challenger firm access to information*).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 31

LORD OFFORD OF GARVEL

Clause 31, page 17, line 22, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish an enforcement order in full rather than a summary of the order.

BARONESS JONES OF WHITCHURCH

Clause 31, page 17, line 23, at end insert –

“(7A) As soon as reasonably practicable after making an enforcement order (including a revised version of an order), the CMA must give a copy of the order to challenger firms, in accordance with section (*Procedure relating to SMS investigations: challenger firm access to information*).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 32

LORD OFFORD OF GARVEL

Clause 32, page 18, line 16, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a notice under clause 32(5) in full rather than a summary of the notice.

BARONESS JONES OF WHITCHURCH

Clause 32, page 18, line 16, at end insert –

“(6A) As soon as reasonably practicable after giving a notice under subsection (5), the CMA must give a copy of the notice to challenger firms, in accordance with section (*Procedure relating to SMS investigations: challenger firm access to information*).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 34

LORD OFFORD OF GARVEL

Clause 34, page 19, line 16, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a notice under clause 34(1) in full rather than a summary of the notice.

BARONESS JONES OF WHITCHURCH

Clause 34, page 19, line 16, at end insert –

“(4A) As soon as reasonably practicable after revoking an enforcement order, the CMA must give a copy of the order to challenger firms, in accordance with section (*Procedure relating to SMS investigations: challenger firm access to information*).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 48

LORD OFFORD OF GARVEL

Clause 48, page 27, line 39, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a PCI investigation notice or a revised version of the PCI investigation notice rather than a summary.

BARONESS JONES OF WHITCHURCH

Clause 48, page 28, line 2, at end insert –

“(5) As soon as reasonably practicable after giving a PCI investigation notice or a revised version of the PCI investigation notice, the CMA must give a copy of the notice to challenger firms, in accordance with section (*Procedure relating to SMS investigations: challenger firm access to information*).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 51

LORD OFFORD OF GARVEL

Clause 51, page 29, line 26, leave out “a statement summarising the contents of”

Member's explanatory statement

This amendment would require the CMA to publish a pro-competition order rather than a summary of the order.

BARONESS JONES OF WHITCHURCH

Clause 51, page 29, line 26, at end insert –

“(7) As soon as reasonably practicable after making a pro-competition order, the CMA must give a copy of the order to challenger firms, in accordance with section (Procedure relating to SMS investigations: challenger firm access to information).”

Member's explanatory statement

This amendment is one of a series that would give challenger firms (those who are not designated in a particular area but have a clear interest in the activities of firms with SMS status) greater access to information about cases being considered by the CMA.

Clause 88

LORD OFFORD OF GARVEL

Clause 88, page 54, line 40, leave out “a person other than” and insert “an undertaking that is not”

Member's explanatory statement

This amendment would ensure that a penalty imposed on undertaking that is not an individual is calculated by reference to the undertaking's turnover.

LORD OFFORD OF GARVEL

Clause 88, page 55, line 10, leave out subsection (4) and insert –

“(4) Where a person is an undertaking that is part of a group, references in subsection (3) to the person's turnover are to the turnover of that group.”

Member's explanatory statement

This amendment is consequential on the first amendment to clause 88 in my name.

LORD OFFORD OF GARVEL

Clause 88, page 55, line 15, after “individual” insert “or a person that is not an undertaking”

Member's explanatory statement

This amendment would ensure that a penalty imposed on an individual or a person that is not an undertaking is calculated by reference to the amounts specified in subsection (5) (and not by reference to turnover).

Clause 101

LORD OFFORD OF GARVEL

Clause 101, page 61, line 12, at end insert –

- “(4A) Rules of court and Tribunal rules may make provision about the transfer from the Tribunal to the appropriate court or from the appropriate court to the Tribunal of all or any part of a claim made in proceedings under subsection (2).”

Member's explanatory statement

This amendment would permit rules of court and Tribunal rules to make provision about the transfer of claims between the appropriate court and the Tribunal.

Clause 102

LORD OFFORD OF GARVEL

Clause 102, page 61, line 25, leave out subsection (2) and insert –

- “(2) A CMA breach decision becomes final –
- (a) when the time for applying for a review of that decision has passed without an application being made, or
 - (b) where an application has been made, when the application has been finally determined or has otherwise ended.
- (2A) For the purposes of subsection (2)(b), an application is not finally determined until any appeal relating to it has been determined (ignoring any possibility of an appeal out of time with permission).”

Member's explanatory statement

This amendment confirms the circumstances in which a CMA breach decision becomes final.

Clause 109

LORD OFFORD OF GARVEL

Clause 109, page 68, line 17, leave out subsection (3)

Member's explanatory statement

This amendment removes an amendment to section 393 of the Communications Act 2003 as this will now be addressed by the same amendment to that section contained in Schedule 29 to the Bill (see my amendment to that Schedule at page 407 at line 23).

Clause 113

LORD OFFORD OF GARVEL

Clause 113, page 71, line 8, at end insert –

“(4) In order to give effect to any need to keep information confidential, the CMA may publish the notice or other document in a redacted form.”

Member's explanatory statement

This amendment would ensure that the CMA may redact documents which it is required by this Part to publish in order to give effect to any need to keep information confidential.

Clause 116

LORD OFFORD OF GARVEL

Clause 116, page 71, line 31, leave out “the CMA to disclose or produce” and insert “the disclosure or production of”

Member's explanatory statement

This amendment would prevent a court or the Tribunal from making a disclosure order requiring the disclosure or production of digital markets investigation information while the investigation to which the information relates is ongoing, regardless of who holds the information.

Clause 127

LORD OFFORD OF GARVEL

Leave out Clause 127

Member's explanatory statement

This clause would leave out Clause 127 of the Bill (use of damages-based agreements in opt-out collective proceedings), which addresses the Supreme Court judgment in R (PACCAR Inc) v Competition Appeal Tribunal [2023] UKSC 28 in respect of certain proceedings, because the Government intends to bring forward a separate Bill addressing that judgment in respect of all proceedings.

After Clause 127

LORD HODGSON OF ASTLEY ABBOTTS

After Clause 127, insert the following new Clause –

“Review of third-party litigation funding industry in relation to competition and consumer cases

- (1) The Secretary of State must, within 12 months of the passing of this Act, commence a review on the need for long term regulation of third-party litigation funding as it relates to competition and consumer law.
- (2) The review should consider in relation to competition and consumer cases whether to –
 - (a) establish a statutory regulator of third party litigation funders;
 - (b) require mandatory disclosure of litigation funding agreements to courts;
 - (c) impose a statutory duty on third party litigation funders to act in claimants’ best interests;
 - (d) impose restrictions on withdrawing funding without the informed consent of the claimant.
- (3) The review should not consider the funding arrangements of competition and consumer cases which are before the courts at the date of the passing of this Act.”

Schedule 13

LORD OFFORD OF GARVEL

Schedule 13, page 304, line 22, after “(6)” insert “, 111(4) or (6)”

Member's explanatory statement

This amendment, which would amend section 124 of the Enterprise Act 2002 (orders and regulations), is consequential on paragraph 17(6) and (9) of Schedule 9 to the Bill which omits order making powers in section 111(4) and (6) of that Act.

Clause 158

LORD OFFORD OF GARVEL

Clause 158, page 102, line 32, after second “order” insert “, or a notice accompanying service of the order,”

Member's explanatory statement

This amendment provides that, where an order is made requiring payment of a monetary penalty, the requirement to provide monetary penalty information (see clause 203) within the order may instead be met by providing the information in a separate document. This will ensure that if any such information is not known at the time of making the order it can be included instead in that document.

LORD OFFORD OF GARVEL

Clause 158, page 103, line 7, at end insert –

“(9) In the application of subsection (4) to Scotland, “service of the order” includes service of an extract order in execution of or diligence on the order.”

Member's explanatory statement

This amendment is consequential on my other amendment to clause 158.

Clause 160

LORD OFFORD OF GARVEL

Clause 160, page 104, line 21, leave out “The CMA” and insert “A public designated enforcer”

Member's explanatory statement

This amendment enables all public designated enforcers to apply for online interface orders, and interim online interface orders, instead of only the CMA.

LORD OFFORD OF GARVEL

Clause 160, page 104, line 22, leave out “CMA” and insert “enforcer”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 160, page 104, line 27, leave out “CMA” and insert “enforcer”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 160, page 105, line 4, at end insert –

“(4A) Section 154 (CMA directions to other enforcers) applies where it appears to the CMA that another public designated enforcer intends to make an application for an online interface order, or an interim online interface order, as it applies in relation to intended applications for enforcement orders and interim enforcement orders, but for this purpose the reference to such other enforcer in subsection (2)(b) is to be taken as a reference only to such other public designated enforcer.”

Member's explanatory statement

This amendment extends the power of the CMA to give directions to other enforcers intending to make an application for an enforcement order or an interim enforcement order so as to include intended applications by other public designated enforcers for online interface orders and interim online interface orders (see my first amendment to Clause 160).

Clause 161

LORD OFFORD OF GARVEL

Clause 161, page 105, line 25, leave out “CMA” and insert “public designated enforcer that applied for the order”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 161, page 105, line 26, leave out “CMA” and insert “public designated enforcer that applied for the order”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 161, page 105, line 32, leave out “CMA” and insert “enforcer”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Clause 162

LORD OFFORD OF GARVEL

Clause 162, page 106, line 21, leave out “CMA” and insert “public designated enforcer that applied for the order”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 162, page 106, line 30, leave out “CMA” and insert “public designated enforcer making the application”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 162, page 106, line 33, leave out “CMA” and insert “enforcer that applied for the order”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Clause 166

LORD OFFORD OF GARVEL

Clause 166, page 109, line 39, leave out “an enforcement order or an interim enforcement” and insert “a consumer protection”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 166, page 110, line 1, after “154” insert “and 160(4A)”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Clause 167

LORD OFFORD OF GARVEL

Clause 167, page 110, line 36, leave out “an enforcement order or an interim enforcement” and insert “a consumer protection”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 167, page 110, line 38, after “154” insert “and 160(4A)”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Clause 169

LORD OFFORD OF GARVEL

Clause 169, page 112, line 4, leave out “an enforcement order or an interim enforcement” and insert “a consumer protection”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 169, page 112, line 11, after “order” insert “or an online interface order”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 169, page 112, line 13, after “order” insert “or an interim online interface order”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 169, page 112, line 15, leave out “an enforcement order or an interim enforcement” and insert “a consumer protection”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

LORD OFFORD OF GARVEL

Clause 169, page 112, line 20, leave out “an enforcement order or an interim enforcement” and insert “a consumer protection”

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Clause 203

LORD OFFORD OF GARVEL

Clause 203, page 137, line 20, leave out “that the respondent has the right” and insert “the rights available to the respondent”

Member's explanatory statement

This amendment is consequential on my amendments to clause 158.

LORD OFFORD OF GARVEL

Clause 203, page 137, line 34, at end insert –

- “(5) References in subsections (1) and (2) to an order include references to a notice accompanying such an order given under section 158(4).
- (6) In the application of this section to Scotland, the references in subsections (1)(e) and (3) to an order being served include service of an extract order in execution of or diligence on the order.”

Member's explanatory statement

This amendment is consequential on my amendments to clause 158.

Schedule 16

LORD OFFORD OF GARVEL

Schedule 16, page 338, line 25, after “paragraph” insert “, or a notice accompanying service of the order,”

Member's explanatory statement

This amendment provides that, where an order is made requiring payment of a monetary penalty under new paragraph 16A of Schedule 5 to the Consumer Rights Act 2015 (see Schedule 16 to the Bill), the requirement to provide the information listed in paragraph 16A(7) within the order may instead be met by providing the information in a separate document. This will ensure that if any such information is not known at the time of making the order it can be included instead in that document.

LORD OFFORD OF GARVEL

Schedule 16, page 339, line 2, leave out “or” and insert “and the rights available to the respondent”

Member's explanatory statement

This amendment is consequential on my first amendment to Schedule 16.

LORD OFFORD OF GARVEL

Schedule 16, page 339, line 4, leave out “notification date” and insert “date on which an order under this paragraph is served on the respondent”

Member's explanatory statement

This amendment corrects a drafting error.

LORD OFFORD OF GARVEL

Schedule 16, page 339, line 23, at end insert –

“(12A) In the application of this paragraph to Scotland, the references in sub-paragraphs (7) and (8) to an order being served include service of an extract order in execution of or diligence on the order.”

Schedule 17

LORD OFFORD OF GARVEL

Schedule 17, page 349, line 29, leave out “or 163” and insert “, 163 or 185”

Member's explanatory statement

This amendment provides that orders under the Estate Agents Act 1979 prohibiting unfit persons from doing estate agency work can be made in cases where a person has failed to comply with an undertaking given to the CMA under clause 185 of the Bill.

LORD OFFORD OF GARVEL

Schedule 17, page 349, line 33, at end insert –

“(c) after paragraph (bb) insert –

“(bc) has failed to comply with a requirement imposed by a final infringement notice given under section 182 of that Act in relation to estate agency work; or”.

Member's explanatory statement

This amendment provides that orders under the Estate Agents Act 1979 prohibiting unfit persons from doing estate agency work can be made in cases where a person has failed to comply with a final infringement notice given by the CMA under clause 182 of the Bill.

Clause 223

BARONESS HAYMAN
BARONESS RITCHIE OF DOWNPATRICK
BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
BARONESS HARDING OF WINSCOMBE

Clause 223, page 149, line 27, at end insert –

“(5A) Section (*Right to repair*) confers the right to repair on consumers.”

Clause 224

LORD CLEMENT-JONES

Clause 224, page 150, line 33, at end insert –

- “(ba) a product is sold online, and the operator of the online marketplace has not taken reasonable steps to ensure that the goods offered for sale in the online marketplace comply with –
- (i) the General Product Safety Regulations 2005 (S.I. 2005/1803) (“the 2005 Regulations”), and
 - (ii) such other safety requirements as the Secretary of State may by regulations specify,
- or”

Member's explanatory statement

This amendment makes it an unfair commercial practice to sell goods online unless the specified safety requirements have been complied with.

LORD CLEMENT-JONES

Clause 224, page 151, line 8, at end insert –

- “(7) The Secretary of State must make regulations specifying what constitutes “reasonable steps” under subsection (4)(ba).
- (8) Regulations under this section are subject to the negative procedure.”

Member's explanatory statement

This amendment requires the Secretary of State to make regulations to define “reasonable steps” for the purposes of Clause 224 of this Act and is consequential to the amendment in the name of Lord Clement-Jones to this clause.

Schedule 19

LORD OFFORD OF GARVEL

Schedule 19, page 362, line 10, at end insert –

- “12A(1) 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.
- (2) Publishing consumer reviews, or consumer review information, in a misleading way.
- (3) Publishing consumer reviews, or consumer review information, 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, or
 - (iii) consumer review information that is false or misleading, and
 - (b) removing any such reviews or information from publication.
- (4) Offering services to traders –
- (a) for the doing of anything covered by sub-paragraph (1) or (2);
 - (b) for the facilitating of anything covered by sub-paragraph (1) or (2) to be done.
- (5) For the purposes of this paragraph –
- (a) “consumer review” means a review of a product, a trader or any other matter relevant to a transactional decision;
 - (b) “fake consumer review” means a consumer review that purports to be, but is not, based on a person’s genuine experience;
 - (c) a consumer review conceals the fact it has been incentivised if –
 - (i) a person has been commissioned to submit or write the review, and
 - (ii) that fact is not made apparent (whether through the contents of the review or otherwise);
 - (d) “consumer review information” means information that is derived from, or is influenced by, consumer reviews;
 - (e) a person “submits” a review or information if they supply it with a view to publication;
 - (f) “writing” includes creating by any means;
 - (g) “commissioning” includes incentivising by any means (and “commissioned” is to be read accordingly);
 - (h) “publishing” includes disseminating, or otherwise making available, by any means;
 - (i) publishing in a “misleading way” includes (for example) –
 - (i) failing to publish, or removing from publication, negative consumer reviews whilst publishing positive ones (or vice versa);
 - (ii) giving greater prominence to positive consumer reviews over negative ones (or vice versa);
 - (iii) omitting information that is relevant to the circumstances in which a consumer review has been written (including that a person has been commissioned to write the review).”

Member's explanatory statement

This amendment adds various activities relating to fake reviews directed at consumers to the list of unfair commercial practices in Schedule 19 to the Bill.

Clause 225

LORD CLEMENT-JONES

Clause 225, page 151, line 22, at insert “, or

- (e) an operator of an online marketplace failing to take reasonable steps to ensure that no goods offered for sale in the marketplace have been the subject of a notification to an enforcement authority under regulation 9 of the 2005 Regulations.”

Member's explanatory statement

This amendment makes it a misleading action to sell goods online without taking reasonable steps to ensure that those goods have not been subject to a recall.

LORD CLEMENT-JONES

Clause 225, page 151, line 29, at end insert –

- “(4A) The Secretary of State must make regulations specifying what constitutes “reasonable steps” under subsection (1)(e).
- (4B) Regulations under this section are subject to the negative procedure.”

Member's explanatory statement

This amendment requires the Secretary of State to make regulations to define “reasonable steps” for the purposes of Clause 225 of this Act and is consequential to the amendment in the name of Lord Clement-Jones to this clause.

Clause 229

LORD OFFORD OF GARVEL

Clause 229, page 153, line 12, leave out paragraph (b) and insert –

- “(b) the total price of the product (so far as paragraph (ba) does not apply);
- (ba) if, owing to the nature of the product, the whole or any part of the total price cannot reasonably be calculated in advance, how the price (or that part of it) will be calculated;”

Member's explanatory statement

This amendment, along with my amendment to insert new subsections (3A) and (3B) into clause 229, requires a trader to set out in an invitation to purchase the total price of a product including any mandatory fees, taxes and charges that apply to the purchase of a product rather than “drip-feeding” such amounts during the transaction process.

LORD OFFORD OF GARVEL

Clause 229, page 153, line 24, leave out “additional to the price of the product” and insert “not included in the total price of the product but which the consumer may choose to incur”

Member's explanatory statement

This amendment is consequential on my other amendments to clause 229.

LORD OFFORD OF GARVEL

Clause 229, page 153, line 40, at end insert –

- “(3A) For the purposes of subsection (2)(b) the total price of a product includes any fees, taxes, charges or other payments that the consumer will necessarily incur if the consumer purchases the product.
- (3B) For the purposes of subsection (2)(ba) (and subject to the matters mentioned in subsection (6)) the information given must –
- (a) be such that it enables the consumer to calculate the total price, and
 - (b) be set out with as much prominence as any information that is set out in compliance with subsection (2)(b).”

Member's explanatory statement

See the explanatory statement for my amendment to clause 229(2) (on page 153, at line 12).

Clause 232

LORD OFFORD OF GARVEL

Clause 232, page 157, line 6, leave out “The first regulations made” and insert “Regulations”

Member's explanatory statement

This amendment, and my other amendment to clause 232, changes the parliamentary procedure for regulations under clause 232 so that any regulations made under the clause (not just the first) are subject to the affirmative procedure.

LORD OFFORD OF GARVEL

Clause 232, page 157, line 8, leave out subsection (6)

Member's explanatory statement

See the explanatory statement to my other amendment to clause 232.

After Clause 234

BARONESS HAYMAN
 BARONESS RITCHIE OF DOWNPATRICK
 BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
 BARONESS HARDING OF WINSCOMBE

After Clause 234, insert the following new Clause –

“Right to repair

- (1) The Secretary of State must, within 18 months of the day on which this Act is passed, publish a strategy that would require manufacturers, authorised representatives and importers of new consumer electrical and electronic products to –
 - (a) make publicly available to consumers (and others, on behalf of consumers), spare parts and tools to repair a relevant product at a reasonable price,
 - (b) publish, for each product, the list of spare parts referred to in paragraph (a), the process for ordering them and the repair instructions,
 - (c) whilst the guarantee applies and repair is feasible, repair the product where the cost to the manufacturer is lower than or equal to the cost of replacement,
 - (d) carry out repairs at a reasonable price outside the duration of the guarantee,
 - (e) remove contractual, hardware or software measures which impede the repair of UK consumer connectable products, including through practices limiting the use of parts made by other manufacturers or previously-used parts which comply with UK law, and
 - (f) provide support periods for United Kingdom consumer connectable products of at least five years after the product ceases to be made available.
- (2) The Secretary of State must make regulations to implement the strategy in subsection (1) within five years of the day on which this Act is passed.
- (3) In meeting the duties under subsections (1) and (2), the Secretary of State must –
 - (a) have regard to any risks of adverse effects on health, safety and the environment, and
 - (b) consult with –
 - (i) the Competition and Markets Authority, and
 - (ii) relevant bodies listed in the Schedule to the Enterprise Act 2002 (Bodies Designated to make Super-complaints) Order 2004.
- (4) In this section –

“consumer electrical and electronic products” are products which –

 - (a) are made available to consumers in the United Kingdom, and
 - (b) meet the definition of “electrical and electronic equipment” within the definition of regulation 2 of the Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113);

“defined support period” and “hardware” have the meaning given in regulation 2 of the Product Security and Telecommunications Infrastructure

(Security Requirements for Relevant Connectable Products) Regulations 2023 (S.I. 2023/1007);

“reasonable price” is a question of fact;

“UK consumer connectable product” has the meaning given in section 54 of the Product Security and Telecommunications Infrastructure Act 2022.

- (5) The first regulations made under this section are subject to the affirmative procedure.
- (6) Any other regulations under this section are subject to the negative procedure.”

Member's explanatory statement

This amendment, and another in Baroness Hayman's name, would require the Secretary of State to publish a strategy conferring the right to access repair within 18 months of Royal Assent, and to make regulations within 5 years, to extend the right to access repair at affordable prices, including outside guarantee and ban practices which prevent repair and prematurely terminate software support. It also requires the Secretary of State to consult with certain prescribed persons in meeting the duties.

Clause 236

LORD OFFORD OF GARVEL

Clause 236, page 159, line 8, at end insert –

“(aa) the descriptions of practices mentioned in paragraph 12A of that Schedule;”

Member's explanatory statement

This amendment provides that the new unfair commercial practice relating to fake reviews provided for by my amendment to Schedule 19 will be an excluded description of practice for the purposes of clause 236(7) (and accordingly will not be subject to criminal liability).

Schedule 20

LORD OFFORD OF GARVEL

Schedule 20, page 367, line 3, at end insert –

“(2A) In section 74(3) (interpretation of Chapter) –

- (a) in paragraph (b) for “the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277)” substitute “Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024”;
- (b) in paragraph (c) for “those Regulations (see regulation 19 of those Regulations)” substitute “that Chapter (see section 230 of that Act).”

Member's explanatory statement

This amendment makes a further amendment to the Online Safety Act 2023 that is consequential on the revocation of the Consumer Protection from Unfair Trading Regulations 2008 and the commencement of Chapter 1 of Part 4 of the Bill.

Clause 254

LORD OFFORD OF GARVEL

Clause 254, page 167, line 37, at end insert –

- “(5) See section 274(4) to (8) for how this Chapter applies in relation to a contract that –
- (a) was an excluded contract at the time it was entered into, and
 - (b) on subsequently ceasing to be an excluded contract, becomes a subscription contract.”

Member's explanatory statement

This amendment is consequential on my second amendment to clause 274.

Schedule 21

LORD OFFORD OF GARVEL

Schedule 21, page 371, line 16 leave out “who is not a body corporate” and insert “whose business is a micro-entity”

Member's explanatory statement

This amendment, along with my other amendments to Schedule 21, provides that a contract for the supply of foodstuffs etc delivered to the consumer's home is excluded from the subscription contracts regime if the trader's business is a “micro-entity”, which is assessed on the basis of the business' turnover, balance sheet and number of staff, regardless of whether the business is incorporated or not.

LORD OFFORD OF GARVEL

Schedule 21, page 371, line 26, at end insert –

- “(3A) For the purposes of sub-paragraph (1), a business is a micro-entity in each financial year, other than its first financial year, that the condition in sub-paragraph (3B) or (3C) is met in relation to the business.
- (3B) The condition in this sub-paragraph is met if –
- (a) the business is carried on by a company, and
 - (b) the company qualified as a micro-entity in accordance with section 384A of the Companies Act 2006 in relation to the preceding financial year.
- (3C) The condition in this sub-paragraph is met if –
- (a) the business is not carried on by a company, but
 - (b) if the business had been carried on by a company, the company would have qualified as a micro-entity in accordance with that section in relation to the preceding financial year.
- (3D) In the first financial year of a business, the business is a micro-entity for the purposes of sub-paragraph (1) if (and for so long as) the person carrying on the business believes on reasonable grounds that the person will qualify as a

micro-entity in accordance with section 384A of the Companies Act 2006 in relation to that financial year (or would do so if the person were a company).”

Member's explanatory statement

See the explanatory statement for my other amendment to Schedule 21.

LORD OFFORD OF GARVEL

Schedule 21, page 371, line 29, at end insert –

“(5) In this paragraph –

“company” has the same meaning as in the Companies Act 2006 (see section 1 of that Act);

“financial year” –

- (a) in relation to a business which is carried on by a company, means the company’s financial year in accordance with sections 390 to 392 of that Act;
- (b) in relation to a business which is not carried on by a company, means a year, beginning on 6 April and ending on the following 5 April;

“first financial year” –

- (a) in relation to a business which is carried on by a company, means the company’s first financial year in accordance with sections 390 to 392 of the Companies Act 2006;
- (b) in relation to a business which is not carried on by a company, means the first financial year in which the business begins trading.”

Member's explanatory statement

This amendment is consequential on my other amendments to Schedule 21.

Clause 259

LORD OFFORD OF GARVEL

Clause 259, page 172, line 18, leave out paragraph (a) and insert –

“(a) in a way which is straightforward, and”

Member's explanatory statement

This amendment sets out the principle that must inform the way in which a trader enables a consumer to bring a subscription contract to an end.

LORD OFFORD OF GARVEL

Clause 259, page 172, line 35, leave out paragraphs (a) and (b) and insert “may be given by the consumer making a clear statement setting out their decision to bring the contract to an end.”

Member's explanatory statement

This amendment enables a consumer to exercise a right to bring a subscription contract to an end by notifying the trader by any clear statement of their decision to bring the contract to an end. The concept of a consumer ending a contract by making a clear statement of their decision to do so is already in use in consumer law.

Clause 262

LORD OFFORD OF GARVEL

Clause 262, page 174, line 15, leave out paragraphs (a) and (b) and insert “may be given by the consumer making a clear statement setting out their decision to cancel the contract.”

Member's explanatory statement

This amendment enables a consumer to exercise a right to cancel a subscription contract for breach of an implied term under the Chapter by notifying the trader by any clear statement of their decision to cancel the contract. The concept of a consumer ending a contract by making a clear statement of their decision to do so is already in use in consumer law.

Clause 263

LORD OFFORD OF GARVEL

Clause 263, page 175, line 9, leave out paragraphs (a) and (b) and insert “may be given by the consumer making a clear statement setting out their decision to cancel the contract.”

Member's explanatory statement

This amendment enables a consumer to exercise a right to cancel a subscription contract during a cooling-off period by notifying the trader by any clear statement of their decision to cancel the contract. The concept of a consumer ending a contract by making a clear statement of their decision to do so is already in use in consumer law.

Clause 266

LORD OFFORD OF GARVEL

Clause 266, page 177, line 25, at end insert “(for example, provision that a consumer may lose the right to cancel a subscription contract during a cooling-off period if they choose to be supplied with digital content or services under the contract during that period)”

Member's explanatory statement

This amendment makes clear that the power under clause 266(1)(a) may be exercised to provide that a consumer may lose the right to cancel during a cooling-off period if the consumer chooses to receive digital content or services during that period.

LORD OFFORD OF GARVEL

Clause 266, page 178, line 3, at end insert –

- “(3A) Provision under subsection (3)(a) and (b) may secure the result (for example, in cases where a consumer has been supplied with digital content or services under a contract before it is cancelled during a cooling-off period) that –
- (a) the consumer remains liable (partly or fully) for payments falling due before the cancellation of the contract, and
 - (b) the consumer is entitled to a reduced or no refund.”

Member's explanatory statement

This amendment makes clear that the power under clause 266(1)(b) may be exercised to provide that a consumer remains fully or partly liable, and so is not entitled to a refund or a full refund, in respect of payments they have made under a subscription contract before cancelling it during a cooling-off period, for example where the consumer has received digital content or services during that period.

Clause 274

LORD OFFORD OF GARVEL

Clause 274, page 182, line 25, leave out “subscription”

Member's explanatory statement

This amendment clarifies that the Chapter does not apply in relation to any contract that was entered into before clause 253 comes into force. This is to ensure that it does not apply to a contract that was not a subscription contract when it was entered into before that clause comes into force (e.g. because it was an excluded contract) but then becomes a subscription contract after that clause comes into force.

LORD OFFORD OF GARVEL

Clause 274, page 182, line 26 at end insert –

- “(4) Subsections (5) and (6) apply where –
- (a) a trader enters into a contract that is an excluded contract,
 - (b) but for it being an excluded contract, the contract would have been a subscription contract, and
 - (c) on a later day (the “relevant day”), the contract ceases to be an excluded contract and, accordingly, becomes a subscription contract.
- (5) This Chapter applies to the contract with the following modifications –
- (a) sections 255 and 256 (pre-contract information) do not apply;
 - (b) section 257 (reminder notices) applies as if –
 - (i) in subsection (1), the reference to a trader entering into a subscription contract with a consumer that does not involve a

- concessionary period were a reference to a trader entering into the contract,
- (ii) the reference in subsection (2)(a) to the day that the contract was entered into were a reference to the relevant day, and
 - (iii) subsections (3), (4) and (6) were omitted;
- (c) section 258 (content and timing etc of reminder notices) applies as if, in subsections (3) and (4), references to the period specified by the trader in pre-contract information were references to the period specified by the trader in information given under subsection (6) of this section;
- (d) section 261 (terms implied into contracts) applies as if –
- (i) in paragraph (a), the reference to the duty set out in section 255(1)(a) were a reference to the duty set out in subsection (6) of this section;
 - (ii) paragraph (b) was omitted;
 - (iii) in paragraph (d), the reference to pre-contract information were a reference to the information given under subsection (6) of this section;
- (e) section 263 (right to cancel during cooling-off periods) applies as if subsection (1)(a) were omitted.
- (6) As soon as reasonably practicable after the relevant day, and in any event before the end of 12 months beginning with that day, the trader must give to the consumer key pre-contract information and full pre-contract information in relation to the contract, other than any such information that is excluded by subsection (7).
- (7) Information is excluded by this subsection if –
- (a) it relates to the initial cooling-off period under the contract;
 - (b) it relates to a period mentioned under section 253(3)(a) (initial concessionary period) and the relevant day falls after the end of that period.
- (8) For the purposes of the duty under subsection (6) –
- (a) it is irrelevant whether any of the information required has already been given to the consumer before the relevant day,
 - (b) section 255(5) applies as it applies for the purposes of the duty under section 255(1)(b), and
 - (c) paragraph 13 of Schedule 22 is to be ignored.”

Member's explanatory statement

This amendment provides for how the subscription contract regime applies to a subscription contract that was initially excluded from the regime as a result of being a contract of a kind listed in Schedule 21 but later falls to be included in the regime as a result of no longer being a contract excluded under that Schedule.

Clause 284

LORD OFFORD OF GARVEL

Clause 284, page 189, line 4, leave out from second “to” to end of line 11 and insert –

- “(a) a bankruptcy order having been made in relation to the trader (or, in Scotland, the trader’s estate having been sequestrated),
- (b) a winding up order having been made in relation to the trader as a result of the trader’s insolvency,
- (c) an appointment of a liquidator (otherwise than following the making of a winding up order) as a result of the trader’s insolvency,
- (d) the trader being in administration,
- (e) the appointment of an administrative receiver (or, in Scotland, a receiver) in relation to the trader, or
- (f) in any jurisdiction, the trader being subject to an order or procedure that corresponds to any order or procedure mentioned in paragraphs (a) to (e).”

Member's explanatory statement

This amendment broadens the definition of insolvency for the purposes of the Chapter.

Clause 297

LORD OFFORD OF GARVEL

Clause 297, page 201, line 25, at end insert –

- “(4A) In subsection (4)(a)(i) the reference to limiting (or further limiting) the accreditation to particular descriptions of ADR or of special ADR arrangements includes, in particular, limiting it to ADR relating to consumer contract disputes that have already been referred for ADR or to special ADR arrangements that already exist (as the case may be), whether for a limited period or otherwise.”

Member's explanatory statement

The amendment clarifies that the powers of the Secretary of State under clause 297 to limit or further limit the scope of an accreditation includes limiting it to finishing off subsisting referrals of disputes for ADR and/or operating existing special ADR arrangements.

LORD OFFORD OF GARVEL

Clause 297, page 201, line 32, leave out from “Any” to second “the” and insert “variations made under subsection (4)(a) must be variations”

Member's explanatory statement

This amendment ensures that the requirement that new conditions imposed on an ADR provider’s accreditation must be ones that the Secretary of State considers necessary to secure compliance with prohibitions applies also to other variations made by the Secretary of State to the accreditation.

LORD OFFORD OF GARVEL

Clause 297, page 201, line 35, at end insert –

“(6A) In subsection (6) “existing conditions” means the existing conditions disregarding any previous variations made under subsection (4)(a) or (7)(b).”

Member's explanatory statement

This amendment clarifies which existing conditions are being referred to in clause 297(6).

LORD OFFORD OF GARVEL

Clause 297, page 201, line 36, leave out from “Where” to second “the” and insert “variations of the accreditation are made under subsection (4)(a),”

Member's explanatory statement

This amendment provides that the duty to keep new conditions imposed on an ADR provider's accreditation under review, and to revoke such conditions if no longer necessary, extends also to other variations made in respect of the accreditation.

LORD OFFORD OF GARVEL

Clause 297, page 201, line 38, leave out “conditions” and insert “variations”

Member's explanatory statement

This amendment is consequential on my amendment to clause 297 at page 201, line 36.

LORD OFFORD OF GARVEL

Clause 297, page 201, line 39, leave out from beginning to “no” in line 40 and insert –

“(b) by notice to the ADR provider vary the accreditation for the purpose of revoking or reversing the effect of all or any of the variations, to the extent that the Secretary of State considers that they are”

Member's explanatory statement

This amendment is consequential on my amendment to clause 297 at page 201, line 36.

LORD OFFORD OF GARVEL

Clause 297, page 202, line 1, leave out “altered” and insert “varied”

Member's explanatory statement

The amendment would bring the language in line with references elsewhere to the variation of an accreditation

LORD OFFORD OF GARVEL

Clause 297, page 202, line 2, leave out “alterations” and insert “variations”

Member's explanatory statement

The amendment would bring the language in line with references elsewhere to the variation of an accreditation

After Clause 309

LORD MOYNIHAN
BARONESS JONES OF WHITCHURCH
LORD CLEMENT-JONES

After Clause 309, insert the following new Clause –

“Requirements on secondary ticketing facilities

After section 92 of the Consumer Rights Act 2015 insert –

“92A Requirements on secondary ticketing facilities

- (1) A secondary ticketing facility must not permit a trader or business to list tickets for resale unless the trader or business has provided evidence of proof of purchase to the ticketing facility, or evidence of title to the tickets offered for resale.
- (2) A secondary ticketing facility must not permit a reseller to sell more tickets to an event that they can legally purchase from the primary market.
- (3) A secondary ticketing facility must ensure that the face value of any ticket listed for resale, and the trader or business’s name and trading address are clearly visible, in full, on the first page the ticket is viewable on.
- (4) The information required by subsection (3) must be unabbreviated, and must not be hidden behind an icon, drop down menu or other device.
- (5) A secondary ticketing facility must make it clear to traders and businesses based overseas that sell tickets to UK consumers and target UK consumers through paid or sponsored advertisements or paid infomercials that they are subject to UK legislation.””

Member's explanatory statement

This amendment imposes requirements on secondary tickets sites regarding proof of purchase, ticket number limits and the provision of information, with the aim of reducing fraud. These requirements are in line with recommendations made by the CMA.

LORD MOYNIHAN

After Clause 309, insert the following new Clause –

“Sale of tickets received by trustees of registered charities

Trustees of registered charities who receive tickets as a result of their position as a trustee must not sell those tickets through secondary ticketing facilities for more than face value plus a handling charge.”

Clause 335

LORD OFFORD OF GARVEL

Clause 335, page 235, line 2, leave out “Secretary of State” and insert “appropriate authority”

Member's explanatory statement

This amendment, together with my other amendment to clause 335, ensures that the power to make regulations containing consequential amendments is conferred on the Treasury rather than the Secretary of State if the regulations only contain amendments to tax legislation, in compliance with the usual approach. This would, for example, enable the Treasury to make amendments to the Income Tax Act 2007 so as to ensure that gift aid can continue to be claimed in the case of payments made under subscription contracts between consumers and charities.

LORD OFFORD OF GARVEL

Clause 335, page 235, line 11, after “section” insert “–

“appropriate authority” means –

- (a) in the case of regulations under this section that contain amendments only in relation to tax, the Treasury;
- (b) in any other case, the Secretary of State;”

Member's explanatory statement

See the explanatory statement for my amendment to this clause at line 2.

Clause 336

LORD OFFORD OF GARVEL

Clause 336, page 235, line 29, at end insert –

- “(4A) In the case of regulations under section 335 made by the Treasury, the references in subsections (3) and (4) to each or either House of Parliament are to be read as references to the House of Commons only.”

Member's explanatory statement

This amendment secures that the power to make regulations under clause 335 containing only amendments to tax legislation are subject to procedure in the House of Commons alone, in compliance with the usual approach for such powers in recognition of the financial privilege of the Commons. See also my amendments to that clause providing for the power to be exercisable by the Treasury.

Clause 338

LORD OFFORD OF GARVEL

Clause 338, page 236, line 8, leave out paragraph (a)

Member's explanatory statement

This amendment is consequential on my amendment leaving out Clause 127.

Schedule 29

LORD OFFORD OF GARVEL

Schedule 29, page 407, line 23, at end insert –

“(ai) Part 1;”

Member's explanatory statement

This amendment to section 393 of the Communications Act 2003 relocates the previous amendment to that section made by clause 109(3) (which is omitted by my other amendment to that clause).

LORD OFFORD OF GARVEL

Schedule 29, page 407, line 33, at end insert –

“(ai) Part 1;”

Member's explanatory statement

This amendment would add Part 1 of the Bill to the provisions listed in section 111(6) of the Wireless Telegraphy Act 2006 (information sharing by OFCOM).

LORD OFFORD OF GARVEL

Schedule 29, page 412, line 5, at end insert –

“(aa) Part 1;”

Member's explanatory statement

This amendment would add Part 1 of the Bill to the provisions listed in Article 4 of the Postal Services Act 2011 (Disclosure of Information) Order 2012 (information sharing by OFCOM).

Digital Markets, Competition and Consumers Bill

AMENDMENTS
TO BE MOVED
ON REPORT

4 March 2024

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS