

Chapter 3

Distance communications

3.1 Distance marketing

Application

- 3.1.1 **R** This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom*.

The distance marketing disclosure rules

- 3.1.2 **R**
- (1) Subject to (2), a *firm* must provide a *consumer* with the distance marketing information (■ BCOBS 3 Annex 1 R) in good time before the *consumer* is bound by a *distance contract* or offer.
 - (2) Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of ■ BCOBS 3 Annex 1 R.

[Note: articles 3(1) and 4(5) of the *Distance Marketing Directive*]

- 3.1.3 **R** A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[Note: article 3(2) of the *Distance Marketing Directive*]

- 3.1.4 **R** When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

- 3.1.5 **R** A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

- 3.1.6** **R** A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* (■ BCOBS 3.1.2R to ■ 3.1.5R) in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** articles 4(5) and 5 (1) of the *Distance Marketing Directive*]

- 3.1.7** **G** A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Commencing performance of the distance contract

- 3.1.8** **R** The performance of the *distance contract* may only begin after the *consumer* has given his approval.

[**Note:** article 7 (1) of the *Distance Marketing Directive*]

Exception: successive operations

- 3.1.9** **R** In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this chapter only apply to the initial agreement.

[**Note:** article 1(2) of the *Distance Marketing Directive*]

- 3.1.10** **R**
- (1) If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (■ BCOBS 3.1.2R to ■ 3.1.5R) will only apply:
 - (a) when the first operation is performed; and
 - (b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[**Note:** recital 16 and article 1(2) of the *Distance Marketing Directive*]

- (2) In this section:
 - (a) “initial service agreement” includes the opening of a bank account;
 - (b) “operations” includes the deposit or withdrawal of funds to or from a bank account; and
 - (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing *retail banking service*, does not constitute an “operation” but an additional contract to which the rules in this chapter apply.

[**Note:** recital 17 of the *Distance Marketing Directive*]

Exception: voice telephony communications

3.1.11 **R** In the case of voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ BCOBS 3 Annex 2 R) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information (■ BCOBS 3 Annex 1 R) in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

[Note: articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: means of distance communication not enabling disclosure

3.1.12 **R** A *firm* may provide the distance marketing information (■ BCOBS 3 Annex 1 R) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(2) of the *Distance Marketing Directive*]

Exception: contracts for payment services

3.1.13 **G** Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in ■ BCOBS 3.1.2R (2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 6 of the *Payment Services Regulations*.

Consumer’s right to request paper copies and change the means of communication

3.1.14 **R** At any time during the contractual relationship, the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: article 5(3)of the *Distance Marketing Directive*]

Unsolicited services

3.1.15 **R**

- (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of a reply not constituting consent.
- (2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[Note: article 9 of the *Distance Marketing Directive*]

Mandatory nature of a consumer’s rights

3.1.16 **R** If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[**Note:** article 12 of the *Distance Marketing Directive*]

Contracts governed by law of a third party state

3.1.17 **R** If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the territory of one or more *United Kingdom*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]