

Conduct of Business Sourcebook

Chapter 15

Cancellation

15.1 Application

15.1.1 **G** This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:

- (1) most providers of retail financial products that are based on *designated investments*; and
- (2) *firms* that enter into *distance contracts* with *consumers* that relate to *designated investment business*; and
- (3) *firms* that enter into *distance contracts* the making or performance of which by the *firm* constitutes, or is part of, the activity of *issuing electronic money*.

Definitions

15.1.2 **R** In this section:

- (a) "pension transfer" means a transaction, resulting from the decision of a *retail client* who is an individual to require a transfer payment of benefits from a pension scheme to:
 - (i) benefits under a non-occupational pension scheme; or
 - (ii) (for transfers from a non-occupational pension scheme) benefits under a *defined contribution occupational pension scheme*;
- (b) "non-occupational pension scheme" means a *stakeholder pension scheme*, a *personal pension scheme* or a deferred annuity contract; and
- (c) "pension scheme" means an *occupational pension scheme* or a non-occupational pension scheme.

15.2 The right to cancel

Cancellable contracts

15.2.1

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A consumer has a right to cancel any of the following contracts with a *firm*:

Cancellable contract	Cancellation period	Supplementary provisions
Life and pensions:		
<ul style="list-style-type: none"> a <i>life policy</i> (including a <i>pension annuity</i>, a <i>pension policy</i> or within a <i>wrapper</i>) a contract to join a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i> a <i>pension contract</i> a contract for a pension transfer a contract to vary an existing <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> by exercising, for the first time, an option to make <i>income withdrawals</i> 	30 calendar days	<p>For a <i>life policy</i> effected when opening or transferring a <i>wrapper</i>, the 30 calendar day right to cancel applies to the entire arrangement</p> <p>For a contract to buy a <i>unit</i> in a <i>regulated collective investment scheme</i> within a <i>pension wrapper</i>, the cancellation right for 'non-life/pensions (advised but not at a distance)' below may apply</p> <p>Exemptions may apply (see COBS 15 Annex 1)</p>
Lifetime ISAs (advised but not at a distance):		
<ul style="list-style-type: none"> a <i>non-distance contract</i> to open or transfer a <i>lifetime ISA</i> 	30 calendar days	<p>These rights arise only following a <i>personal recommendation</i> of the contract (by the <i>firm</i> or any other <i>person</i>).</p> <p>Exemptions may apply (see COBS 15 Annex 1)</p>
Cash deposit ISAs:		
<ul style="list-style-type: none"> a contract for a <i>cash deposit ISA</i> 	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)
Non-life/pensions (advised but not at a distance):		
<ul style="list-style-type: none"> to buy a <i>unit</i> in a <i>regulated collective investment scheme</i> (in- 	14 calendar days	These rights arise only following a <i>personal recommendation</i> of the

Cancellable contract	Cancellation period	Supplementary provisions
cluding within a <i>wrapper</i> or <i>pension wrapper</i> <ul style="list-style-type: none"> • to open or transfer a child trust fund (CTF) • to open or transfer an ISA (other than a lifetime ISA) • for an <i>Enterprise Investment Scheme</i> 		contract (by the <i>firm</i> or any other <i>person</i>). For a <i>unit</i> bought when opening or transferring a <i>wrapper</i> or <i>pension wrapper</i> , the 14 calendar day right to cancel applies to the entire arrangement. Exemptions may apply (see COBS 15 Annex 1).
Non-life/pensions (at a distance): a <i>distance contract</i> , relating to: <ul style="list-style-type: none"> • <i>accepting deposits</i> • <i>designated investment business</i> • <i>issuing electronic money</i> 	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)

[Note: article 186 of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

- 15.2.2 G
- (1) If the same transaction attracts more than one right to cancel, the *firm* should apply the longest cancellation period applicable.
 - (2) A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *consumer* as those in this chapter, unless the differences are clearly explained.
 - (3) If the right to cancel applies to a *wrapper* or *pension wrapper* and underlying investments, the *firm* may give the *consumer* the option of cancelling individual components separately if it wishes.

Start of cancellation period

- 15.2.3 R
- The cancellation period begins:
- (1) either from the day of the conclusion of the contract, except in respect of contracts relating to *life policies* where the time limit will begin from the time when the *consumer* is informed that the contract has been concluded; or
 - (2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook or the *PRIPs Regulation*, if that is later than the date referred to above.

[Note: article 186 of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

- 15.2.4 G
- If a *firm* does not give a *consumer* the required information about the right to cancel and other matters, the contract remains cancellable and the *consumer* will not be liable for any *shortfall*.

Disclosing a right to cancel or withdraw

15.2.5

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- (1) The *firm* must disclose to the *consumer*:
- (a) in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract that attracts a right to cancel or withdraw; and
 - (b) in a *durable medium*;
- the existence of the right to cancel or withdraw, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it indicating the address to which the notification of cancellation or withdrawal should be sent.
- (1A) If the *firm* offers to facilitate, directly or through a third party, the payment of *adviser charges* or *consultancy charges*, it must disclose to the *consumer* at the same time as it makes the disclosure in (1):
- (a) whether any refund will include an *adviser charge* or *consultancy charge*; and
 - (b) that the *consumer* may be liable to pay any outstanding *adviser charges* or *consultancy charges*.
- (2) This *rule* applies only where a *consumer* would not otherwise receive similar information under a *rule* in this sourcebook or in a *key information document* from the *firm* or another *authorised person* (such as under the distance marketing disclosure rules (■ COBS 5.1.1 R to ■ 5.1.4 R), ■ COBS 14 (Providing product information) or the *PRIPs Regulation*).

15.3 Exercising a right to cancel

Notice of exercise

15.3.1 **R** If a *consumer* exercises his right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a durable medium available and accessible to the recipient, is dispatched before the deadline expires.

[**Note:** article 6 (6) of the *Distance Marketing Directive*]

15.3.2 **R** A *consumer* need not give any reason for exercising his right to cancel.

[**Note:** article 6(1) of the *Distance Marketing Directive*]

15.3.3 **G** The *firm* should accept any indication that the *consumer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as the date when the notification was dispatched.

Record keeping

15.3.4 **R** The *firm* must make adequate records concerning the exercise of a right to cancel or withdraw and retain them:

- (1) indefinitely in relation to a pension transfer, *pension opt-out* or *FSAVC*;
- (2) for at least five years in relation to a *life policy*, *pension contract*, *personal pension scheme*, *stakeholder pension scheme* or *lifetime ISA*; and
- (3) for at least three years in any other case.

15.4 Effects of cancellation

Termination of contract

- 15.4.1 **R** By exercising a right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

- 15.4.2 **R**
- (1) This *rule* applies in relation to a *distance contract* that is not a *life policy, personal pension scheme, cash deposit ISA, cash-only lifetime ISA* or *CTF*.
 - (2) When the *consumer* exercises their right to cancel they may be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The performance of the contract may only begin after the *consumer* has given their approval. The amount payable must not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract; and
 - (b) in any case be such that it could be construed as a penalty.
 - (3) The *firm* may not require the *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable, in conformity with the distance marketing disclosure rules. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive*]

Shortfall

- 15.4.3 **R**
- (1) The *firm* may require the *consumer* to pay for any loss under a contract caused by market movements that the *firm* would reasonably incur in cancelling it. The period for calculating the loss shall end on the day on which the *firm* receives the notification of cancellation.
 - (2) This *rule*:
 - (a) does not apply for a *distance contract* or for a contract established on a regular or recurring premium or payment basis; and

(b) only applies if the *firm* has complied with its obligations to disclose information concerning the right to cancel.

Obligations on cancellation

- 15.4.4** **R** The *firm* must, without any undue delay and no later than within 30 calendar days, return to the *consumer* any sums it has received from him in accordance with the contract, except for any amount that the *consumer* may be required to pay under this section. This period shall begin from the day on which the *firm* receives the notification of cancellation.
- [Note: article 7(4) of the *Distance Marketing Directive*]
- 15.4.5** **R** The *firm* is entitled to receive from the *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.
- [Note: article 7(5) of the *Distance Marketing Directive*]
- 15.4.6** **R** Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

15.5 Special situations

Contracts with trustees and operators of pension schemes

15.5.1

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In this chapter:

- (1) references to a *consumer* include the trustees of an *occupational pension scheme* and the trustees or operator of a *personal pension scheme* or *stakeholder pension scheme*; and
- (2) any contract with such *persons* is to be treated as a *non-distance contract*.

Other legislation including for child trust funds and automatic enrolment into pensions

15.5.2

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This chapter applies as modified to the extent necessary for it to be compatible with any enactment.

15.5.3

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For example:

- (1) the *Child Trust Fund Regulations* contain provisions relevant to cancellation rights; in particular they provide that any uninvested sums held in connection with a *CTF* should be held in a designated bank account; and the effect of conditions 4(a) and (b) in regulation 5 of the *Child Trust Fund Regulations* (applicable to non-*HMRC allocated CTF*) is that a *CTF* opened by way of *distance contract* has a cancellable management agreement in all cases and the *CTF* cannot be opened until the cancellation period has expired, therefore the price fluctuation exemption is not engaged;
- (2) where legislation does not permit sums within a *personal pension scheme* or *CTF* to be returned to a *consumer*, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the *consumer*; the *firm* should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention;
- (3) the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 contain provisions relevant to cancellation rights; in particular they provide rights of opt-out from an *automatic enrolment scheme*; the cancellation rights in this chapter are modified to permit a provider to adopt the opt-out process in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 in relation to all members of an

automatic enrolment scheme; the cancellation rules will continue to apply for any single premium contributions or transfers where these would normally attract this right.

Automatic cancellation of an attached distance contract

- 15.5.4 **G** When a *consumer* cancels a *distance contract* under this chapter, his notice may also operate to cancel any attached contract which is also a distance financial services contract unless the *consumer* gives notice that cancellation of the main contract is not to operate to cancel the attached contract (see regulation 12 of the *Distance Marketing Regulations*). Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

Appointed representatives

- 15.5.5 **G** This chapter does not act to cancel *distance contracts* entered into by an *appointed representative* or where applicable, by a *tied agent*, as principal such as a *distance contract* to provide advisory services, but the *Distance Marketing Regulations* (regulations 9 to 13, see regulation 4(3)) may have this effect.

Maxi-ISAs

- 15.5.6 **G** Where a *life policy* or *unit* bought on opening or transferring an *ISA* is cancellable, the right to cancel, or substitute right to withdraw, applies to the entire arrangement. For example, a maxi-ISA comprising a *life policy* in the stocks and shares component and a *cash component* would be cancellable as a whole with a cancellation period of 30 calendar days. However, a *firm* is free to give the *consumer* the option of cancelling individual components separately with the same cancellation period if it wishes.

Exemptions from the right to cancel

Exemptions for life policies and pension contracts (non-distance)

- 1.1 R There is no right to cancel a non-distance contract that is a *life policy* or a *pension contract*:
- (1) that is a *pension fund management policy*; or
 - (2) that relates to or is associated with securing benefits under a *defined benefits pension scheme*; or
 - (3) for a term of six months or less, unless it is a single *premium* contract where the designated retirement date is within six months of the date of the policy; or
 - (4) that is effected by the trustees of an *occupational pension scheme* or the employer, trustees or operator of a *stakeholder pension scheme* and that represents a:
 - (a) *pension buy-out contract*; or
 - (b) purchase of a without-profits deferred *pension annuity*; or
 - (c) *defined benefits pension scheme* or a single *premium* payment to any *occupational pension scheme* with a pooled fund (that is, underlying investments are not earmarked for individual scheme members); or
 - (d) purchase made to insure and secure members' pension benefits under a *money-purchase occupational scheme* or *stakeholder pension scheme* (unless it is the master, first or only policy); or
 - (5) if the *consumer*, at the time he signs the application, is *habitually resident* outside the UK and is not present in the UK.
- 1.2 G There is no right to cancel a non-distance contract for a *traded life policy*. This is because the 30-day right to cancel a *life policy* (in COBS 15.2.1 R) applies at the point of conclusion of the *life policy* not on its assignment. However, there may be a 14-day right to cancel a *distance contract* for a *traded life policy* unless an exemption applies, since that *distance contract* relates to *designated investment business*.
- Exemption for SIPPs
- 1.3 R There is no right to cancel a contract to join a *SIPP* whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel.
- 1.4 G If a *consumer* requests that a *firm* complete a transaction to join a *SIPP* before the expiry of the cancellation period, the *firm* should, in having regard to the information needs of the *consumer*, make him aware that he will lose his right to cancel and satisfy itself on reasonable grounds that the customer understands the cost and other implications.
- Exemptions for certain pension arrangements (the 'cancellation substitute')
- 1.5 R There is no right to cancel:
- (1) a contract for or funded (wholly or in part) from a pension transfer; or
 - (2) a *pension annuity* due to commence within a year and a day of the contract or a variation of one with similar commencement; or
 - (3) the exercise of an option to make *income withdrawals*;

to the extent that the right to cancel is replaced with a pre-contract right to withdraw the *consumer's* offer of at least 14 calendar days. The combined period of the right to withdraw and any residual right to cancel must be at least 30 calendar days.

Exemption for pension compensation

- 1.6 R There is no right to cancel a *pension annuity*, a *pension policy*, a *pension contract*, or a contract to join a *personal pension scheme* or *stakeholder pension scheme*, which in each case is funded (wholly or in part) from payments derived from compensation or redress following a review undertaken in relation to a complaint.

Exemption for annuities after death of the life assured

- 1.7 R A *firm* need not accept notification of cancellation of a *pension annuity* contract if the life (or any of the lives) assured under it has died before notice is given.

Exemptions for units (non-distance)

- 1.8 R There is no right to cancel a non-distance contract to buy a unit in a regulated collective investment scheme:
- (1) if the unit is not purchased from the scheme's operator, from the operator's associate acting as provider of a wrapper; or
 - (2) if the consumer is not a retail client; or
 - (3) if the contract represents an exchange of units between sub-funds of the same umbrella; or
 - (4) if the contract relates to a change between units of one class and units of another class in the same scheme; or
 - (5) if the contract relates to a recognised scheme and is with an operator who is not an authorised person or carrying on business in the UK; or
 - (6) if the consumer is not habitually resident in the UK at the date of the offer of the contract; or
 - (7) if the firm has reasonable grounds for assuming that no personal recommendation of the contract was provided by anyone carrying on designated investment business in the UK; or
 - (8) for the second and subsequent purchases of units under recurring single payment unit savings plans, provided that:
 - (a) the intention or option to make a series of single payments is disclosed at the outset (for example in pre-contract disclosure documents); or
 - (b) the intention is evidenced (for example, by the establishment of a direct debit mandate).

Exemptions for ISAs, CTFs and EISs (non-distance)

- 1.9 R There is no right to cancel a non-distance contract:
- (1) to open or transfer an ISA (mini or maxi and including all components whatever the underlying investment, but not a cash deposit ISA or an ISA containing a life policy); or
 - (2) to open or transfer a CTF; or
 - (3) [deleted]
 - (4) for an EIS;
- provided that:

- (5) (for an *EIS* or *ISA* which is not a *lifetime ISA*) the right to cancel is replaced with a seven calendar day, pre-contract right to withdraw the *consumer's* offer; or
- (5A) (for a *lifetime ISA*) the right to cancel is replaced with a fourteen calendar day, pre-contract right to withdraw the *consumer's* offer; or
- (6) the contract relates to an *EIS* or a non-packaged product *ISA* (which is not a *lifetime ISA*) or *CTF* and is entered into following an explanation that neither a right to cancel nor a right to withdraw will apply given in accordance with the relevant rules on pre-contractual disclosure; or
- (7) (for an *ISA* or *EIS*) the contract entered into is a second or subsequent *ISA* or *EIS* on substantially the same terms (such as mini-to-mini *ISA* or maxi-to-maxi *ISA*) as an *ISA* or *EIS* purchased from the same *ISA manager* or *EIS manager* in the previous tax year.

Exemptions for distance contracts (all products and services)

- 1.10 R There is no right to cancel a *distance contract*:
- (1) whose price depends on fluctuations in the financial market outside the *firm's* control, which may occur during the cancellation period, such as:
 - (a) foreign exchange; or
 - (b) money market instruments; or
 - (c) transferable securities; or
 - (d) units in collective investment undertakings; or
 - (e) financial-futures contracts, including equivalent cash-settled instruments; or
 - (f) forward interest-rate agreements; or
 - (g) interest-rate, currency and equity swaps; or
 - (h) options to acquire or dispose of any instruments referred to above including cash-settled instruments and options on currency and on interest rates; or
 - (2) whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel; or
 - (3) to *deal as agent, advise* or *arrange* if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[**Note:** article 6(2) and recital 19 of the *Distance Marketing Directive*]

- 1.11 R In the case of *distance contracts* for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel shall apply only to the initial agreement.

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

