

Insurance: Conduct of Business

Chapter 7

Cancellation

7.1 The right to cancel

The right to cancel

7.1.1

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A consumer has a right to cancel, without penalty and without giving any reason, within:

- (1) 30 days for a *contract of insurance* which is, or has elements of, a *pure protection contract* or *payment protection contract*; or
- (2) 14 days for any other *contract of insurance* or *distance contract*.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to a *distance contract* and article 186 of the *Solvency II Directive* in relation to a *pure protection contract*]

7.1.2

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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.

Exceptions to the right to cancel

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The right to cancel does not apply to:

- (1) a travel and baggage *policy* or similar short-term *policy* of less than one *month's* duration;
- (2) a *policy* the performance of which has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel;
- (3) a *pure protection contract* of six *months'* duration or less which is not a *distance contract*;
- (4) a *pure protection contract* effected by the trustees of an *occupational pension scheme*, an employer or a *partnership* to secure benefits for the *employees* or the *partners* in the *partnership*;
- (5) a *general insurance contract* which is neither a *distance contract* nor a *payment protection contract*, sold by an intermediary who is an *unauthorised person* (other than an *appointed representative*); and
- (6) a *connected contract* which is not a *distance contract*.

[Note: articles 6(2)(b) and (c) of the *Distance Marketing Directive* and article 186(2) of the *Solvency II Directive*]

7.1.4 **G** A 'similar short-term *policy*' is any *policy* where the event or activity being insured is less than one *month's* duration. 'Duration' refers to the period of cover rather than the period of the contract.

Start of the cancellation period

7.1.5 **R** The cancellation period begins either:

- (1) from the day of the conclusion of the contract, except in respect of a *pure protection contract* where the time limit begins when the *customer* 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, if that is later than the date referred to above.

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

Exercising a right to cancel

7.1.6 **R** If a *consumer* exercises the 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 on paper or another *durable medium*, is dispatched before the deadline expires.

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

7.2 Effects of cancellation

Termination of contract

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

Payment for the service provided before cancellation

- 7.2.2 **R**
- (1) When a *consumer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract.
 - (2) 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) A *firm* must not require a *consumer* to pay any amount:
 - (a) unless it can prove that the *consumer* was duly informed about the amount payable; or
 - (b) if it commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.
 - (4) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *pure protection contract*.
 - (5) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *payment protection contract* unless a claim is made during the cancellation period and settlement terms are subsequently agreed.

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

- 7.2.3 **G** The amount payable may include:
- (1) any sums that a *firm* has reasonably incurred in concluding the contract, but should not include any element of profit;
 - (2) an amount for cover provided (i.e. a proportion of the *policy's* exposure that relates to the time on risk);

- (3) a proportion of the *commission* paid to an *insurance intermediary* sufficient to cover its costs; and
- (4) a proportion of any *fees* charged by an *insurance intermediary* which, when aggregated with any *commission* to be repaid, would be sufficient to cover its costs.

7.2.4 **G** In most cases, the *FCA* would expect the proportion of a *policy's* exposure that relates to the time on risk to be a pro rata apportionment. However, where there is material unevenness in the incidence of risk, an *insurer* could use a more accurate method. The sum should be reasonable and should not exceed an amount commensurate to the risk incurred.

7.2.5 **G** An *insurer* and an *insurance intermediary* should take reasonable steps to ensure that double recovery of selling costs is avoided, particularly where the contract for the *insurance intermediary's* services is a *distance contract*, or where both *commission* and *fees* are recouped by the *insurer* and *insurance intermediary* respectively.

Firm’s obligation on cancellation

7.2.6 **R** (1) A *firm* must, without any undue delay and no later than within 30 *days*, return to a *consumer* any sums it has received from him in accordance with the contract, except as specified in this section.

(2) 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*]

Consumer’s obligation on cancellation

7.2.7 **R** (1) A *firm* is entitled to receive from a *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 *days*.

(2) 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*]

7.2.8 **G** If an *insurer* has made a charge for services provided, the sums and property to be returned by a *consumer* should not include any money or property provided in settling a claim.

Set off

7.2.9 **R** Any sums payable under this section are owed as simple contract debts and may be set off against each other.

Automatic cancellation of an attached distance contract

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A *consumer's* notice to cancel a *distance contract* may also operate to cancel any attached contract which is also a distance financial services contract. This is unless the *consumer* gives notice that cancellation of the contract is not to operate to cancel the attached contract. (See the *Distance Marketing Regulations*.) Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.