

Chapter 11

Cancellation

11.1 The right to cancel

11.1.1

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Except as provided for in ■ CONC 11.1.2 R or where ■ PROF 5.4.1 R (1) or ■ PROF 5.4.1 R (2) applies, a *consumer* has a right to cancel a *distance contract* without penalty and without giving any reason, within 14 calendar days where that contract is:

- (1) a *credit agreement*;
- (2) an agreement between a *consumer* and a *firm* the subject matter of which comprises or relates to *credit broking, debt counselling, debt adjusting, providing credit information services or providing credit references*, other than an agreement that relates to any of those activities in relation to a *consumer hire agreement*.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to distance contracts that are consumer credit agreements]

11.1.2

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- (1) For a *credit agreement* there is no right to cancel under ■ CONC 11.1.1 R, unless (2) or (3) applies, in respect of:
 - (a) a regulated consumer credit agreement (within the meaning of that section) to which section 66A (right to withdraw) of the CCA applies;
 - (b) a *credit agreement* under which a *lender* provides *credit* to a *consumer* and where the *consumer's* obligation to repay is secured by a legal mortgage on *land*;
 - (c) a *credit agreement* cancelled under regulation 15(1) of the Consumer Protection (Distance Selling) Regulations 2000 (automatic cancellation of a related credit agreement) or under regulation 38 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (effects of withdrawal or cancellation on ancillary contracts);
 - (d) a *credit agreement* cancelled under regulation 23 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (automatic termination of credit agreement); and
 - (e) a *restricted-use credit agreement* to finance the purchase of *land* or an existing building, or an agreement for a bridging loan in connection with the purchase of *land* or an existing building.
- (2) There is a right to cancel under ■ CONC 11.1.1 R where the *lender* has not complied with ■ CONC 2.7.6 R (requirement to communicate terms and conditions etc), unless the *distance contract* falls with the exception in ■ CONC 2.7.12 R and the *firm* has complied with the requirements of that *rule*.

(3) There is a right to cancel under ■ CONC 11.1.1 R where the circumstances in ■ CONC 2.7.12 R apply but the *lender* has not supplied all the contractual terms and conditions and information as required in ■ CONC 2.7.12 R.

(4) 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 right to cancel under ■ CONC 11.1.1 R applies only to the initial service agreement.

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

(5) In this *rule*:

- (a) “initial service agreement” includes the opening of a bank account or the making of a *credit-token agreement*; and
- (b) “operations” includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or store card.

11.1.3 G Section 66A of the CCA (right to withdraw) does not apply to an agreement for *credit* exceeding £60,260 (unless the agreement is a *residential renovation agreement*), an agreement secured on *land*, a *restricted-use credit agreement* to finance the purchase of *land* or an agreement for a bridging loan in connection with the purchase of *land*. Section 67 of the CCA (cancellable agreements) applies to *regulated credit agreements* (apart from agreements secured on *land*, *restricted-use credit agreements* to finance the purchase of *land* or agreements for a bridging loan in connection with the purchase of *land* and agreements covered by section 66A) and *consumer hire agreements* (to which this section does not apply) in the circumstances specified in the section. A *customer* with a right to cancel under section 67 of the CCA may choose to cancel the agreement under that section or under ■ CONC 11.1.1 R.

11.1.4 G 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 *customer* as those in this chapter, unless the differences are clearly explained.

Beginning of cancellation period

11.1.5 R The cancellation period begins:

- (1) either from the day the *distance contract* is made; or
- (2) from the day on which the *consumer* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under ■ CONC 2.7.6 R or under ■ CONC 2.7.12 R, if that is later than the date referred to in (1) above.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to distance contracts]

Disclosing the right to cancel

11.1.6

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- (1) The *firm* must disclose to a *consumer* in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract to which the right to cancel applies under ■ CONC 11.1.1 R, and in a *durable medium*, the existence of the right to cancel, 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 should be sent.
- (2) This *rule* applies only where a *consumer* would not otherwise receive the information in (1) under a *rule* in this sourcebook from the *firm* (such as under ■ CONC 2.7.2 R to ■ CONC 2.7.5 R (the distance marketing disclosure rules)).

Exercising the right to cancel

11.1.7

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If a *consumer* exercises the right to cancel the *consumer* must, before the expiry of the cancellation period, 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 cancellation period expires.

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

11.1.8

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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

11.1.9

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The *firm* must make adequate records concerning the exercise of a right to cancel and retain them for at least three years.

Effects of cancellation

11.1.10

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

11.1.11

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- (1) When a *consumer* exercises the right to cancel the *consumer* may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. 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;
 - (b) in any case be such that it could be construed as a penalty.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to distance contracts]

(2) The *firm* may not require a *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 and, in conformity with the distance marketing disclosure *rules* (■ CONC 2.7.2 R to ■ CONC 2.7.5 R). However, in no case may the *firm* require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the *consumer's* prior request.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to distance contracts]

Firm's obligations on cancellation

11.1.12 R The *firm* must, without undue delay and within 30 calendar days, return to the *consumer* any sums it has received from the *consumer* except for any amount that the *consumer* may be required to pay under ■ CONC 11.1.11 R. This period begins from the day on which the *firm* receives the notification of cancellation.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to distance contracts]

Consumer's obligations on cancellation

11.1.13 R The *firm* is entitled to receive from the *consumer* any sums or property the *consumer* has received from the *firm* without any undue delay and no later than within 30 calendar days. This period begins from the day on which the *consumer* dispatches the notification of cancellation.

[Note: article 7(5) of the *Distance Marketing Directive* in relation to distance contracts]

11.1.14 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.

11.2 Right of withdrawal: P2P agreements

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 11.2: see ■ CONC TP 4.6]

Application

- 11.2.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement*.
- 11.2.2 **R** This section does not apply to a *P2P agreement* under which *credit* exceeding £60,260 is, was or would be provided unless the agreement is a *residential renovation agreement*.

Right to cancel

- 11.2.3 **R** A *firm* must ensure that a *P2P agreement* that the *firm* makes available to a *borrower* and a *lender* provides for the following contractual rights and obligations and procedure for and effect of the exercise of those rights and obligations:
- (1) a right for the *borrower*:
 - (a) to withdraw from the agreement ("the right of withdrawal");
 - (b) without giving any reason; and
 - (c) by giving oral or written notice of the withdrawal to the *firm* (on behalf of the *lender*) before the end of the period of 14 days:
 - (i) beginning with the day after the *P2P agreement* is made; or
 - (ii) beginning with the day on which the *borrower* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under ■ CONC 4.3, if that is later than the date in (1);
 - (2) where written notice is given of the right of withdrawal by *electronic means*:
 - (a) it may be sent to the number or electronic address specified for the purpose in the agreement; and
 - (b) where it is so sent, it is to be regarded as having been received by the *firm* (on behalf of the *lender*) at the time it is sent;
 - (3) where written notice is given of the right of withdrawal, other than by *electronic means*:

- (a) it may be sent by post to, or left at, the postal address specified for the purpose in the agreement; and
 - (b) where it is sent by post to that address, it is to be regarded as having been received by the *firm* (on behalf of the *lender*) at the time of posting;
- (4) where the *borrower* exercises the right of withdrawal from a *P2P agreement*:
- (a) the *borrower* must repay to the *firm* (on behalf of the *lender*) or the *lender* any *credit* provided and the interest accrued on it (at the rate provided for under the agreement); but
 - (b) the *borrower* is not liable to pay to the *firm* (on behalf of the *lender*) or the *lender* any compensation, fees or charges, except any non-returnable charges paid by the *lender* or by the *firm* (on behalf of the *lender*) to a public administrative body;
- (5) the effect of exercising the right to withdraw is that the obligations of the *borrower* under the agreement cease to have effect except for the obligation in (4); and
- (6) where an amount is payable where (4) applies, the agreement may provide that the amount must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period the agreement may provide that the sum may be recovered from the *borrower* as a debt).

11.2.4

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A *firm* must ensure that a *P2P agreement* that it makes available to a *lender* and a *borrower* does not provide for any other obligations of the *borrower* in connection with the exercise of the rights in ■ CONC 11.2.3 R.

