

Chapter 11

Cancellation

11.1 The right to cancel

11.1.1 **R** 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 **R**

- (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.

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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.

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

Beginning of cancellation period

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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]

11.1.6

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Disclosing the right to cancel

- (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)).

11.1.7

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Exercising the right to cancel

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]

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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.

11.1.9

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Record keeping

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

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Effects of cancellation

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.