

Chapter 1

Application and purpose

1.3 General application: where?

Location of the customer

- 1.3.1 **R** Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *home finance activities* is, at the time that the *home finance activity* is carried on, resident in:
- (1) the *United Kingdom*; or

(2) an *EEA State*, where the activity is carried on:

(a) from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*; and

(b) in respect of a *regulated mortgage contract* entered into before *IP completion day*.
- 1.3.1A **R** [deleted]
- 1.3.1B **R** [deleted]
- 1.3.1C **G** [deleted]

Financial Promotion

- 1.3.2 **R** The territorial scope of **MCOB 3A** Financial promotions and communications with customers) is set out in MCOB 3A.1.13R to MCOB 3A.1.16R (Territorial scope and Exceptions to territorial scope), rather than in this section.
- 1.3.3 **R** [deleted]
- 1.3.4 **R** [deleted]

Distance contracts with retail customers

- 1.3.5 **G** Parts of *MCOB* relate to *distance contracts* (or *distance mortgage mediation contracts* and *distance home purchase mediation contracts*) with *consumers*. These expressions are derived from the *Distance Marketing Directive*, and the following paragraphs provide some *guidance* to *firms* on their meaning:
- (1) *consumer*

The *rules* which implemented the *Distance Marketing Directive* apply for *distance contracts* with 'any natural person who is acting for purposes which are outside his trade, business or profession', for which the term '*consumer*' has been adopted. Examples of individuals who would be regarded as *consumers* include:

- (a) personal representatives, including executors, unless they are acting in a professional capacity, for example a solicitor acting as executor; or
- (b) private individuals acting in personal or other family circumstances, for example, a trustee of a family trust.

(2) *Distance contract*

To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication up to and including the time at which the contract is concluded. So:

- (a) the *firm* must have put in place facilities designed to enable a *customer* to deal with it exclusively at a distance, such as facilities for a *customer* to deal with it purely by post, telephone, fax or the Internet. If a *firm* normally operates face-to-face and has no facilities in place enabling a *customer* to deal with it customarily by distance means, the *rules* which implemented the *Distance Marketing Directive* will not apply. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*; and
- (b) there must have been no simultaneous physical presence of the *firm* and the other party to the contract throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the Internet, through a telemarketing operation, or by post will normally be *distance contracts*.

Use of intermediaries

1.3.6

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The mere fact that an intermediary (acting for the supplier or for the *consumer*) is involved, does not make the sale of a financial product or service a *distance contract*. There will not be a *distance contract* if there has been simultaneous physical presence of the intermediary and the *consumer* at some stage in the offer, negotiation and conclusion of the contract.