

Cancellation of consumer contracts

Members should be aware that all contracts entered into with consumers (with some limited exceptions) will fall within Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013). Whilst the information appears to be primarily aimed at traders, the legislation does in fact affect contracts for professional services.

All members providing services directly to clients should be clear that in the vast majority of cases, the contract must provide for a 14-day cancellation period. So, if your client signs the contract at home on the Friday and wants you to start work on the Monday, be aware – they can subsequently terminate the contract. If your client wishes work to commence before the 14-day cancellation period has ended, it may be wise to either post it for signature or ask them to sign in your own offices.

The Institute's *Conditions of Engagement* includes a relevant provision, including a section at the end for signing if the client wishes to invoke the right to cancel. Cancellation would have to be within the statutory 14-day cooling off period, which the Institute's provision includes with wording directly from the Regulations.

On the basis that there must be a 14 day cancellation provision in such contracts, members may wish to consider taking the following steps in respect of new projects:

1) Start the work only after the 14 day cancellation period has ended. With this safeguard, members will avoid a situation of undertaking (and potentially completing) the work and then having their contract terminated with no method of obtaining payment.

2) As cancellation rights cannot be waived, should your client request that you start the work before the cancellation period has ended, a written and signed instruction to commence within the time period should be obtained. The instruction should preferably include precise dates and agreement to the payment of any fees and reasonable costs incurred in line with Section 36 of the Act.

3) Any member considering using a contract that does not include a 14 day cancellation provision, should ensure that appropriate wording is incorporated into the contract prior to signing. The cancellation provision in the CIAT *Conditions of Engagement* would be a good starting point for members to refer to when considering appropriate wording, but as always, care must be taken with any bespoke or altered contract, and legal advice may well be necessary.

Of critical importance to all members is the provision within the Act at section 31 which extends the cancellation period to up to 12 months and 14 days if the consumer has not been notified and provided with details of their rights and the cancellation period required by the Act. The potential adverse financial consequences on the member (or firm) of not informing the consumer of their cancellation rights could be significant in the event that the consumer ends their contract within this extended period (which they would be entitled to do).

When looking to incorporate a cancellation clause into a contract, members should first consider section 6 of the Act which sets out the exceptions and in particular clause 6(e) which states that the Regulation does not apply to “the construction of new buildings, or the construction of substantially new buildings by the conversion of existing buildings”.

More information can be found at the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/429300/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf

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