Insurance Act 2015

2015 CHAPTER 4

PART 5

GOOD FAITH AND CONTRACTING OUT

Good faith

14 Good faith

(1) Any rule of law permitting a party to a contract of insurance to avoid the contract on the ground that the utmost good faith has not been observed by the other party is abolished.

(2) Any rule of law to the effect that a contract of insurance is a contract based on the utmost good faith is modified to the extent required by the provisions of this Act and the Consumer Insurance (Disclosure and Representations) Act 2012.

(3) Accordingly—

(a) in section 17 of the Marine Insurance Act 1906 (marine insurance contracts are contracts of the utmost good faith), the words from “, and” to the end are omitted, and

(b) the application of that section (as so amended) is subject to the provisions of this Act and the Consumer Insurance (Disclosure and Representations) Act 2012.

(4) In section 2 of the Consumer Insurance (Disclosure and Representations) Act 2012 (disclosure and representations before contract or variation), subsection (5) is omitted.

Contracting out

15 Contracting out: consumer insurance contracts

(1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects any of the matters provided for in Part

3 or 4 of this Act than the consumer would be in by virtue of the provisions of those Parts (so far as relating to consumer insurance contracts) is to that extent of no effect.

(2) In subsection (1) references to a contract include a variation.

(3) This section does not apply in relation to a contract for the settlement of a claim arising under a consumer insurance contract.

16 Contracting out: non-consumer insurance contracts

(1) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects representations to which section 9 applies than the insured would be in by virtue of that section is to that extent of no effect.

(2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in Part 2, 3 or 4 of this Act than the insured would be in by virtue of the provisions of those Parts (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.

(3) In this section references to a contract include a variation.

(4) This section does not apply in relation to a contract for the settlement of a claim arising under a non-consumer insurance contract.

[F1 16A Contracting out of the implied term about payment of claims: consumer and non-consumer insurance contracts

(1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects any of the matters provided for in section 13A than the consumer would be in by virtue of the provisions of that section (so far as relating to consumer insurance contracts) is to that extent of no effect.

(2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects deliberate or reckless breaches of the term implied by section 13A than the insured would be in by virtue of that section is to that extent of no effect.

(3) For the purposes of subsection (2) a breach is deliberate or reckless if the insurer—
   (a) knew that it was in breach, or
   (b) did not care whether or not it was in breach.

(4) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in section 13A than the insured would be in by virtue of the provisions of that section (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.

(5) In this section references to a contract include a variation.

(6) This section does not apply in relation to a contract for the settlement of a claim arising under an insurance contract.]

Textual Amendments

F1 S. 16A inserted (4.5.2017) by Enterprise Act 2016 (c. 12), **ss. 29(1)**, 44(3) (with s. 44(3))

17 The transparency requirements

(1) In this section, "the disadvantageous term" means such a term as is mentioned in section 16(2) **[**[F2]or 16A(4)**]** .

(2) The insurer must take sufficient steps to draw the disadvantageous term to the insured's attention before the contract is entered into or the variation agreed.

(3) The disadvantageous term must be clear and unambiguous as to its effect.

(4) In determining whether the requirements of subsections (2) and (3) have been met, the characteristics of insured persons of the kind in question, and the circumstances of the transaction, are to be taken into account.

(5) The insured may not rely on any failure on the part of the insurer to meet the requirements of subsection (2) if the insured (or its agent) had actual knowledge of the disadvantageous term when the contract was entered into or the variation agreed.

Textual Amendments

F2 Words in s. 17(1) inserted (4.5.2017) by Enterprise Act 2016 (c. 12), **ss. 29(2)**, 44(3) (with s. 44(3))

18 Contracting out: group insurance contracts

(1) This section applies to a contract of insurance referred to in section 13(1)(a); and in this section—

"A" and "the Cs" have the same meaning as in section 13,

"consumer C" means an individual who is one of the Cs, where the cover provided by the contract for that individual would have been a consumer insurance contract if entered into by that person rather than by A, and

"non-consumer C" means any of the Cs who is not a consumer C.

(2) A term of the contract of insurance, or any other contract, which puts a consumer C in a worse position as respects any matter dealt with in section 13 than that individual would be in by virtue of that section is to that extent of no effect.

(3) A term of the contract of insurance, or any other contract, which puts a non-consumer C in a worse position as respects any matter dealt with in section 13 than that person would be in by virtue of that section is to that extent of no effect, unless the requirements of section 17 have been met in relation to the term.

(4) Section 17 applies in relation to such a term as it applies to a term mentioned in section 16(2), with references to the insured being read as references to A rather than the non-consumer C.

(5) In this section references to a contract include a variation.

(6) This section does not apply in relation to a contract for the settlement of a claim arising under a contract of insurance to which this section applies.

Changes to legislation:
There are currently no known outstanding effects for the Insurance Act 2015, PART 5.