

SCHEDULES

SCHEDULE 1

Section 8(2).

INSURERS’ REMEDIES FOR QUALIFYING BREACHES

PART 1

CONTRACTS

General

- 1 This Part of this Schedule applies to qualifying breaches of the duty of fair presentation in relation to non-consumer insurance contracts (for variations to them, see Part 2).

Deliberate or reckless breaches

- 2 If a qualifying breach was deliberate or reckless, the insurer—
- (a) may avoid the contract and refuse all claims, and
 - (b) need not return any of the premiums paid.

Other breaches

- 3 Paragraphs 4 to 6 apply if a qualifying breach was neither deliberate nor reckless.
- 4 If, in the absence of the qualifying breach, the insurer would not have entered into the contract on any terms, the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid.
- 5 If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.
- 6 (1) In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.
- (2) In sub-paragraph (1), “reduce proportionately” means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph 5), where—

$$X = \frac{\text{Premium actually charged}}{\text{Higher premium}} \times 100$$

Status: This is the original version (as it was originally enacted).

PART 2

VARIATIONS

General

- 7 This Part of this Schedule applies to qualifying breaches of the duty of fair presentation in relation to variations to non-consumer insurance contracts.

Deliberate or reckless breaches

- 8 If a qualifying breach was deliberate or reckless, the insurer—
- (a) may by notice to the insured treat the contract as having been terminated with effect from the time when the variation was made, and
 - (b) need not return any of the premiums paid.

Other breaches

- 9 (1) This paragraph applies if—
- (a) a qualifying breach was neither deliberate nor reckless, and
 - (b) the total premium was increased or not changed as a result of the variation.
- (2) If, in the absence of the qualifying breach, the insurer would not have agreed to the variation on any terms, the insurer may treat the contract as if the variation was never made, but must in that event return any extra premium paid.
- (3) If sub-paragraph (2) does not apply—
- (a) if the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms if the insurer so requires, and
 - (b) paragraph 11 also applies if (in the case of an increased premium) the insurer would have increased the premium by more than it did, or (in the case of an unchanged premium) the insurer would have increased the premium.
- 10 (1) This paragraph applies if—
- (a) a qualifying breach was neither deliberate nor reckless, and
 - (b) the total premium was reduced as a result of the variation.
- (2) If, in the absence of the qualifying breach, the insurer would not have agreed to the variation on any terms, the insurer may treat the contract as if the variation was never made, and paragraph 11 also applies.
- (3) If sub-paragraph (2) does not apply—
- (a) if the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms if the insurer so requires, and
 - (b) paragraph 11 also applies if the insurer would have increased the premium, would not have reduced the premium, or would have reduced it by less than it did.

Proportionate reduction

- 11 (1) If this paragraph applies, the insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation.
- (2) In sub-paragraph (1), “reduce proportionately” means that the insurer need pay on the claim only Y% of what it would otherwise have been under an obligation to pay under the terms of the contract (whether on the original terms, or as varied, or under the different terms provided for by virtue of paragraph 9(3)(a) or 10(3)(a), as the case may be), where—

$$Y = \frac{\text{Total premium actually charged}}{P} \times 100$$

- (3) In the formula in sub-paragraph (2), “P”—
- (a) in a paragraph 9(3)(b) case, is the total premium the insurer would have charged,
 - (b) in a paragraph 10(2) case, is the original premium,
 - (c) in a paragraph 10(3)(b) case, is the original premium if the insurer would not have changed it, and otherwise the increased or (as the case may be) reduced total premium the insurer would have charged.

PART 3

SUPPLEMENTARY

Relationship with section 84 of the Marine Insurance Act 1906

- 12 Section 84 of the Marine Insurance Act 1906 (return of premium for failure of consideration) is to be read subject to the provisions of this Schedule in relation to contracts of marine insurance which are non-consumer insurance contracts.