

Status: Point in time view as at 06/04/2013.

Changes to legislation: There are currently no known outstanding effects for the Consumer Insurance (Disclosure and Representations) Act 2012. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 4(3).

INSURERS' REMEDIES FOR QUALIFYING MISREPRESENTATIONS

PART 1

CONTRACTS

General

- 1 This Part of this Schedule applies in relation to qualifying misrepresentations made in connection with consumer insurance contracts (for variations to them, see Part 2).

Commencement Information

I1 Sch. 1 para. 1 in force at 6.4.2013 by S.I. 2013/450, art. 2

Deliberate or reckless misrepresentations

- 2 If a qualifying misrepresentation 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, except to the extent (if any) that it would be unfair to the consumer to retain them.

Commencement Information

I2 Sch. 1 para. 2 in force at 6.4.2013 by S.I. 2013/450, art. 2

Careless misrepresentations—claims

- 3 If the qualifying misrepresentation was careless, paragraphs 4 to 8 apply in relation to any claim.

Commencement Information

I3 Sch. 1 para. 3 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 4 The insurer's remedies are based on what it would have done if the consumer had complied with the duty set out in section 2(2), and paragraphs 5 to 8 are to be read accordingly.

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Commencement Information

I4 Sch. 1 para. 4 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 5 If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid.

Commencement Information

I5 Sch. 1 para. 5 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 6 If the insurer would have entered into the consumer insurance contract, but on different terms (excluding 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.

Commencement Information

I6 Sch. 1 para. 6 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 7 In addition, if the insurer would have entered into the consumer insurance 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.

Commencement Information

I7 Sch. 1 para. 7 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 8 “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 6), where—

Commencement Information

I8 Sch. 1 para. 8 in force at 6.4.2013 by S.I. 2013/450, art. 2

Careless misrepresentations—treatment of contract for the future

- 9 (1) This paragraph—
 (a) applies if the qualifying misrepresentation was careless, but
 (b) does not relate to any outstanding claim.
- (2) Paragraphs 5 and 6 (as read with paragraph 4) apply as they apply where a claim has been made.
- (3) Paragraph 7 (as read with paragraph 4) applies in relation to a claim yet to be made as it applies in relation to a claim which has been made.

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- (4) If by virtue of sub-paragraph (2) or (3), the insurer would have either (or both) of the rights conferred by paragraph 6 or 7, the insurer may—
 - (a) give notice to that effect to the consumer, or
 - (b) terminate the contract by giving reasonable notice to the consumer.
- (5) But the insurer may not terminate a contract under sub-paragraph (4)(b) if it is wholly or mainly one of life insurance.
- (6) If the insurer gives notice to the consumer under sub-paragraph (4)(a), the consumer may terminate the contract by giving reasonable notice to the insurer.
- (7) If either party terminates the contract under this paragraph, the insurer must refund any premiums paid for the terminated cover in respect of the balance of the contract term.
- (8) Termination of the contract under this paragraph does not affect the treatment of any claim arising under the contract in the period before termination.
- (9) Nothing in this paragraph affects any contractual right to terminate the contract.

Commencement Information

I9 [Sch. 1 para. 9](#) in force at 6.4.2013 by [S.I. 2013/450, art. 2](#)

PART 2

VARIATIONS

- 10 This Part of this Schedule applies in relation to qualifying misrepresentations made in connection with variations to consumer insurance contracts.

Commencement Information

I10 [Sch. 1 para. 10](#) in force at 6.4.2013 by [S.I. 2013/450, art. 2](#)

- 11 If the subject-matter of a variation can reasonably be treated separately from the subject-matter of the rest of the contract, Part 1 of this Schedule applies (with any necessary modifications) in relation to the variation as it applies in relation to a contract.

Commencement Information

I11 [Sch. 1 para. 11](#) in force at 6.4.2013 by [S.I. 2013/450, art. 2](#)

- 12 Otherwise, Part 1 applies (with any necessary modifications) as if the qualifying misrepresentation had been made in relation to the whole contract (for this purpose treated as including the variation) rather than merely in relation to the variation.

Commencement Information

I12 [Sch. 1 para. 12](#) in force at 6.4.2013 by [S.I. 2013/450, art. 2](#)

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PART 3

MODIFICATIONS FOR GROUP INSURANCE

- 13 Part 1 is to be read subject to the following modifications in relation to cover provided for C under a group insurance contract as mentioned in section 7 (and in this Part “A” and “C” mean the same as in that section).

Commencement Information

I13 Sch. 1 para. 13 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 14 References to the consumer insurance contract (however described) are to that part of the contract which provides for cover for C.

Commencement Information

I14 Sch. 1 para. 14 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 15 References to claims and premiums are to claims and premiums in relation to that cover.

Commencement Information

I15 Sch. 1 para. 15 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 16 The reference to the consumer is to be read—
- (a) in paragraph 2(b), as a reference to whoever paid the premiums, or the part of them that related to the cover for C,
 - (b) in paragraph 9(4) and (6), as a reference to A.

Commencement Information

I16 Sch. 1 para. 16 in force at 6.4.2013 by S.I. 2013/450, art. 2

PART 4

SUPPLEMENTARY

- 17 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 consumer insurance contracts.

Commencement Information

I17 Sch. 1 para. 17 in force at 6.4.2013 by S.I. 2013/450, art. 2

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SCHEDULE 2

Section 9.

RULES FOR DETERMINING STATUS OF AGENTS

- 1 This Schedule sets out rules for determining, for the purposes of this Act only, whether an agent through whom a consumer insurance contract is effected is acting as the agent of the consumer or of the insurer.

Commencement Information

I18 Sch. 2 para. 1 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 2 The agent is to be taken as the insurer's agent in each of the following cases—
- (a) when the agent does something in the agent's capacity as the appointed representative of the insurer for the purposes of the Financial Services and Markets Act 2000 (see section 39 of that Act),
 - (b) when the agent collects information from the consumer, if the insurer had given the agent express authority to do so as the insurer's agent,
 - (c) when the agent enters into the contract as the insurer's agent, if the insurer had given the agent express authority to do so.

Commencement Information

I19 Sch. 2 para. 2 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 3
- (1) In any other case, it is to be presumed that the agent is acting as the consumer's agent unless, in the light of all the relevant circumstances, it appears that the agent is acting as the insurer's agent.
 - (2) Some factors which may be relevant are set out below.
 - (3) Examples of factors which may tend to confirm that the agent is acting for the consumer are—
 - (a) the agent undertakes to give impartial advice to the consumer,
 - (b) the agent undertakes to conduct a fair analysis of the market,
 - (c) the consumer pays the agent a fee.
 - (4) Examples of factors which may tend to show that the agent is acting for the insurer are—
 - (a) the agent places insurance of the type in question with only one of the insurers who provide insurance of that type,
 - (b) the agent is under a contractual obligation which has the effect of restricting the number of insurers with whom the agent places insurance of the type in question,
 - (c) the insurer provides insurance of the type in question through only a small proportion of the agents who deal in that type of insurance,
 - (d) the insurer permits the agent to use the insurer's name in providing the agent's services,
 - (e) the insurance in question is marketed under the name of the agent,
 - (f) the insurer asks the agent to solicit the consumer's custom.

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Commencement Information

I20 Sch. 2 para. 3 in force at 6.4.2013 by S.I. 2013/450, art. 2

- 4 (1) If it appears to the Treasury that the list of factors in sub-paragraph (3) or (4) of paragraph 3 has become outdated, the Treasury may by order made by statutory instrument bring the list up to date by amending the sub-paragraph so as to add, omit or alter any factor.
- (2) A statutory instrument containing an order under sub-paragraph (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Commencement Information

I21 Sch. 2 para. 4 in force at 6.4.2013 by S.I. 2013/450, art. 2

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