

INSURANCE ACT 2015

EXPLANATORY NOTES

SUMMARY

Insurance contract law

The duty of fair presentation

14. The Act updates and replaces the existing duty on non-consumer policyholders to disclose risk information to insurers before entering into an insurance contract. It redefines its boundaries under the banner of the “duty of fair presentation”, effectively requiring policyholders to undertake a reasonable search of information available to them, and defining what a policyholder knows or ought to know. The Act also requires insurers to play a more active role, asking questions in some circumstances. Importantly, the Act introduces a new system of proportionate remedies where the duty has been breached. This replaces the existing single remedy of avoidance of the contract, except where the policyholder has breached the duty deliberately or recklessly.

Warranties and other terms

15. Under the current law, breach of a warranty in an insurance contract discharges the insurer from liability completely from that point onwards, even if the breach is remedied. An insurer may also avoid liability even if the breached term would not have increased the risk of the type of loss occurring which was actually suffered. The Act abolishes “basis of the contract” clauses, which have the effect of converting pre-contractual information supplied to insurers into warranties. It also provides that the insurer’s liability will be suspended, rather than discharged, in the event of breach of warranty, so that the insurer is liable for valid claims which arise after a breach has been remedied. Further, it provides that non-compliance with a warranty or other term relating to a particular type of loss should not allow the insurer to escape liability for a different type of loss, on which the non-compliance could have had no effect.

Insurers’ remedies for fraudulent claims

16. The Act provides the insurer with clear statutory remedies when a policyholder submits a fraudulent claim. The main remedy in the Act is the one already established by the courts: if a claim is tainted by fraud, the policyholder forfeits the whole claim. The Act also addresses a current area of uncertainty: the insurer may refuse any claim arising after the fraudulent act. However, previous valid claims are unaffected.
17. The Act makes special provision for situations in which a member of a group insurance policy makes a fraudulent claim. Where this happens, the insurer will have a remedy against the fraudulent member but it will not affect the other members or the insurance policy as a whole.

Good faith

18. The Act removes the remedy of avoidance of the contract for breach of the duty of good faith in section 17 of the 1906 Act, and any equivalent common law rule.

Contracting out

19. The Act provides that, as far as it applies to consumer insurance contracts, an insurer will not be able to use a contractual term to put a consumer in a worse position than they would be in under the terms of the Act. For non-consumer insurance, the provisions of the Act are intended to provide default rules and parties are free to agree alternative regimes, provided that the insurer satisfies two transparency requirements.

Consequential amendments

20. The Act repeals sections 18, 19 and 20 of the 1906 Act. In addition, the Act abolishes any common law rule which has the same effect as these sections.
21. Section 152 of the Road Traffic Act 1988 and Article 98A of the [Road Traffic \(Northern Ireland\) Order 1981 \(S.I. 1981/154 \(N.I.\)\)](#) are amended by the Act because they relate to insurance companies avoiding motor insurance contracts where the insured has breached the duty of fair presentation.
22. The Act repeals sections 11(1) and 11(2) of CIDRA, which are superseded by amendments to the 1906 Act and the Road Traffic Act 1988.