

# **INSURANCE ACT 2015**

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## **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.

### ***Amendments to the Third Parties (Rights against Insurers) Act 2010***

23. The policy of the 2010 Act, like that of the 1930 Acts which it will repeal, is to enable payments of compensation by insurers of relevant wrongdoers to go to the victim rather than forming part of the assets available to the general creditors of the wrongdoer. This is achieved by a statutory transfer: the rights the policyholder has against the insurer are transferred to the victim. This enables the victim to recover direct from the insurer the insurance monies that would have been paid to the policyholder in respect of the victim's claim. Unlike the 1930 Acts, however, the 2010 Act does this without the victim having first to establish the liability of the policyholder, whether by legal proceedings or otherwise. The victim is the third party referred to in the title of the 1930 Acts and the 2010 Act.
24. There is no single term that can completely describe the circumstances in which a person should be subject to the 1930 Acts or the 2010 Act but the Commissions, in their joint 2001 Report, broadly endorsed the view of Bingham LJ that:  
  
"The legislative intention was, I think, that ... the provisions of the 1930 Act should apply upon an insured losing the effective power to enforce its own rights and dispose of its own assets.
25. The 1930 Acts and the 2010 Act each define the insured wrongdoers to whom they are to apply. The 2010 Act does so by listing in sections 4 to 7 the circumstances in which the insured wrongdoer is a "relevant person". These circumstances are of various types but they include all the principal forms of insolvency and some other situations, including some dissolutions, that may be, but are not always, related to insolvency. For example, a body corporate or unincorporated body which has been dissolved under specified provisions in the Companies Act 2006 is defined by the 2010 Act as a relevant person – so the 2010 Act will apply.<sup>2</sup> Such dissolutions may or may not follow insolvency. If a circumstance is not listed in sections 4 to 7, it will not be capable of triggering a transfer of rights under the 2010 Act.
26. Where a person who is a relevant person for the purposes of the 2010 Act is already subject to a liability to another person or becomes subject to such a liability later, his or her rights under a contract insuring that liability will be transferred to the person to whom the liability is owed.<sup>3</sup>

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<sup>2</sup> 2010 Act, s 6(1)(b).

<sup>3</sup> 2010 Act, s 1.

*These notes refer to the Insurance Act 2015 (c.4)  
which received Royal Assent on 12 February 2015*

27. The 2010 Act was, among other things, intended to address omissions from the 1930 Acts, in particular by providing for the wide variety of insolvency type procedures to which individuals, companies and other bodies may now be subject and which may adversely affect a third party. The intention was therefore that the 2010 Act should have a wider coverage than the 1930 Acts. However, while the 1930 Acts cover all forms of administration under the Insolvency Act 1986 and its Northern Ireland equivalent, the 2010 Act only covers administration pursuant to a court order. Additionally, the 2010 Act has not kept up to date with other developments in the field of insolvency, even though some of the new procedures fall within the 1930 Acts.<sup>4</sup> Further, whilst the 1930 Acts did not cover dissolution, the 2010 Act, while its scope is wider in this respect, still only covers a limited number of the possible forms of dissolution of bodies corporate and unincorporated bodies.<sup>5</sup>
28. The provisions in the Act address this by adding categories of administrations under the Insolvency Act 1986 and debt relief orders in Northern Ireland to the circumstances in which the 2010 Act applies; and by providing a means both of correcting other omissions and accommodating future changes in the law, where the 2010 Act is not amended by the legislation in question, without the need for primary legislation.
29. The inclusion of a power to change the circumstances in which the 2010 Act is to apply by making regulations will give effect to a recommendation made by the Commissions in their 2001 joint Report, which was not implemented in the 2010 Act (other than, in effect, in relation to Northern Ireland).<sup>6</sup>

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<sup>4</sup> See, for example, energy administration orders (Energy Act 2004, ss 154-171) and railway administration orders (Railways Act 1993, schedule 6, para 20).

<sup>5</sup> Companies Act 2006, ss 1000, 1001 and 1003.

<sup>6</sup> See cl 18 of the draft Bill annexed to the 2001 joint Report (Law Com No 272; Scot Law Com No 184) and 2010 Act, s 19.