

INSURANCE ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Warranties and Other Terms

Section 10: Breach of warranty

85. **Section 10** replaces the existing remedy for breach of a warranty in an insurance contract, which is contained in section 33(3) of the 1906 Act. Under that section, the insurer's liability under the contract is completely discharged from the point of breach. Section 34(2) makes clear that remedying a breach of warranty does not change this. Sections 10(1) and 10(7) repeal these existing statutory rules, and any common law equivalent.
86. However, the Act does not make any change to the definition of warranty. Warranties are defined in section 33(1) of the 1906 Act with regard to marine warranties, and the common law has developed in parallel in regard to other types of insurance. A warranty "must be exactly complied with, whether material to the risk or not".¹
87. The effect of section 10(2) is that breach of warranty by an insured suspends the insurer's liability under the insurance contract from the time of the breach, until such time as the breach is remedied. The insurer will have no liability for anything which occurs, or which is attributable to something occurring, during the period of suspension.
88. **Section 10(4)(b)** makes explicit that the insurer will be liable for losses occurring after a breach has been remedied. It acknowledges, however, that some breaches of warranty cannot be remedied.
89. The "attributable to something happening" wording is intended to cater for the situation in which loss arises as a result of an event which occurred during the period of suspension, but is not actually suffered until after the breach has been "remedied".
90. Generally, a breach of warranty will be "remedied" where the insured "ceases to be in breach of warranty". This is set out in section 10(5)(b). However, some warranties require something to be done by an ascertainable time. If a deadline is missed, the insured could never cease to be in breach because the critical time for compliance has passed. Sections 10(5)(a) and 10(6) are intended to mean that this type of breach will be remedied if the warranty is ultimately complied with, albeit late.
91. **Section 10** applies to all express and implied warranties, including the implied marine warranties in sections 39, 40 and 41 of the 1906 Act.

¹ 1906 Act, s 33(3).