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

INSURANCE ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Warranties and Other Terms

Section 9: Warranties and representations

83. Under the current law, an insurer may add a declaration to a non-consumer insurance proposal form or policy stating that the insured warrants the accuracy of all the answers given, or that such answers form the "basis of the contract".[1] This has the legal effect of converting representations into warranties. The insurer is discharged from liability for claims if the insured made any misrepresentation, even if it was immaterial and did not induce the insurer to enter into the contract.

84. This section abolishes basis of the contract clauses in non-consumer insurance. Basis of the contract clauses in consumer insurance were abolished by section 6 of CIDRA. It remains possible for insurers to include specific warranties within their policies.

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".[2]

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".

---

1 *Dawsons Ltd v Bonnin* [1922] 2 AC 413, 1922 SC (HL) 156; *Genesis Housing Association Ltd v Liberty Syndicate Management Ltd for and on behalf of Liberty Syndicate 4472at Lloyd's* [2013] EWCA Civ 1173, [2013] WLR (D) 368.
2 1906 Act, s 33(3).

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.

Section 11: Terms not relevant to the actual loss

92. Section 11 applies to any warranty or other term which can be seen to relate to a particular type of loss, or the risk of loss at a particular time or in a particular place. In the event of non-compliance with such a term, it is intended that the insurer should not be able to rely on that non-compliance to escape liability unless the non-compliance could potentially have had some bearing on the risk of the loss which actually occurred.

93. Section 11(1) refers to contractual terms which, if complied with, "would tend to reduce the risk" of loss of a particular kind, or loss at a particular location or time. This is intended to enable an objective assessment of the "purpose" of the provision, by considering what sorts of loss might be less likely to occur as a consequence of the term being complied with.

94. Section 11(1) does not apply only to warranties and may catch other types of contractual provision such as conditions precedent or exclusion clauses – provided those terms relate to a particular type of loss or loss at a particular location or time. Section 11 does not apply to clauses which define the risk as a whole. This is expected to include, for example, a requirement that a property or vehicle is not to be used commercially.

95. If a loss occurs and a contractual term to which section 11 applies has not been complied with, sections 11(2) and 11(3) mean that the insurer cannot rely on that non-compliance to avoid or limit its liability for the loss, if the insured shows that the non-compliance could not have increased the risk of the loss which actually occurred in the circumstances in which it actually occurred. For example, where a property has been damaged by flooding, it is expected that an insured could show that a failure to use the required type of lock on a window could not have increased the risk of that loss. In this case the insurer should pay out on the flood claim.

96. A direct causal link between the breach and the ultimate loss is not required. That is, the relevant test is not whether the non-compliance actually caused or contributed to the loss which has been suffered.

97. Section 11(4) provides that sections 10 and 11 may apply together. This will only arise where the relevant term is found to be a warranty, because section 10 only applies to warranties.