

INSURANCE ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: General

Schedule 1: Insurer's remedies for qualifying breaches

Part 1: Contracts

153. [Part 1](#) of Schedule 1 sets out the remedies available for qualifying breaches of the duty of fair presentation in relation to non-consumer insurance contracts. This includes breaches of that duty in relation to renewals.

Deliberate or reckless breaches

154. [Paragraph 2](#) specifies the remedies for qualifying breaches that are deliberate or reckless, as defined in section 8. The insurer is entitled to avoid the contract and retain premiums paid.

Other breaches

155. If the breach of the duty of fair presentation was not deliberate or reckless, the remedy is based on what the insurer would have done if the insured had not made the qualifying breach; that is, if the insured had made a fair presentation of the risk.
156. Under paragraph 4, where an insurer would have declined the risk altogether, the policy may be avoided, the claim refused and the premiums returned.
157. [Paragraphs 5](#) and [6](#) set out the position where the insurer would have contracted on different terms. If the different terms do not relate to the premium, paragraph 5 provides that the insurer can treat the contract as having been entered into on those terms. Thus if the insurer would have included an exemption clause or imposed an excess, the claim would be treated as if the contract included that exemption clause or excess.
158. Where the insurer would have charged a higher premium, paragraph 6 allows the insurer to reduce the claim proportionately. The formula for calculating the reduction is contained in paragraph 6(2). For example, if an insurer only charged £10,000 but would have charged £15,000 had the insured made a fair presentation, the insurer is entitled to reduce the amount to be paid on a claim by a third.
159. In some cases, both paragraphs 5 and 6 will apply. If the insurer would have entered the contract on different terms and would have charged a higher premium, those alternative terms may be applied to the contract and, in addition, the claim may be reduced proportionately.