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 7: General

Schedule 1: Insurer's remedies for qualifying breaches

Part 2: Variations

160. Part 2 of Schedule 1 sets out the remedies available for qualifying breaches of the duty of fair presentation made when an insurance contract is being varied.

Deliberate or reckless breaches

161. Paragraph 8 specifies the remedies for qualifying breaches that are deliberate or reckless in the context of variations. Under paragraph 8(a), the insurer is entitled to treat the contract as having been terminated with effect from the time the variation was made. Under paragraph 8(b), the insurer need not return the premiums paid.

Other breaches

162. 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 had the insured made a fair presentation of the additional or changed risk on variation.

163. The Act makes a distinction between variations involving a reduction in premium (paragraph 10) and all other variations (that is, where the premium was increased, or not changed, as a result of the variation) (paragraph 9). This is intended to reflect the fact that, where the overall premium is reduced, the overall bargain between the parties is affected. The variation therefore goes to the heart of the insurance policy.

164. In either case, if the insurer would not have agreed to the variation on any terms, the insurer may treat the contract as if the variation was never made. If the premium was increased, the insurer must return the additional premium paid for the variation (paragraph 9(2)). If the premium was reduced, the insurer may reduce proportionately the amount to be paid on claims arising out of events after the variation (paragraphs 10(2) and 11).

165. Again, in either case, if the insurer would have included additional terms relating to the variation (for example, a warranty relating to the new risk), the insurer may treat the variation as if it contained those terms (paragraphs 9(3)(a) and 10(3)(a)).

166. If the insurer would have charged a different premium for the variation, or would not have changed the premium when in fact it increased or reduced it, the amount to be paid on claims arising out of events occurring after the variation may be reduced in proportion to the premium that the insurer would have charged (paragraphs 9(3)(b) and 10(3)(b)). Paragraph 11(3) makes further provision about the formula, depending on whether the insurer increased or reduced the premium or did not change it.