

INSURANCE ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: General

Section 21: Provision consequential on Part 2

142. This section amends or repeals:
- a) the Marine Insurance Act 1906, sections 18, 19 and 20;
 - b) the Road Traffic Act 1988, section 152;
 - c) [Road Traffic \(Northern Ireland\) Order 1981 \(S.I. 1981/154 \(N.I.\)\)](#), Article 98A;
and
 - d) the Consumer Insurance (Disclosure and Representations) Act 2012, section 11.

Marine Insurance Act 1906, sections 18, 19 and 20

143. [Part 2](#) of the Act now provides the content of the duty imposed on the non-consumer insured in the pre-contractual phase of the relationship between insurer and insured. Section 21(2) therefore repeals sections 18 to 20 of the 1906 Act, which currently govern the pre-contractual relationship between insured and insurer. The 1906 Act applies directly to marine insurance but it has also been held to be an authoritative statement of common law principles to be applied to non-marine insurance contracts. Therefore, section 21(3) abolishes any rule of law to the same effect as those statutory provisions.
144. The combined effect of the relevant provisions of CIDRA and this Act is to replace sections 18, 19 and 20 of the Marine Insurance Act 1906.

Road Traffic Act 1988, section 152

145. [Section 21\(4\)](#) amends section 152 of the Road Traffic Act 1988 (RTA). The RTA provides for a scheme of compulsory motor insurance by which motor insurers generally have an obligation to satisfy judgments obtained by third parties, even if the insured has breached the insurance contract. However, there is a limited exception in section 152(2) of the RTA, by which an insurer may obtain a declaration that it is entitled to avoid a policy because the insured has made a non-disclosure or misrepresentation. The effect of this section is much more limited than first appears. Under an agreement between the Motor Insurance Bureau and the government, insurers have undertaken to ensure that the third party is compensated.
146. The amendments to this section made by these provisions mean that an insurer is only entitled to avoid a non-consumer insurance policy under section 152(2) if it may avoid the policy under Part 2 of the Act.
147. [Section 21\(5\)](#) amends the equivalent provisions for Northern Ireland.

Consumer Insurance (Disclosure and Representations) Act 2012

148. As a result of the amendments to the 1906 Act and the RTA 1988 set out in section 21, sections 11(1) and 11(2) of CIDRA, which deal with the points in relation to consumer insurance, are now superseded and are repealed by section 21(6).

Section 22: Application etc of Parts 2 to 5

149. Sections 22(1) to 22(3) confirm that the provisions of the Act relating to fair presentation and good faith apply only to insurance contracts entered into after the end of the period of 18 months from the Act's entry into force, and to variations made after that same time period, to contracts entered into at any time. The provisions on warranties and other terms, and the remedies for fraudulent claims, apply only in relation to contracts made more than 18 months from the Act's entry into force, and variations to such contracts.
150. Section 22(4) provides that in general references in Parts 2 to 5 of the Act to something being done by or in relation to the insurer or the insured include its being done by or in relation to that person's agent.

Section 23: Extent, commencement and short title

151. Section 23(1) provides that the Act extends to the whole of the United Kingdom, apart from the consequential provision in section 21(4), which does not extend to Northern Ireland, and section 21(5), which extends only to Northern Ireland.
152. Sections 23(2) to 23(4) deal with commencement and are explained at the end of this document.

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.

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.

Part 3: Supplementary

167. Section 84 of the 1906 Act sets out an insurer's duties to return premiums. Section 84(3) (a) states that where the policy is avoided by the insurer from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured. Under paragraph 12, this is to be read subject to the provisions of Schedule 1, which allows the insurer to retain premiums for deliberate or reckless breaches of the duty of fair presentation.

Schedule 2: Rights of third parties against insurers: relevant insured persons

Debt relief orders in Northern Ireland

168. [Paragraph 2](#) adds debt relief orders (“DRO”) in Northern Ireland to the list of circumstances in which an individual is a relevant person for the purposes of the 2010 Act.¹

Administration

169. An administrator may be appointed in three ways: by the court; by the holder of a floating charge; and by the company or its directors.² Under the 2010 Act a company is a relevant person if it is subject to an administration order,³ but the 1930 Acts apply if a company enters administration, irrespective of whether there is an administration order in place.⁴ Paragraph 3 amends section 6 of the 2010 Act so that it includes all forms of administration under schedule B1 of the Insolvency Act 1986 and the equivalent legislation in Northern Ireland.⁵

Transitional cases

170. [Paragraph 5](#) inserts a new paragraph 1A into Schedule 3 to the 2010 Act. The new paragraph describes some additional categories of relevant person for the purpose of the 2010 Act. These categories will catch people who fell within the 1930 Acts but do not fall within sections 4 to 7 of the 2010 Act. As these additional cases refer back to the circumstances in which the 1930 Acts apply, new paragraph 1A(7) provides that the insured is only a relevant person if the liability was insured at the relevant time.⁶

Interpretation

171. [Paragraph 6](#) inserts a new section 19A into the 2010 Act. The new section ensures that, subject to any contrary intention, references to enactments in the provisions of the 2010 Act specified in the new section 19A(1) are to be read as including those enactments as amended, extended or applied at any time, including in the future. That is intended to help to secure that the definition of a relevant person brings within the 2010 Act cases involving an insured person subject to a procedure described in sections 4 to 7, whenever it occurred. In particular, it is intended to help those sections to remain up to date if and when changes are made in the future to insolvency legislation and to legislation relating to bodies corporate and unincorporated bodies.

¹ A DRO lasts for 12 months, during which creditors named in it cannot take any action to recover their money without permission from the court. At the end of the 12 months the person subject to the DRO will, provided his or her circumstances have not changed, be freed from all debts included in the DRO.

² Insolvency Act 1986, schedule B1, paragraph 2.

³ Section 6(2)(b).

⁴ See section 1(1)(b) of the 1930 Acts.

⁵ [Insolvency \(Northern Ireland\) Order 1989 \(S.I. 1989/2405 \(N.I. 19\)\)](#), Schedule B1.

⁶ Cf. the opening words of section 1(1) of the 1930 Acts.