

# Insurance Contracts Bill

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Make provision for a duty of fair presentation in relation to non-consumer insurance contracts and for remedies for breach of that duty; to amend the law relating to representations and warranties in connection with non-consumer insurance contracts, and relating to breach of warranty and certain other terms in contracts of insurance; to make provision in connection with remedies for fraudulent insurance claims and late payment of insurance claims; to amend the law relating to the remedies for a breach of the duty of good faith in connection with contracts of insurance; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

MAIN DEFINITIONS

**1 Main definitions [j901]**

In this Act—

- “consumer insurance contract” has the same meaning as in the Consumer Insurance (Disclosure and Representations) Act 2012;
- “non-consumer insurance contract” means a contract of insurance that is not a consumer insurance contract;
- “insured” means the party to a contract of insurance who is the insured under the contract, or would be if the contract were entered into;
- “insurer” means the party to a contract of insurance who is the insurer under the contract, or would be if the contract were entered into;
- “the duty of fair presentation” means the duty imposed by section 3(1).

**PART 2**

## THE DUTY OF FAIR PRESENTATION

**2 Application and interpretation [j102a]**

- (1) This Part applies to non-consumer insurance contracts only.
- (2) This Part applies in relation to variations of non-consumer insurance contracts as it applies to contracts, but—
  - (a) references to the risk are to be read as references to changes in the risk relevant to the proposed variation, and
  - (b) references to the contract of insurance are to the variation.

**3 The duty of fair presentation [j700]**

- (1) Before a contract of insurance is entered into, the insured must make to the insurer a fair presentation of the risk.
- (2) The duty imposed by subsection (1) is referred to in this Act as “the duty of fair presentation”.
- (3) A fair presentation of the risk is one—
  - (a) which makes the disclosure required by subsection (4),
  - (b) which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and
  - (c) in which every material representation as to something the insured knows or ought to know is substantially correct; or, if as to something else (such as a matter of expectation or belief), is made in good faith.
- (4) The disclosure required is as follows, except as provided in subsection (5)—
  - (a) disclosure of every material circumstance which the insured knows or ought to know, or
  - (b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.
- (5) In the absence of enquiry, subsection (4) does not require the insured to disclose a circumstance if—
  - (a) it diminishes the risk,
  - (b) the insurer knows it,
  - (c) the insurer ought to know it,
  - (d) the insurer is presumed to know it,
  - (e) it is something as to which the insurer waives information, or
  - (f) it is covered by an express or implied warranty (and it is therefore superfluous to disclose it).

**4 Knowledge of insured [j702]**

- (1) Subsections (2) to (4) provide for what an insured knows or ought to know for the purposes of section 3(3)(c) and (4).
- (2) An insured who is an individual knows—
  - (a) what is known to the individual, and

- (b) what is known to one or more of the individuals who are responsible for the insured's insurance.
- (3) An insured who is not an individual knows only what is known to one or more of the individuals who are –
  - (a) part of the insured's senior management, or
  - (b) responsible for the insured's insurance.
- (4) Whether an individual or not, an insured ought to know what would have been revealed by a reasonable search of information available to the insured (whether within its own organisation or held by others, for example its agent).
- (5) In this section –
  - (a) an individual is responsible for the insured's insurance if the individual participates on behalf of the insured in the procurement of the insured's insurance (whether the individual does so as the insured's employee, or agent, or in any other capacity),
  - (b) "senior management" means those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised.

## 5 Knowledge of insurer [j703]

- (1) For the purposes of section 3(5)(b), an insurer knows something only if it is known to one or more of the individuals who participate on behalf of the insurer in the decision whether to take the risk, and if so on what terms (whether the individual does so as the insurer's employee, or agent, or in any other capacity).
- (2) For the purposes of section 3(5)(c), an insurer ought to know something only if –
  - (a) an employee or agent of the insurer knows it, and ought reasonably to have passed on the relevant information to an individual mentioned in subsection (1), or
  - (b) the relevant information is held by the insurer and is readily available to an individual mentioned in subsection (1).
- (3) For the purposes of section 3(5)(d), an insurer is presumed to know –
  - (a) things which are common knowledge, and
  - (b) things which an insurer offering insurance of the class in question to insureds in the field of activity in question would reasonably be expected to know in the ordinary course of business.

## 6 Knowledge: general [j704]

- (1) Subsections (2) and (3) apply for the purposes of sections 3 to 5.
- (2) References to an individual's knowledge include not only actual knowledge, but also matters which the individual suspected, and of which the individual would have had knowledge but for deliberately refraining from confirming them or enquiring about them.
- (3) References to an individual's knowledge do not include confidential information which the individual acquired through a business relationship with someone other than –
  - (a) the insured, in section 4, or

- (b) the insurer, in section 5.
- (4) Nothing in this Part affects the operation of any rule of law according to which knowledge of a fraud perpetrated by an individual (“F”) either on the insured or on the insurer is not to be attributed to the insured or to the insurer (respectively), where—
  - (a) if the fraud is on the insured, F is any of the individuals mentioned in section 4(2)(b) or (3), or
  - (b) if the fraud is on the insurer, F is any of the individuals mentioned in section 5(1).

## 7 Supplementary [j701]

- (1) A fair presentation need not be contained in only one document or oral presentation.
- (2) The term “circumstance” includes any communication made to, or information received by, the insured.
- (3) A circumstance or representation is material if it would influence the judgment of a prudent insurer in determining whether to take the risk and, if so, on what terms.
- (4) Examples of things which may be material circumstances are—
  - (a) special or unusual facts relating to the risk,
  - (b) any particular concerns which led the insured to seek insurance cover for the risk,
  - (c) anything which those concerned with the class of insurance and field of activity in question would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question.
- (5) A material representation is substantially correct if a prudent insurer would not consider the difference between what is represented and what is actually correct to be material.
- (6) A representation may be withdrawn or corrected before the contract of insurance is entered into.

## 8 Remedies for breach [j105]

- (1) The insurer has a remedy against the insured for a breach of the duty of fair presentation only if the insurer shows that, but for the breach, the insurer—
  - (a) would not have entered into the contract of insurance at all, or
  - (b) would have done so only on different terms.
- (2) The only such remedies are set out in the Schedule.
- (3) A breach for which the insurer has a remedy against the insured is referred to in this Act as a “qualifying breach”.
- (4) A qualifying breach is either—
  - (a) deliberate or reckless, or
  - (b) neither deliberate nor reckless.
- (5) A qualifying breach is deliberate or reckless if the insured —

- (a) knew that it was in breach of the duty of fair presentation, or
  - (b) did not care whether or not it was in breach of that duty.
- (6) It is for the insurer to show that a qualifying breach was deliberate or reckless.

### PART 3

#### WARRANTIES AND OTHER TERMS

#### 9 Warranties and representations [j501]

- (1) This section applies to representations made by the insured in connection with—
- (a) a proposed non-consumer insurance contract, or
  - (b) a proposed variation to a non-consumer insurance contract.
- (2) Such a representation is not capable of being converted into a warranty by means of any provision of the non-consumer insurance contract (or of the terms of the variation), or of any other contract (and whether by declaring the representation to form the basis of the contract or otherwise).

#### 10 Breach of warranty [j500]

- (1) Any rule of law that breach of a warranty (express or implied) in a contract of insurance results in the discharge of the insurer's liability under the contract is abolished.
- (2) Subject to section 11, an insurer has no liability under a contract of insurance in respect of any loss occurring, or attributable to something happening, after a warranty (express or implied) in the contract has been breached but before the breach has been remedied.
- (3) But subsection (2) does not apply if—
- (a) because of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract,
  - (b) compliance with the warranty is rendered unlawful by any subsequent law, or
  - (c) the insurer waives the breach of warranty.
- (4) Subsection (2) does not affect the liability of the insurer in respect of losses occurring, or attributable to something happening—
- (a) before the breach of warranty, or
  - (b) if the breach can be remedied, after it has been remedied.
- (5) For the purposes of this section, a breach of warranty is to be taken as remedied—
- (a) if the insured ceases to be in breach of the warranty, or
  - (b) in the case of a warranty to which subsection (6) applies, if the risk to which the warranty relates later becomes essentially the same as that originally contemplated by the parties.
- (6) This subsection applies to a warranty requiring that by an ascertainable time—
- (a) something is to be done, or not done,
  - (b) a condition is to be fulfilled, or
  - (c) something is, or is not, to be the case.

- (7) In the Marine Insurance Act 1906—
- (a) in section 33 (nature of warranty), in subsection (3), the second sentence is omitted,
  - (b) section 34 (when breach of warranty excused) is omitted.

## **11 Terms relevant to particular descriptions of loss [j502]**

- (1) This section applies to any term (express or implied) of a contract of insurance compliance with which would tend to reduce the risk of either or both of the following—
- (a) loss of a particular kind,
  - (b) loss at a particular location or time.
- (2) Breach of such a term may not be relied upon by the insurer to exclude, limit or discharge its liability for, respectively—
- (a) loss of a different kind,
  - (b) loss at a different location or time.
- (3) This section may apply in addition to section 10.

### **PART 4**

#### **OTHER MATTERS**

##### *Fraudulent claims*

## **12 Remedies for fraudulent claims [j201]**

- (1) If the insured makes a fraudulent claim under a contract of insurance—
- (a) the insurer is not liable to pay the claim,
  - (b) the insurer may recover from the insured any sums paid by the insurer to the insured in respect of the claim, and
  - (c) in addition, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.
- (2) If the insurer does treat the contract as having been terminated—
- (a) it may refuse all liability to the insured under the contract in respect of a relevant event occurring after the time of the fraudulent act, and
  - (b) it need not return any of the premiums paid under the contract.
- (3) Treating a contract as having been terminated under this section does not affect the rights and obligations of the parties to the contract with respect to a relevant event occurring before the time of the fraudulent act.
- (4) In subsections (2)(a) and (3), “relevant event” refers to whatever gives rise to the insurer’s liability under the contract (and includes, for example, the occurrence of a loss, the making of a claim, or the notification of a potential claim, depending on how the contract is written).

## **13 Remedies for fraudulent claims: group insurance [j303]**

- (1) This section applies where—

- (a) a contract of insurance is entered into by a person (“A”) in order to provide cover for one or more other persons (“C”),
  - (b) none of the Cs is a party to the contract,
  - (c) so far as the cover for each C is concerned, the contract would have been a consumer insurance contract if entered into by that C rather than by A, and
  - (d) a fraudulent claim is made under the contract by or on behalf of one of the Cs (“CF”).
- (2) Section 12 applies in relation to the claim as if the cover provided for CF were provided under an individual consumer insurance contract between the insurer and CF as the insured; and, accordingly –
- (a) the insurer’s rights under section 12 are exercisable only in relation to the cover provided for CF, and
  - (b) the exercise of any of those rights does not affect the cover provided under the contract for anyone else.
- (3) In its application by virtue of subsection (2), section 12 is subject to the following particular modifications –
- (a) the reference to “the insured” in subsection (1)(b) of that section, in respect of any particular sum paid by the insurer, is to whichever of A and CF the insurer paid the sum to; but if a sum was paid to A and passed on by A to CF, the reference is to CF,
  - (b) the reference to “the insured” in subsection (1)(c) is to both CF and A,
  - (c) the reference in subsection (2)(b) to the premiums paid under the contract is to premiums paid in respect of the cover for CF.

*Late payment*

**14 Implied term about payment [j301a]**

- (1) It is an implied term of every contract of insurance that if the insured makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time.
- (2) A reasonable time includes a reasonable time to investigate and assess the claim.
- (3) What is reasonable will depend on all the relevant circumstances, but the following are examples of things which may need to be taken into account –
  - (a) the type of insurance,
  - (b) the size and complexity of the claim,
  - (c) compliance with any relevant statutory or regulatory rules or guidance,
  - (d) factors outside the insurer’s control.
- (4) If the insurer shows that there were reasonable grounds for disputing the claim (whether as to the amount of any sum payable, or as to whether anything at all is payable) –
  - (a) the insurer does not breach the term implied by subsection (1) merely by failing to pay the claim (or the affected part of it) while the dispute is continuing, but
  - (b) the conduct of the insurer in handling the dispute may be a relevant factor in deciding whether that term was breached and, if so, when.

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- (5) Remedies (for example, damages) available for breach of the term implied by subsection (1) are in addition to and distinct from –
- (a) any right to enforce payment of the sums due, and
  - (b) any right to interest on those sums (whether under the contract, under another enactment, at the court’s discretion or otherwise).

## PART 5

### GOOD FAITH AND CONTRACTING OUT

#### *Good faith*

#### 15 Good faith [j302]

- (1) Any rule of law permitting a party to a contract of insurance to avoid the contract on the ground that the utmost good faith has not been observed by the other party is abolished.
- (2) Any rule of law to the effect that a contract of insurance is a contract based on the utmost good faith is modified to the extent required by the provisions of this Act and the Consumer Insurance (Disclosure and Representations) Act 2012.
- (3) Accordingly –
  - (a) in section 17 of the Marine Insurance Act 1906 (marine insurance contracts are contracts of the utmost good faith), the words from “, and” to the end are omitted, and
  - (b) the application of that section (as so amended) is subject to the provisions of this Act and the Consumer Insurance (Disclosure and Representations) Act 2012.
- (4) In section 2 of the Consumer Insurance (Disclosure and Representations) Act 2012 (disclosure and representations before contract or variation), subsection (5) is omitted.

#### *Contracting out*

#### 16 Contracting out: consumer insurance contracts [j304]

- (1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects any of the matters provided for in Parts 3 and 4 of this Act than the consumer would be in by virtue of the provisions of those Parts so far as relating to consumer insurance contracts is to that extent of no effect.
- (2) In subsection (1) –
  - (a) references to a contract include a variation,
  - (b) references to the consumer include any person referred to as “C” in section 13.
- (3) This section does not apply in relation to a contract for the settlement of a claim arising under a consumer insurance contract.

**17 Contracting out: non-consumer insurance contracts [j305]**

- (1) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the matters provided for in Parts 2 to 4 of this Act (other than those referred to in subsections (2) and (3)) than the insured would be in by virtue of the provisions of those Parts so far as relating to non-consumer insurance contracts is to that extent of no effect, unless the requirements of section 18 have been satisfied in relation to the term.
- (2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects the matters set out in subsection (3) than the insured would be in by virtue of the sections mentioned there is to that extent of no effect.
- (3) The matters referred to in subsection (2) are –
  - (a) representations to which section 9 applies, and
  - (b) deliberate or reckless breaches of the term implied by section 14(1).
- (4) A term of a non-consumer insurance contract, or of any other contract, which would put any person referred to in section 13 as “C” in a worse position as respects the matters dealt with in that section than C would be in by virtue of section 13 is to that extent of no effect.
- (5) For the purposes of subsection (3)(b), a breach is deliberate or reckless if the insurer –
  - (a) knew that it was in breach, or
  - (b) did not care whether or not it was in breach.
- (6) In this section, references to a contract include a variation.
- (7) This section does not apply in relation to a contract for the settlement of a claim arising under a non-consumer insurance contract.

**18 The transparency requirements [j306]**

- (1) In this section, “the disadvantageous term” means such a term as is mentioned in section 17(1).
- (2) The insurer must take sufficient steps to draw the disadvantageous term to the insured’s attention before the contract is entered into or the variation agreed.
- (3) The disadvantageous term must be clear and unambiguous as to its effect.
- (4) In determining whether the requirements of subsections (2) and (3) have been met, the characteristics of insured persons of the kind in question, and the circumstances of the transaction, are to be taken into account.
- (5) The insured may not rely on any failure on the part of the insurer to meet the requirements of subsection (2) if the insured had actual knowledge of the disadvantageous term when the contract was entered into or the variation agreed.

**PART 6**

## GENERAL

**19 Provision consequential on Part 2 [j107]**

- (1) The provision made by this section is consequential on Part 2 of this Act.
- (2) In the Marine Insurance Act 1906, sections 18 (disclosure by assured), 19 (disclosure by agent effecting insurance) and 20 (representations pending negotiation of contract) are omitted.
- (3) Any rule of law to the same effect as any of those provisions is abolished.
- (4) Section 152 of the Road Traffic Act 1988 (exceptions to duty of insurers to satisfy judgment against persons insured against third-party risks) is amended in accordance with subsections (5) to (7).
- (5) In subsection (2) –
  - (a) in paragraph (a), for “it either under the Consumer Insurance (Disclosure and Representations) Act 2012 or, if that Act does not apply,” substitute “the policy under either of the relevant insurance enactments, or the security”,
  - (b) in paragraph (b), for “or security under that Act or” substitute “under either of the relevant insurance enactments, or the security”.
- (6) In subsection (3), after “specifying” insert “the relevant insurance enactment or, in the case of a security,”.
- (7) After subsection (4) add –
  - “(5) In this section, “relevant insurance enactment” means the Consumer Insurance (Disclosure and Representations) Act 2012 or Part 2 of the Insurance Contracts Act 2014.”
- (8) In section 11 of the Consumer Insurance (Disclosure and Representations) Act 2012 (consequential provision), subsections (1) and (2) are omitted.

**20 Short title, commencement, application and extent [j401]**

- (1) This Act may be cited as the Insurance Contracts Act 2014.
- (2) This Act comes into force at the end of the period of 12 months beginning with the day on which this Act is passed.
- (3) Part 2 (and section 19) and section 15 of this Act apply only in relation to –
  - (a) contracts of insurance entered into after this Act comes into force, and
  - (b) variations, agreed after this Act comes into force, to contracts of insurance entered into at any time.
- (4) Parts 3 and 4 of this Act apply only in relation to contracts of insurance entered into after this Act comes into force, and variations to such contracts.
- (5) This Act extends to England and Wales and to Scotland.

## SCHEDULE

Section 8(2).

### INSURERS’ REMEDIES FOR QUALIFYING BREACHES [j105S]

#### PART 1

#### CONTRACTS

##### *General*

- 1 This Part of this Schedule applies to qualifying breaches of the duty of fair presentation in relation to non-consumer insurance contracts (for variations to them, see Part 2).

##### *Deliberate or reckless breaches*

- 2 If a qualifying breach was deliberate or reckless, the insurer –
  - (a) may avoid the contract and refuse all claims, and
  - (b) need not return any of the premiums paid.

##### *Other breaches*

- 3 Paragraphs 4 to 6 apply if a qualifying breach was neither deliberate nor reckless.
- 4 If the insurer would not have entered into the contract on any terms, the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid.
- 5 If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.
- 6 (1) In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.  
(2) In sub-paragraph (1), “reduce proportionately” means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph 5), where –

$$X = \frac{\text{Premium actually charged}}{\text{Higher premium}} \times 100$$

PART 2

VARIATIONS

*General*

- 7 This Part of this Schedule applies to qualifying breaches of the duty of fair presentation in relation to variations to non-consumer insurance contracts.

*Deliberate or reckless breaches*

- 8 (1) This paragraph applies if a qualifying breach was deliberate or reckless.
- (2) If the total premium payable was increased or not changed as a result of the variation –
- (a) the insurer may treat the contract as if the variation was never made, and
  - (b) in the case of an increased premium, the insurer need not return any part of the increase.
- (3) If the total premium payable was reduced as a result of the variation, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time when the variation was made.

*Other breaches*

- 9 (1) This paragraph applies if –
- (a) a qualifying breach was neither deliberate nor reckless, and
  - (b) the total premium was increased or not changed as a result of the variation.
- (2) 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, but must in that event return any extra premium paid.
- (3) If sub-paragraph (2) does not apply –
- (a) if the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms if the insurer so requires, and
  - (b) paragraph 11 also applies if (in the case of an increased premium) the insurer would have increased the premium by more than it did, or (in the case of an unchanged premium) the insurer would have increased the premium.
- 10 (1) This paragraph applies if –
- (a) a qualifying breach was neither deliberate nor reckless, and
  - (b) the total premium was reduced as a result of the variation.
- (2) 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, and paragraph 11 also applies.
- (3) If sub-paragraph (2) does not apply –
- (a) if the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation is to be

- treated as if it had been entered into on those different terms if the insurer so requires, and
- (b) paragraph 11 also applies if the insurer would have increased the premium, would not have reduced the premium, or would have reduced it by less than it did.

*Proportionate reduction*

- 11 (1) If this paragraph applies, the insurer may reduce proportionately the amount to be paid on a claim.
- (2) In sub-paragraph (1), “reduce proportionately” means that the insurer need pay on the claim only Y% of what it would otherwise have been under an obligation to pay under the terms of the contract (whether on the original terms, or as varied, or under the different terms provided for by virtue of paragraph 9(3)(a) or 10(3)(a), as the case may be), where –

$$Y = \frac{A}{B} \times 100$$

- (3) In the formula in sub-paragraph (2) –
- (a) “A” is the total premium actually charged,
- (b) “B” in a paragraph 9(3)(b) case is the total premium the insurer would have charged, in a paragraph 10(2) case is the original premium, and in a paragraph 10(3)(b) case is the original premium if the insurer would have increased or not changed it, and otherwise the reduced total premium the insurer would have charged.

PART 3

SUPPLEMENTARY

*Relationship with section 84 of the Marine Insurance Act 1906*

- 12 Section 84 of the Marine Insurance Act 1906 (return of premium for failure of consideration) is to be read subject to the provisions of this Schedule in relation to contracts of marine insurance which are non-consumer insurance contracts.