

DRAFT/ Insurance Contracts Bill

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Make provision

BE 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

In this Act—

- “consumer insurance contract” has the same meaning as in the Consumer Insurance (Disclosure and Representations) Act 2012; 5
- “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; 10
- “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;
- “proposer” means the person who would become the insured under a contract of insurance if the contract were entered into;
- “the duty of fair presentation” has the meaning given in section 3(2). 15

PART 2

THE DUTY OF FAIR PRESENTATION

2 Application and interpretation

- (1) This Part, apart from section 8, applies to non-consumer insurance contracts only. 20

- (2) In this Part, references to an individual’s knowledge include not only actual knowledge, but also blind-eye knowledge (meaning knowledge which the individual suspected, and would have had but for refraining from confirming it or inquiring about it).
- (3) This Part applies in relation to variations of a contract of insurance as it applies to contracts, but – 5
- (a) references to the proposal are to be read as references to the proposal by the insured to vary the contract, and “proposer” is to be construed accordingly,
- (b) references to the risk are to be read as references to changes in the risk relevant to the proposed variation, and 10
- (c) references to the contract of insurance are to the variation.
- 3 The duty of fair presentation**
- (1) Before a contract of insurance is entered into, the proposer must make to the insurer a fair presentation of the risk. 15
- (2) The duty imposed by subsection (1) is referred to in this Act as “the duty of fair presentation”.
- (3) Sections 4 to 6 make further provision about the duty of fair presentation.
- (4) Section 7 makes provision about the insurer’s remedies if the proposer is in breach of the duty of fair presentation. 20
- 4 Duty of fair presentation: content**
- (1) A fair presentation of the risk is one –
- (a) which discloses every material circumstance which the proposer knows or ought to know, or (taking the information provided by the proposer in the round) gives the insurer sufficient information, in relation to those material circumstances, to put a prudent insurer on notice that it needs to make further inquiries [as to circumstances which may prove material], 25
- (b) which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and 30
- (c) in which every material representation as to something the proposer 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.
- (2) Section 6 provides for matters which need not be disclosed under subsection (1)(a). 35
- (3) A fair presentation need not be contained in only one document or oral presentation.
- (4) [The term “circumstance” includes any communication made to, or information received by, the proposer.]
- (5) A circumstance 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. 40
- (6) 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 proposer 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
 - (7) 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.
 - (8) A representation may be withdrawn or corrected before the contract is entered into. 10
- 5 Duty of fair presentation: knowledge of proposer**
- (1) This section provides for what a proposer knows or ought to know for the purposes of section 4(1)(a) and (c).
 - (2) A proposer who is an individual knows not only what is known to the proposer, but also what is known to one or more of the individuals who are responsible for the proposer’s insurance. 15
 - (3) A proposer who is not an individual knows only what is known to one or more of the individuals who are –
 - (a) part of the proposer’s senior management, or 20
 - (b) responsible for the proposer’s insurance.
 - (4) Whether an individual or not, a proposer ought to know what would have been revealed by a reasonable search of information available to the proposer (whether within its own organisation or held by others, for example its agent).
 - (5) In this section – 25
 - (a) “senior management” means those individuals who play significant roles in the making of decisions about how the proposer’s activities are to be managed or organised, or in the actual management or organisation of those activities,
 - (b) an individual is responsible for the proposer’s insurance if the individual participates on behalf of the proposer in the procurement of the proposer’s insurance (whether the individual does so as the proposer’s employee, or agent, or in any other capacity). 30
- 6 Duty of fair presentation: exceptions**
- (1) In the absence of inquiry, section 4(1)(a) does not require the proposer to disclose a circumstance if – 35
 - (a) it diminishes the risk,
 - (b) the insurer knows it,
 - (c) the insurer ought reasonably to know it,
 - (d) the insurer is to be presumed to know it, 40
 - (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).

- (2) For the purposes of subsection (1)(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). 5
- (3) For the purposes of subsection (1)(c), an insurer ought reasonably 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 (2), or 10
 - (b) the relevant information is readily available to an individual mentioned in subsection (2).
- (4) For the purposes of subsection (1)(d), the insurer is to be presumed to know—
- (a) things which are common knowledge, and
 - (b) things which an insurer offering insurance of the class in question to proposers in the field of activity in question would reasonably be expected to know in the ordinary course of business. 15
- (5) In this section, “things” refers to information and knowledge of any kind, including facts, rumours, expectations and beliefs (and “something” is to be construed accordingly). 20

7 Duty of fair presentation: remedies for breach

- (1) The insurer has a remedy against the insured (formerly the proposer) 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 at all, or 25
 - (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— 30
- (a) deliberate or reckless, or
 - (b) neither deliberate nor reckless.
- (5) A qualifying breach is deliberate or reckless if the proposer—
- (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. 35
- (6) It is for the insurer to show that a qualifying breach was deliberate or reckless.

8 Consequential provision

- (1) 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. 40
- (2) Any rule of law to the same effect as any of those provisions is abolished.

- (3) 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 (4) to (6).
- (4) In subsection (2) –
- (a) in paragraph (a), for “either under the Consumer Insurance (Disclosure and Representations) Act 2012 or, if that Act does not apply,” substitute “under either of the relevant insurance enactments or, in the case of a security,”, 5
 - (b) in paragraph (b), for “under that Act or” substitute “under either of the relevant insurance enactments or, in the case of a security,”. 10
- (5) In subsection (3), after “specifying” insert “the relevant insurance enactment or, in the case of a security,”.
- (6) 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.” 15
- (7) Section 11 of the Consumer Insurance (Disclosure and Representations) Act 2012 (consequential provision) is amended as follows –
- (a) subsections (1) and (2) are omitted,
 - (b) in subsection (3), paragraph (a) is omitted, and in paragraph (b) the words “after “policy or security” insert “under that Act or”, and” are omitted. 20

PART 3

WARRANTIES

- 9 Warranties** 25
- Clauses on warranties to be inserted.*

PART 4

OTHER MATTERS

Fraudulent claims

- 10 Remedies for fraudulent claims** 30
- (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 it, 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. 35
- (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 40

- (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)]. 5

11 Fraudulent claims: group insurance

- (1) ... 10

Late payment

12 Implied term about payment

- (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. 15
- (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 – 20
- (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) – 25
- (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. 30
- (5) Remedies [(for example, damages)] available for breach of the term implied by subsection (1) are in addition to and distinct from – 35
- (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

13 Good faith

- (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. 5
- (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.] 10
- (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.] 15
- (4) [In section 2 of the Consumer Insurance (Disclosure and Representations) Act 2012 (disclosure and representations before contract or variation), subsection (5) is omitted.] 20

14 Contracting out

To be inserted.

PART 6

GENERAL

- #### 15 Short title, commencement, application and extent 25
- (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 2 months beginning with the day on which this Act is passed].
 - (3) [Provisions about application.]
 - (4) This Act extends to England and Wales and to Scotland. 30

SCHEDULE

Section 7

INSURERS’ REMEDIES FOR QUALIFYING BREACHES

PART 1

CONTRACTS

<i>General</i>		5
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).	
<i>Deliberate or reckless breaches</i>		
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.	10
<i>Other breaches</i>		
3	Paragraphs 4 to 8 apply if a qualifying breach was neither deliberate nor reckless.	15
4	The insurer’s remedies are based on what it would have done if the insured had complied with the duty of fair presentation, and this paragraph is to be read accordingly.	
5	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.	20
6	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.	
7	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.	25
8	“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 6), where – $X = \frac{\text{Premium actually charged}}{\text{Higher premium}} \times 100$	30

PART 2

VARIATIONS

General

9 ...

PART 3

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SUPPLEMENTARY

Relationship with section 84 of the Marine Insurance Act 1906

10 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. 10

General interpretation

11 [The right of the insurer under this Schedule to “reduce proportionately” a claim or part of a claim includes the right to reduce it to zero in the case where no premium for the contract or, as the case may be the variation, was “actually charged”.] 15