

EXPLANATORY NOTES

Insurance Act 2015

Chapter 4

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These notes refer to the Insurance Act 2015 (c. 4)
which received Royal Assent on 12 February 2015

INSURANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Insurance Act 2015 which received Royal Assent on 12 February 2015. They have been provided by HM Treasury to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

3. In these notes, references to the current or existing law are to the law as at 3 February 2015, before the commencement of any provisions of the Insurance Act 2015.

TERRITORIAL EXTENT AND APPLICATION

4. The Act extends to the whole of the United Kingdom, apart from the consequential amendments in sections 21(4) and (5). Section 21(4) extends only to England and Wales and Scotland and section 21(5) extends only to Northern Ireland. This reflects the extent of the Acts amended by those provisions.

BACKGROUND

Insurance contract law

5. The main provisions of the Act give effect, with some modifications, to the recommendations set out in a joint Report published in July 2014 by the Law Commission and the Scottish Law Commission ("the Commissions"): *Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment* (Law Com No 353; Scot Law Com No 238).

6. British insurance law developed during the 18th and 19th centuries, and was partly codified by the Marine Insurance Act 1906 ("the 1906 Act"). The rules were designed to protect a fledgling insurance industry against exploitation by the insured. They therefore provide insurers with several mechanisms to refuse claims, even where this does not reflect the commercial merits of the case. Although strictly the 1906 Act applies only to marine insurance, most of its principles have been applied to non-marine insurance on the basis that the 1906 Act embodies the common law. The 1906 Act is written in clear, forthright terms which can constrain the courts' ability to develop the law.

7. Its provisions are now significantly out of line with best practice in the modern insurance market. The law has also failed to keep pace with developments in other areas of commercial contract and consumer law, and with insurance law in other jurisdictions.

8. The Commissions focused first on the consumer's duty to disclose information to the insurer. Their recommendations formed the basis for the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). CIDRA replaced the consumer's duty to volunteer information with a duty to answer the insurer's questions honestly and reasonably.

9. The Commissions published further consultation papers in 2011 and 2012, covering the matters in the current Act. The Act reforms insurance contract law in the following areas:

    a) disclosure and misrepresentation in business and other non-consumer insurance contracts;
    b) insurance warranties and other terms; and
    c) insurers' remedies for fraudulent claims.

10. The purpose of the Act is to update the statutory framework in these areas, in line with best practice in the modern UK insurance market.

Amendments to the Third Parties (Rights against Insurers) Act 2010

11. The Act also amends the Third Parties (Rights against Insurers) Act 2010 ("the 2010 Act"), which has not yet been brought into force. These amendments clear the way for the 2010 Act to come into force.

12. The 2010 Act was intended to simplify and modernise the existing procedure by which victims can obtain compensation for wrongs done to them by insured persons who, in broad terms, have become insolvent or otherwise ceased to exist. It implements, with minor modifications, the recommendations of the Commissions in their 2001 Report, *Third Parties – Rights against Insurers* (Law Com No 272; Scot Law Com No 184). The 2010 Act was intended to replace the Third Parties (Rights against Insurers) Act 1930 and Third Parties (Rights against Insurers) Act 1930 (Northern Ireland) ("the 1930 Acts").

13. The 2010 Act was not commenced because as originally enacted it failed to cover the full range of insolvent or defunct wrongdoers. Part 6 of the new Act rectifies the problem in two main ways. First, it adds two specific circumstances in which the 2010 Act will apply. Secondly, it substitutes, for the existing power to amend the circumstances in which the 2010 Act may apply in Northern Ireland, a broader power that is applicable to the whole of the United Kingdom.

SUMMARY

Insurance contract law

The duty of fair presentation

14. The Act updates and replaces the existing duty on non-consumer policyholders to disclose risk information to insurers before entering into an insurance contract. It redefines its boundaries under the banner of the "duty of fair presentation", effectively requiring policyholders to undertake a reasonable search of information available to them, and defining what a policyholder knows or ought to know. The Act also requires insurers to play a more active role, asking questions in some circumstances. Importantly, the Act introduces a new system of proportionate remedies where the duty has been breached. This replaces the existing single remedy of avoidance of the contract, except where the policyholder has breached the duty deliberately or recklessly.

Warranties and other terms

15. Under the current law, breach of a warranty in an insurance contract discharges the insurer from liability completely from that point onwards, even if the breach is remedied. An insurer may also avoid liability even if the breached term would not have increased the risk of the type of loss occurring which was actually suffered. The Act abolishes "basis of the contract" clauses, which have the effect of converting pre-contractual information supplied to insurers into warranties. It also provides that the insurer's liability will be suspended, rather than discharged, in the event of breach of warranty, so that the insurer is liable for valid claims which arise after a breach has been remedied. Further, it provides that non-compliance with a warranty or other term relating to a particular type of loss should not allow the insurer to escape liability for a different type of loss, on which the non-compliance could have had no effect.

Insurers' remedies for fraudulent claims

16. The Act provides the insurer with clear statutory remedies when a policyholder submits a fraudulent claim. The main remedy in the Act is the one already established by the courts: if a claim is tainted by fraud, the policyholder forfeits the whole claim. The Act also addresses a current area of uncertainty: the insurer may refuse any claim arising after the fraudulent act. However, previous valid claims are unaffected.

17. The Act makes special provision for situations in which a member of a group insurance policy makes a fraudulent claim. Where this happens, the insurer will have a remedy against the fraudulent member but it will not affect the other members or the insurance policy as a whole.

Good faith

18. The Act removes the remedy of avoidance of the contract for breach of the duty of good faith in section 17 of the 1906 Act, and any equivalent common law rule.

Contracting out

19. The Act provides that, as far as it applies to consumer insurance contracts, an insurer will not be able to use a contractual term to put a consumer in a worse position than

they would be in under the terms of the Act. For non-consumer insurance, the provisions of the Act are intended to provide default rules and parties are free to agree alternative regimes, provided that the insurer satisfies two transparency requirements.

Consequential amendments

20. The Act repeals sections 18, 19 and 20 of the 1906 Act. In addition, the Act abolishes any common law rule which has the same effect as these sections.

21. Section 152 of the Road Traffic Act 1988 and Article 98A of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I.)) are amended by the Act because they relate to insurance companies avoiding motor insurance contracts where the insured has breached the duty of fair presentation.

22. The Act repeals sections 11(1) and 11(2) of CIDRA, which are superseded by amendments to the 1906 Act and the Road Traffic Act 1988.

Amendments to the Third Parties (Rights against Insurers) Act 2010

23. The policy of the 2010 Act, like that of the 1930 Acts which it will repeal, is to enable payments of compensation by insurers of relevant wrongdoers to go to the victim rather than forming part of the assets available to the general creditors of the wrongdoer. This is achieved by a statutory transfer: the rights the policyholder has against the insurer are transferred to the victim. This enables the victim to recover direct from the insurer the insurance monies that would have been paid to the policyholder in respect of the victim's claim. Unlike the 1930 Acts, however, the 2010 Act does this without the victim having first to establish the liability of the policyholder, whether by legal proceedings or otherwise. The victim is the third party referred to in the title of the 1930 Acts and the 2010 Act.

24. There is no single term that can completely describe the circumstances in which a person should be subject to the 1930 Acts or the 2010 Act but the Commissions, in their joint 2001 Report, broadly endorsed the view of Bingham LJ that:

> "The legislative intention was, I think, that ... the provisions of the 1930 Act should apply upon an insured losing the effective power to enforce its own rights and dispose of its own assets."[1]

25. The 1930 Acts and the 2010 Act each define the insured wrongdoers to whom they are to apply. The 2010 Act does so by listing in sections 4 to 7 the circumstances in which the insured wrongdoer is a "relevant person". These circumstances are of various types but they include all the principal forms of insolvency and some other situations, including some dissolutions, that may be, but are not always, related to insolvency. For example, a body corporate or unincorporated body which has been dissolved under specified provisions in the Companies Act 2006 is defined by the 2010 Act as a relevant person – so the 2010 Act will apply.[2] Such dissolutions may or

[1] *The Fanti and The Padre Island* [1989] 1 Lloyd's Rep 239 at p 247 in a passage approved on appeal by Lord Goff of Chievely [1991] 2 AC 1 at p 38. See 2001 Report, *Third Parties – Rights against Insurers* (Law Com No 272; Scot Law Com No 184, para 1.3).

[2] 2010 Act, s 6(1)(b).

may not follow insolvency. If a circumstance is not listed in sections 4 to 7, it will not be capable of triggering a transfer of rights under the 2010 Act.

26. Where a person who is a relevant person for the purposes of the 2010 Act is already subject to a liability to another person or becomes subject to such a liability later, his or her rights under a contract insuring that liability will be transferred to the person to whom the liability is owed.[3]

27. The 2010 Act was, among other things, intended to address omissions from the 1930 Acts, in particular by providing for the wide variety of insolvency type procedures to which individuals, companies and other bodies may now be subject and which may adversely affect a third party. The intention was therefore that the 2010 Act should have a wider coverage than the 1930 Acts. However, while the 1930 Acts cover all forms of administration under the Insolvency Act 1986 and its Northern Ireland equivalent, the 2010 Act only covers administration pursuant to a court order. Additionally, the 2010 Act has not kept up to date with other developments in the field of insolvency, even though some of the new procedures fall within the 1930 Acts.[4] Further, whilst the 1930 Acts did not cover dissolution, the 2010 Act, while its scope is wider in this respect, still only covers a limited number of the possible forms of dissolution of bodies corporate and unincorporated bodies.[5]

28. The provisions in the Act address this by adding categories of administrations under the Insolvency Act 1986 and debt relief orders in Northern Ireland to the circumstances in which the 2010 Act applies; and by providing a means both of correcting other omissions and accommodating future changes in the law, where the 2010 Act is not amended by the legislation in question, without the need for primary legislation.

29. The inclusion of a power to change the circumstances in which the 2010 Act is to apply by making regulations will give effect to a recommendation made by the Commissions in their 2001 joint Report, which was not implemented in the 2010 Act (other than, in effect, in relation to Northern Ireland).[6]

[3] 2010 Act, s 1.

[4] See, for example, energy administration orders (Energy Act 2004, ss 154-171) and railway administration orders (Railways Act 1993, schedule 6, para 20).

[5] Companies Act 2006, ss 1000, 1001 and 1003.

[6] See cl 18 of the draft Bill annexed to the 2001 joint Report (Law Com No 272; Scot Law Com No 184) and 2010 Act, s 19.

COMMENTARY ON SECTIONS

PART 1: INSURANCE CONTRACTS: MAIN DEFINITIONS

Section 1: Insurance contracts: main definitions

30. Some of the insurance contract law provisions apply to both "consumer insurance contracts" and "non-consumer insurance contracts". Others only apply to one or the other. Section 1 defines these terms.

31. Section 1 provides that a "consumer insurance contract" has the same definition as in CIDRA. Section 1 of CIDRA defines a "consumer insurance contract" as an insurance contract between an insurer[7] and "an individual who enters into the contract wholly or mainly for purposes unrelated to the individual's trade, business or profession". A consumer must therefore be a natural person, rather than a legal person (such as a company or corporation). In "mixed use" policies, where the insurance covers some private and some business use, one must look at the main purpose of the insurance to classify it as one or the other.

32. Section 1 of the Act defines "non-consumer insurance contract" as any contract of insurance which does not fall within the CIDRA definition of consumer insurance contract. An insurance contract may be "non-consumer" for two reasons: either the policyholder is not an individual, or they have entered into the contract wholly or in significant part for trade, business or professional reasons.

33. Section 1 also defines "insurer" and "insured". Each is a "party to a contract of insurance". The definitions also capture the parties who would be the "insurer" and "insured" under a contract of insurance if the contract were entered into. This part of the definitions caters for Part 2 of the Act, which addresses pre-contractual requirements and therefore applies to persons who are not yet parties to the relevant insurance contract.

34. The 1906 Act does not define insurance, or contract of insurance, relying instead on common law principles. The Act replaces some of the provisions of the 1906 Act, and therefore the scope of their application must be the same. Therefore, like CIDRA, the Act does not define these terms.

35. The regulatory regime for insurance is governed by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), which largely adopts the common law approach to defining insurance, subject to some specific inclusions and exclusions. In practice, whether a contract is offered by an authorised insurance company is likely to influence a court's categorisation of the contract. However, the courts will not be bound by any specific inclusions or exclusions within

[7] Defined by section 1 of CIDRA as "a person who carries on the business of insurance and who becomes a party to the contract by way of that business (whether or not in accordance with permission for the purposes of the Financial Services and Markets Act 2000)".

the Regulated Activities Order in force at the time. The courts are experienced in determining these matters.

36. Contracts of reinsurance and retrocession are treated as contracts of insurance at common law,[8] and are non-consumer insurance contracts for the purposes of the Act. In such contracts, the party purchasing the insurance (the insurer or the reinsurer) is the "insured" for the purposes of the Act, and the party providing the insurance (the reinsurer or the retrocessionaire) is the "insurer".

PART 2: THE DUTY OF FAIR PRESENTATION

Section 2: Application and interpretation

37. Part 2 of the Act, which addresses the duty of fair presentation, applies to non-consumer insurance contracts only. This is because the law in this area as it applies to consumer insurance contracts was reformed by CIDRA.

38. Section 2(2) provides that the duty of fair presentation, set out in the remainder of Part 2, applies in the event of a variation to a non-consumer insurance contract as well as upon the initial agreement of the contract. Section 2(2)(a) follows the current law by stating that the duty to make a fair presentation of the "risk" relates only to the "changes in the risk" which are "relevant to the proposed variation".[9]

Section 3: The duty of fair presentation

39. Section 3(1) introduces a requirement on the insured (at this stage, the person or party who would be the insured if the contract were entered into) to make to the insurer a "fair presentation of the risk" before the contract is entered into.

40. The duty of fair presentation replaces the existing duties in relation to disclosure and representations contained in sections 18, 19 and 20 of the 1906 Act.[10] However, it retains essential elements of those provisions. It is important that potential insureds provide insurers with the information they require to decide whether to insure a risk, and on what terms.

41. Like the existing duties, the duty of fair presentation attaches before the insurance contract is entered into. Since the law regards renewals as new contracts, the duty also applies when an insurance contract is renewed. This is in accordance with the current law.

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[8] *Delver, Assignee of Bunn v Barnes* (1807) 1 Taunt 48.

[9] See, for example, *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd (The Star Sea)* [2001] UKHL 1, [2003] 1 AC 469, by Lord Hobhouse at [54]. There is no requirement to disclose information relating to the rest of the original policy; see *Lishman v Northern Maritime* (1875) LR 10 CP 179.

[10] Sections 18, 19 and 20 of the 1906 Act are repealed by clause 21(2) of the Act.

42. The duty falls on "the insured", defined in section 1. In some situations, one party may enter into a contract on behalf of others. Who is "the insured" in such cases is, and will continue to be, a determined by reference to the particular contract.

43. Section 3(3) sets out the three elements of a "fair presentation of the risk".

44. The first element of a fair presentation is a duty of disclosure, introduced in section 3(3)(a) and further defined in section 3(4), which provides two ways to satisfy the duty of disclosure. Section 3(4)(a) effectively replicates the disclosure duty in section 18(1) of the 1906 Act. Its key features are that the insured must disclose "every material circumstance"[11] which the insured "knows or ought to know".[12]

45. The second way to satisfy the duty of disclosure, set out in section 3(4)(b), is intended to operate where the insured has failed to satisfy the strict duty in section 3(4)(a) but has nevertheless disclosed enough information to put the insurer on notice that it needs to ask for further information from the insured before it makes the underwriting decision. This reflects the approach already taken by the courts in some cases.[13]

46. The second element of a fair presentation, in section 3(3)(b), relates to the form of presentation rather than the substance. It is intended to target, at one end of the scale, "data dumps", where the insurer is presented with an overwhelming amount of undigested information. At the other end, it is not expected that this requirement would be satisfied by an overly brief or cryptic presentation.

47. The third element of the duty of fair presentation is the duty not to make misrepresentations. It is contained in section 3(3)(c) and is based on section 20 of the 1906 Act.

Exceptions to the duty of fair presentation

48. As in section 18(3) of the 1906 Act, section 3(5) of the Act provides exceptions to the insured's duty of disclosure. The exceptions do not apply to the requirement to make the disclosure in a clear and accessible manner, nor to the duty not to make misrepresentations. Anything which is the subject of an exception does not have to be disclosed by the insured to the insurer, unless the insurer makes enquiries about that matter.

49. Exceptions (a) and (e) replicate the relevant provisions in the 1906 Act almost exactly. The rest of the exceptions relate to circumstances which the insurer "knows", "ought to know" and "is presumed to know". They replace similar provisions in the 1906 Act. Each of these categories of "knowledge" is expanded on in section 5.

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[11] Defined in section 7(3).

[12] Defined in section 4.

[13] For example, *CTI v Oceanus* [1984] 1 Lloyd's LR 476; *Garnat Trading and Shipping v Baominh Insurance Corporation* [2011] EWCA Civ 773.

Section 4: Knowledge of insured

50. Section 4 defines what the insured "knows" and "ought to know" for the purposes of the duty of disclosure in section 3. It is based on the insured's duty under section 18 of the 1906 Act to disclose every material circumstance known to them, including everything which "in the ordinary course of business, ought to be known" to them.

51. Section 4(2) addresses the position of an insured who is an individual (such as a sole trader or practitioner). As well as their own knowledge, the insured will be taken to "know" anything which is known by an individual who is "responsible for the insured's insurance".

52. Section 4(3) sets out the individuals whose knowledge will be directly attributed to the insured where the insured is not an individual (such as a company). They are the insured's senior management and the person or people responsible for the insured's insurance. These categories reflect important decisions on the common law rules of attribution in the insurance context. However, the intended effect of the phrase "knows only" is that the common law on attribution of knowledge to the insured is replaced by the terms of the Act.

53. Section 4(8)(b) defines who is "responsible for the insured's insurance". It is expected to catch, for example, the insured's risk manager if they have one, and any employee who assists in the collection of data or negotiates the terms of the insurance. It may also include an individual acting as the insured's broker.

54. Section 4(8)(c) defines "senior management". It captures those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised. In a corporate context, this is likely to include members of the board of directors but may extend beyond this, depending on the structure and management arrangements of the insured.

55. Because the knowledge of the senior management and those individuals responsible for the insurance is directly imputed to the insured for the purposes of the duty of fair presentation, those categories of person are expected to be construed relatively narrowly, but are capable of being applied flexibly. The knowledge of those individuals who do not fall within the category of senior management, yet who perform management roles or otherwise possess relevant information or knowledge about the risk to be insured, may be captured by the "reasonable search" referred to in section 4(6).

56. Section 4(6) defines what an insured "ought to know" by reference to information that could reasonably be expected to be revealed by a reasonable search of available information. It largely codifies principles derived from some case law,[14] namely that insureds should seek out information about their business by undertaking a reasonable search, which may include making enquiries of their staff and agents (such as their insurance broker). Section 4(7) makes clear that relevant information subject to the reasonable search may be held by persons other than the insured itself. Taken together

[14] See, for example, *Aiken v Stewart Wrightson Members Agency Ltd* [1995] 3 All ER 449.

with section 4(6), this means that the reasonable search may extend beyond the insured itself to other persons, where such a search would be reasonable in the circumstances and where information is available the insured. The scope of the phrase "information held ... by any other person" in this context is intended to be flexible.

57. Future interpretation of sections 4(6) and 4(7) is likely to be guided by existing case law. For example, a search may not be expected to evince an admission by a servant of their own negligence.[15] In contrast, the knowledge of an "agent to know", who has a duty to communicate the relevant information to their employer or principal, may well be included.[16]

58. Unlike section 19 of the 1906 Act (which the Act repeals), the Act does not include a separate duty on the agent to disclose information to the insurer. The agent's knowledge or other information held by the agent may be caught under section 4 as discussed above.

59. Section 4(4) makes further provision about the knowledge of an individual acting as an agent of the insured. Where such an individual acquired confidential information through a business relationship with someone other than the insured or any other person connected with the insurance being placed, that information will not be attributed to the insured. This provision is expected to be particularly relevant to the insured's broker who is likely to hold confidential information on behalf of many unconnected clients..

Section 5: Knowledge of insurer

60. Section 5 defines what the insurer "knows", "ought to know" and "is presumed to know" for the purposes of the section 3(5) exceptions to the duty of disclosure. These provisions are based on the exceptions contained in section 18(3) of the 1906 Act and the case law interpreting them.

61. Section 5(1) sets out the individuals whose knowledge will be directly attributed to the insurer, being what the insurer "knows". This provision is intended to capture the person or people involved in making the particular underwriting decision – essentially the underwriter. The relevant individuals may be, for example, employees of the insurer or of the insurer's agent. Again, the intended effect of the phrase "knows … only" is that the common law on attribution of information to an insurer is replaced by the terms of the Act.

62. Section 5(2) sets out two types of information which an insurer "ought to know".

63. The first, in section 5(2)(a), is information which an employee or agent of the insurer knows and ought reasonably to have passed on to the underwriter. This is intended to

[15] See, for example, *Australia & New Zealand Bank Ltd v Colonial & Eagle Wharves Ltd* [1960] 2 Lloyd's Rep 241.

[16] See, for example, *Proudfoot v Montefiore* (1867) LR 2 QB 511.

include, for example, information held by the claims department or reports produced by surveyors or medical experts for the purpose of assessing the risk.

64. The second category, at section 5(2)(b), is intended to require the relevant underwriter to make a reasonable effort to search such information as is available to them within the insurer's organisation, such as in the insurer's electronic records.

65. Section 5(3) defines what the insurer is "presumed to know".

66. The reference to common knowledge in section 5(3)(a) replicates the language of the 1906 Act. The reference to "common notoriety" has not been retained, because the meaning of that phrase appears to have changed since 1906. At the time the 1906 Act was drafted, "notoriety" appeared to mean the state of being "well known", whereas now it suggests an element of infamy.

67. Section 5(3)(b) is intended to be a modernisation of the reference in section 18(3)(b) of the 1906 Act to "matters which an insurer in the ordinary course of his business, as such, ought to know". Many underwriters work by class of business (such as property or professional indemnity insurance) rather than by industry sector (such as oil and gas). An insurer ought to have some insight into the industry for which it is providing insurance, but this insight may reasonably be limited to matters relevant to the type of insurance provided.

Section 6: Knowledge: general

68. As set out above, sections 4 and 5 respectively set out the categories of individual whose knowledge will be directly attributed to the insured and insurer. These rules are intended to replace the common law in the context of the duty of fair presentation. Section 6 sets out two further rules about an individual's knowledge.

69. Section 6(1) provides that what an individual knows includes not only what it actually knows but also "blind eye" knowledge. The courts have consistently interpreted knowledge to include cases where someone has deliberately failed to make an enquiry in case it results in the confirmation of a suspicion.[17]

70. Section 6(2) concerns the situation in which an individual (an employee or agent) perpetrates fraud against his or her principal (whether the insured or the insurer). It is intended to capture a common law exception to the general rules of attribution, known as the *Hampshire Land* principle, which broadly means that a company or other principal is not fixed with knowledge of a fraud practised against it by its agent or officer.[18]

[17] See, for example, Lord Scott in *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd (The Star Sea)* [2001] UKHL 1, [2003] 1 AC 469 at [112].

[18] From *Re Hampshire Land Company* [1896] 2 Ch 743. For Scotland, see L Macgregor, *Agency* (2013) para 13-24.

Section 7: Supplementary

71. Section 7 makes further provision about the duty of fair presentation, including definitions of some terms used in earlier provisions.

72. Section 7(1) states that a "fair presentation" does not have to be made in a single document or oral presentation. The Act is intended to recognise that the insurer may need to ask questions about the information in the initial presentation in order to draw out the information it requires to make the underwriting decision. All information which has been provided to the insurer by the time the contract is entered into will therefore form part of the presentation to be assessed.

73. Section 7(2) concerns the scope of the term "circumstance", which is the language used in the 1906 Act. Section 7(2) repeats the terms of section 18(5) of the 1906 Act in order to make clear that the terms are used in the same way in both pieces of legislation.

74. Section 7(3) contains a definition of material circumstance and material representation, used in section 3. It is based on sections 18(2) and 20(2) of the 1906 Act. The term "prudent insurer" is also taken from the 1906 Act.

75. Section 7(4) sets out three examples of things which may constitute material circumstances. Whether circumstances falling within these examples are in fact "material" will depend on the facts of each case.

Section 8: Remedies for breach

76. This section sets out the circumstances in which an insurer will be entitled to a remedy for an insured's breach of the duty of fair presentation.

77. The insurer must show that it would have acted differently if the insured had not failed to make a fair presentation; that is, that the insurer would not have entered into the contract or variation at all, or would only have done so on different terms. This reflects the current law on inducement as developed following the decision in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd*.[19]

78. A breach for which the insurer has a remedy is a "qualifying breach".

79. Under the current law, a breach of section 18 or 20 of the 1906 Act gives the insurer a single remedy of avoidance of the contract. Under the Act, the insurer has different remedies depending on the situation. One distinction is whether or not the proposer's breach of the duty of fair presentation was deliberate or reckless.

80. An insured will have acted deliberately if it knew that it did not make a fair presentation. An insured will have acted recklessly if it "did not care" whether or not it was in breach of the duty, but this is intended to indicate a greater degree of culpability than acting "carelessly". "Deliberate or reckless" will include fraudulent behaviour.

[19] [1995] 1 AC 501.

81. The deliberate or reckless definition echoes that in CIDRA. However, in CIDRA a "qualifying breach" must be either deliberate/reckless or careless, since the consumer's duty is to take reasonable care not to make a misrepresentation to the insurer. In non-consumer insurance, breaches do not have to be careless or deliberate/reckless in order to be actionable. "Innocent" breaches of the duty will also give an insurer a remedy if the insurer can show inducement. This reflects the current law for non-consumer insurance.

82. Section 8(2) provides a signpost to the details of the remedies available for breach of the duty of fair presentation, which are set out in Schedule 1.

PART 3: WARRANTIES AND OTHER TERMS

Section 9: Warranties and representations

83. Under the current law, an insurer may add a declaration to a non-consumer insurance proposal form or policy stating that the insured warrants the accuracy of all the answers given, or that such answers form the "basis of the contract".[20] This has the legal effect of converting representations into warranties. The insurer is discharged from liability for claims if the insured made any misrepresentation, even if it was immaterial and did not induce the insurer to enter into the contract.

84. This section abolishes basis of the contract clauses in non-consumer insurance. Basis of the contract clauses in consumer insurance were abolished by section 6 of CIDRA. It remains possible for insurers to include specific warranties within their policies.

Section 10: Breach of warranty

85. Section 10 replaces the existing remedy for breach of a warranty in an insurance contract, which is contained in section 33(3) of the 1906 Act. Under that section, the insurer's liability under the contract is completely discharged from the point of breach. Section 34(2) makes clear that remedying a breach of warranty does not change this. Sections 10(1) and 10(7) repeal these existing statutory rules, and any common law equivalent.

86. However, the Act does not make any change to the definition of warranty. Warranties are defined in section 33(1) of the 1906 Act with regard to marine warranties, and the common law has developed in parallel in regard to other types of insurance. A warranty "must be exactly complied with, whether material to the risk or not".[21]

87. The effect of section 10(2) is that breach of warranty by an insured suspends the insurer's liability under the insurance contract from the time of the breach, until such time as the breach is remedied. The insurer will have no liability for anything which

[20] *Dawsons Ltd v Bonnin* [1922] 2 AC 413, 1922 SC (HL) 156; *Genesis Housing Association Ltd v Liberty Syndicate Management Ltd for and on behalf of Liberty Syndicate 4472 at Lloyd's* [2013] EWCA Civ 1173, [2013] WLR (D) 368.

[21] 1906 Act, s 33(3).

occurs, or which is attributable to something occurring, during the period of suspension.

88. Section 10(4)(b) makes explicit that the insurer will be liable for losses occurring after a breach has been remedied. It acknowledges, however, that some breaches of warranty cannot be remedied.

89. The "attributable to something happening" wording is intended to cater for the situation in which loss arises as a result of an event which occurred during the period of suspension, but is not actually suffered until after the breach has been "remedied".

90. Generally, a breach of warranty will be "remedied" where the insured "ceases to be in breach of warranty". This is set out in section 10(5)(b). However, some warranties require something to be done by an ascertainable time. If a deadline is missed, the insured could never cease to be in breach because the critical time for compliance has passed. Sections 10(5)(a) and 10(6) are intended to mean that this type of breach will be remedied if the warranty is ultimately complied with, albeit late.

91. Section 10 applies to all express and implied warranties, including the implied marine warranties in sections 39, 40 and 41 of the 1906 Act.

Section 11: Terms not relevant to the actual loss

92. Section 11 applies to any warranty or other term which can be seen to relate to a particular type of loss, or the risk of loss at a particular time or in a particular place. In the event of non-compliance with such a term, it is intended that the insurer should not be able to rely on that non-compliance to escape liability unless the non-compliance could potentially have had some bearing on the risk of the loss which actually occurred.

93. Section 11(1) refers to contractual terms which, if complied with, "would tend to reduce the risk" of loss of a particular kind, or loss at a particular location or time. This is intended to enable an objective assessment of the "purpose" of the provision, by considering what sorts of loss might be less likely to occur as a consequence of the term being complied with.

94. Section 11(1) does not apply only to warranties and may catch other types of contractual provision such as conditions precedent or exclusion clauses – provided those terms relate to a particular type of loss or loss at a particular location or time. Section 11 does not apply to clauses which define the risk as a whole. This is expected to include, for example, a requirement that a property or vehicle is not to be used commercially.

95. If a loss occurs and a contractual term to which section 11 applies has not been complied with, sections 11(2) and 11(3) mean that the insurer cannot rely on that non-compliance to avoid or limit its liability for the loss, if the insured shows that the non-compliance could not have increased the risk of the loss which actually occurred in the circumstances in which it actually occurred. For example, where a property has been damaged by flooding, it is expected that an insured could show that a failure to

use the required type of lock on a window could not have increased the risk of that loss. In this case the insurer should pay out on the flood claim.

96. A direct causal link between the breach and the ultimate loss is not required. That is, the relevant test is not whether the non-compliance actually caused or contributed to the loss which has been suffered.

97. Section 11(4) provides that sections 10 and 11 may apply together. This will only arise where the relevant term is found to be a warranty, because section 10 only applies to warranties.

PART 4: FRAUDULENT CLAIMS

Section 12: Remedies for fraudulent claims

98. This section sets out the insurer's remedies where the insured makes a fraudulent claim. It does not apply where a third party commits a fraud against the insurer or the insured, such as where a fraudulent claim is made against an insured, who seeks recovery from its insurer under a liability policy.

99. The section does not define "fraud" or "fraudulent claim". The remedies will apply once fraud has been determined in accordance with common law principles.[22]

100. Section 12(1) puts the common law rule of forfeiture on a statutory footing. Where the insured commits a fraud against the insurer, the insurer is not liable to pay the insurance claim to which the fraud relates. Where the insurer has already paid out insurance monies on the claim and later discovers the fraud, the insurer may recover those monies from the insured.

101. Section 12(1)(c) provides the insurer with a further remedy. It gives the insurer an option to treat the contract as if it had been terminated at the time of the "fraudulent act". This is dependent on the insurer giving notice of their election to do so to the insured.

102. The "fraudulent claim" is to be distinguished from the "fraudulent act". The latter is intended to be the behaviour that makes a claim fraudulent, which may be after the initial submission of the claim. The timing of the "fraudulent act" is relevant in determining when the liability of the insurer ceases for the purposes of section 12(1)(c). For example, if an insured submits a genuine claim in January and adds a fraudulent element in March (for example, adding an additional, fabricated, head of loss), the "fraudulent act" takes place in March. This is the point at which the contract may be treated as having been terminated, and from which the insurer's liability ceases.

103. Section 12(2) sets out the consequences if the insurer elects to treat the contract as terminated under 12(1)(c). It may refuse to pay claims relating to "relevant events"

[22] For example, see the test for fraud in *Derry v Peek* (1889) LR 14 App Cas 337.

occurring after the time of the fraudulent act. It does not have to return any premiums already paid by the insured.

104. "Relevant event", as defined in section 12(4), refers to any event that would trigger the insurer's liability under the particular insurance contract. Usually, this will be the occurrence of loss or damage which is insured under the contract. However, some insurance contracts, such as professional indemnity insurance contracts, are written on the basis of a "claims made" policy. In such cases, the "relevant event" may be the notification of a claim against the professional, even where no loss has actually occurred.

105. Section 12(3) confirms that the insurer remains liable in respect of relevant events that took place before the date of the fraudulent act.

Section 13: Remedies for fraudulent claims: group insurance

106. Group schemes are an important form of insurance. Many schemes are set up by employers to provide protection insurance for their employees. The policyholder is typically the employer, who arranges the scheme directly with the insurer. The group members (typically employees) have no specific status. As they are not policyholders, if a group member makes a fraudulent claim, the insurer's remedies are uncertain.

107. This section is intended to give the insurer a remedy against a fraudulent group member, while protecting the other members who are covered by the insurance.

108. Section 13(1) defines a group scheme to which this section applies. It may cover not only the typical employment scheme, but many other types of arrangement including block building policies taken out by landlords for tenants, and potentially insurance arranged by one company for a group of companies, if the contract is so structured. It is possible for group insurance to cover only one member, where (for example) a freeholder takes out insurance for a single leaseholder.

109. This section envisages a policyholder (A) taking out a policy which is of direct benefit to one or more third parties who are not parties to the contract (the Cs). The contract must not simply insure A's liability in respect of the Cs, though A may itself be a beneficiary under the policy. The section applies where one of the Cs (CF) makes a fraudulent claim.

110. Section 13(2) provides that the insurer has the same remedies against the fraudulent group member (CF) as it would have against a policyholder who makes a fraudulent claim. These remedies are set out in section 12. This means that where a fraudulent claim has been made by CF, the insurer is not liable to pay the fraudulent claim. It may retain any premiums paid by, or on behalf of, CF. It may also treat CF's insurance cover as having been terminated at the time of the fraudulent act. To exercise this option, it must serve notice on both A and CF.

111. Importantly, the insurer may not treat its entire liability under the contract as terminated, but only its liability to CF. Sections 13(2)(a) and (b) provide that the remedies are only exercisable against, and can only affect the rights of, that fraudulent member.

112. The arrangements for payment of insurance monies under a group insurance contract differ. The insurer may either pay insurance monies to the policyholder A (who would pass it on to the relevant group member), or may pay the group member directly. Section 13(3)(a) provides that the insurer may reclaim any sums paid in respect of the fraudulent claim from either A or CF, depending on which of them is (or was last) in possession of the money.

PART 5: GOOD FAITH AND CONTRACTING OUT

Section 14: Good faith

113. Section 17 of the Marine Insurance Act 1906 provides that insurance contracts are contracts based upon the utmost good faith. It also provides that, "if the utmost good faith be not observed by either party, the contract may be avoided by the other party". The common law mirrors this provision in relation to non-marine insurance.

114. Section 14 removes avoidance of the contract as a remedy for breach of this duty of good faith, both from the 1906 Act and at common law.

115. Section 14(4) repeals section 2(5) of CIDRA, which is superseded by the provisions of this section.

116. The intention of section 14 is that good faith will remain an interpretative principle, with section 17 of the 1906 Act and the common law continuing to provide that insurance contracts are contracts of good faith.

Section 15: Contracting out: consumer insurance contracts

117. This section applies to all consumer insurance contracts.

118. Section 15(1) prevents insurers from contracting out of the provisions of the Act to the detriment of the consumer. A term in a consumer insurance contract (or variation) or in another contract is void to the extent that it would put the consumer in a worse position than provided for in the Act.

119. Section 15(3) states that section 15 does not apply to contracts to settle claims. A settlement of a claim will therefore continue to provide certainty for the parties. It would not be possible for a consumer to go behind a settlement by alleging that it was less favourable than the statutory provisions in the Act.

Section 16: Contracting out: non-consumer insurance

120. This section applies to all non-consumer insurance contracts. It concerns the situations in which an insurer can "contract out" by using a term of the non-consumer insurance contract to put the insured in a worse position than it would be in under the default rules contained in the Act.

121. Section 16(2) provides that, generally speaking, parties can agree to contract terms which are less favourable to the insured than provisions of the Act. Such terms may appear in the insurance contract itself or any separate contract. However, such terms will only be valid if the insurer has complied with the "transparency requirements" contained in section 17.

122. There is only one situation in which the insurer cannot contract out to the detriment of the insured, which is set out in section 16(1). This is the prohibition on basis of the contract clauses and similar provisions in section 9.

Section 17: The transparency requirements

123. As discussed above, section 16(2) provides that a contractual term which puts the non-consumer insured in a worse position than it would be in under the terms of the Act is of no effect unless the requirements of section 17 are satisfied. Such a term is referred to in section 17(1) as a "disadvantageous term".

124. The section 17 conditions (the "transparency requirements") are set out in sections 17(2) and 17(3).

125. The requirement, in section 17(2), that the insurer take sufficient steps to draw the term to the insured's attention is intended to ensure that the insured is given a reasonable opportunity to know that the disadvantageous term exists before it enters into the contract.

126. Under the general law of agency, this requirement could also be satisfied by taking sufficient steps to draw the term to the attention of the insured's agent. Section 22(4) is also relevant here. That section explicitly states that references 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.

127. If the insured (or its agent) has actual knowledge of the disadvantageous term, section 17(5) makes clear that an insured may not claim that the insurer has failed to draw the term sufficiently to its attention.

128. Under section 17(3), the term must also be clear and unambiguous as to its effect. This is intended to require the effects of the disadvantageous term to be set out explicitly, not merely that the language is clear and unambiguous.

129. Section 17(4) provides that that in determining whether the transparency requirements have been met, the characteristics of insured persons of the kind in question should be taken into account, as should the circumstances of the transaction. What is sufficient for one type of insured may not be sufficient for another.

130. The extent to which the term is required to spell out the consequences will depend on the nature of the insured party and the extent to which it could be expected to understand the consequences of the provision.

Section 18: Contracting out: group insurance contracts

131. Section 18 addresses contracting out of section 13, which deals with the insurer's remedies where a member of a group insurance contract makes a fraudulent claim.

132. Section 18(2) concerns group members who would each be a "consumer" if they had entered into the insurance contract directly with the insurer rather than it being a group policy. Section 18(2) provides that a term of a contract which seeks to put a

consumer member of a group scheme in a worse position than they would be in under section 13 is, to that extent, of no effect.

133. Where a group member would not have been a "consumer" if they had entered the contract directly with the insurer, they are a "non-consumer C" and section 18(3) applies. This provides that an insurer must comply with the transparency requirements in order to use a contract term to put a non-consumer C in a worse position than it would be in under section 13. For the purposes of those requirements "the insured" means the person who took out the insurance on behalf of the group (referred to in section 13 as A).

PART 6: AMENDMENT OF THE THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 2010

Section 19: Power to change the meaning of "relevant person"

134. Section 19 inserts a new section 19 into the 2010 Act. The new section enables the Secretary of State to make regulations adding or removing circumstances in which a person is a "relevant person" for the purposes of the 2010 Act, provided that the Secretary of State considers that the proposed circumstances involve dissolution, insolvency or financial difficulty, or are similar to those for the time being prescribed in sections 4 to 7 of the 2010 Act.[23] The regulations must be made by statutory instrument and are subject to an affirmative resolution procedure.[24]

135. New section 19(5) of the 2010 Act provides that where the regulations add circumstances, they may provide that section 1 of the 2010 Act applies where those circumstances or the liability under the insurance contract arose before the day on which the regulations come into force or where both of those events occurred before that day, as well as where both events happened afterwards.

136. New section 19(6) provides that, if the regulations are to apply where both of those events occurred before the day on which the regulations come into force, they must provide that the person is to be treated as not having become a "relevant person" until that day. As a result, the transfer of rights will take place upon the regulations coming into force, and not when the two events were first satisfied. The intention is that nothing done before the regulations come into force will be undone.

137. Where regulations remove circumstances in which a person is a "relevant person" for the purposes of the 2010 Act, new section 19(7) provides that the regulations can apply where either those circumstances or the liability under the insurance contract arose before the day on which the regulations come into force, but not where both arose before that day. This prevents regulations from undoing transfers under section 1 that have already occurred.

[23] New section 19(1) and (2).

[24] New section 19(10) and (11).

138. In certain instances, the 2010 Act alters the effect of aspects of the transfer of rights under section 1 by making provision about: the persons to whom and the extent to which rights are transferred; the re-transfer of rights where circumstances change; and the effect of the transfer on the liability of the insured in particular circumstances.[25] New section 19(3) enables regulations to address these issues in connection with the addition or removal of circumstances.

139. New section 19(4) provides that where the regulations add or remove circumstances involving actual or anticipated dissolution, they may change the cases in which section 9(3) and paragraph 3 of Schedule 1 to the 2010 Act apply. These provisions modify the duty to provide information in certain cases, including where a body corporate has been dissolved. If the circumstances in which a person is a "relevant person" due to being dissolved are changed, it may be appropriate to change these two provisions accordingly, and new section 19(4) provides for that situation.

140. Regulations may contain consequential, incidental, supplementary, transitional, transitory or saving provision[26] and amend any enactment, whenever passed or made, including: the 2010 Act and any other Act; any Act or Measure of the National Assembly for Wales; any Act of the Scottish Parliament; and Northern Irish legislation.[27]

Section 20: Other amendments to the 2010 Act

141. This section gives effect to Schedule 2, which amends the 2010 Act by making provision relating to the insured persons to whom the 2010 Act applies.

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.

[25] See for example, section 6(6) [cf. new section 19(3)(a)]; sections 4(5), 6(7) and 7(2) [cf. new section 19(3)(b)]; and section 14(2)-(5) [cf. new section 19(3)(c)].

[26] New section 19(8).

[27] New section 19(9) and new section 21A (introduced into the 2010 Act by section 19 and paragraph 6 of Schedule 2 to the Act respectively).

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.[28]

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.[29] Under the 2010 Act a company is a relevant person if it is subject to an administration order,[30] but the 1930 Acts apply if a company enters administration, irrespective of whether there is an administration order in place.[31] 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.[32]

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.[33]

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.

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[28] 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.

[29] Insolvency Act 1986, schedule B1, paragraph 2.

[30] Section 6(2)(b).

[31] See section 1(1)(b) of the 1930 Acts.

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

[33] Cf. the opening words of section 1(1) of the 1930 Acts.

COMMENCEMENT DATES

172. Under section 23(2), the provisions relating to insurance contract law will come into force 18 months after Royal Assent (on 12 August 2016). This is to allow insurers and others to prepare for the changes made by the Act.

173. Under section 23(3), section 19 (*power to change meaning of "relevant person" for purposes of 2010 Act*) will come into force two months after Royal Assent (on 12 April 2015). This will enable the power to be exercised before the 2010 Act is brought into force. Section 18 and Schedule 2, which further amend the 2010 Act, will come into force with the remainder of the 2010 Act.[34]

[34] Section 21(2) of the 2010 Act provides that the 2010 Act is to come into force on such day as the Secretary of State may by order made by statutory instrument appoint.

HANSARD REFERENCES

174. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference
House of Lords		
Introduction	17 July 2014	Vol. 755 Col. 705
Second reading committee	29 July 2014	Vol. 755 Cols. GC 621 - 630
Second reading	30 July 2014	Vol. 755 Col. 1596
Special Public Bill Committee	2, 3, 9 and 15 December 2014	Lords Select Committee: Special Public Bill Committee on the Insurance Bill
Report stage	8 January 2015	Vol. 758 Cols. 544 – 548
Third reading	15 January 2015	Vol. 758 Col. 980
House of Commons		
First reading	16 January 2015	
Committee Debate: Second Reading Committee	26 January 2015	Public Bill Committee (Session 2014-15)
Second reading	27 January 2015	Vol. 591 Col. 798
Committee, Report and Third reading	3 February 2015	Vol. 591 Cols. 141 – 149
Royal Assent		
Royal Assent	12 February 2015	Commons Vol. 592 Col. 1000 Lords Vol. 759 Col. 1353

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