

INSURANCE ACT 2015

EXPLANATORY NOTES

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.

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

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.