

INSURANCE ACT 2015

EXPLANATORY NOTES

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 insurer¹ 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 the Regulated

¹ 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)”.

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

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,² 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”.

² *Delver, Assignee of Bunn v Barnes* (1807) 1 Taunt 48.