

# Consumer Insurance (Disclosure and Representations) Bill [HL]

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by HM Treasury, are published separately as HL Bill 68 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Sassoon has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Consumer Insurance (Disclosure and Representations) Bill [HL] are compatible with the Convention rights.



# Consumer Insurance (Disclosure and Representations) Bill [HL]

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**B I L L**

TO

Make provision about disclosure and representations in connection with consumer insurance contracts.

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

*Main definitions*

**1 Main definitions**

In this Act—

“consumer insurance contract” means a contract of insurance between—

- (a) an individual who enters into the contract wholly or mainly for purposes unrelated to the individual’s trade, business or profession, and 5
- (b) 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); 10

“consumer” means the individual who enters into a consumer insurance contract, or proposes to do so;

“insurer” means the person who is, or would become, the other party to a consumer insurance contract. 15

*Pre-contract and pre-variation information*

**2 Disclosure and representations before contract or variation**

- (1) This section makes provision about disclosure and representations by a consumer to an insurer before a consumer insurance contract is entered into or varied. 20
- (2) It is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer.

- (3) A failure by the consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation for the purposes of this Act (whether or not it could be apart from this subsection).
- (4) The duty set out in subsection (2) replaces any duty relating to disclosure or representations by a consumer to an insurer which existed in the same circumstances before this Act applied. 5
- (5) Accordingly –
- (a) any rule of law to the effect that a consumer insurance contract is one of the utmost good faith is modified to the extent required by the provisions of this Act, and 10
  - (b) the application of section 17 of the Marine Insurance Act 1906 (contracts of marine insurance are of utmost good faith), in relation to a contract of marine insurance which is a consumer insurance contract, is subject to the provisions of this Act.
- 3 Reasonable care** 15
- (1) Whether or not a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all the relevant circumstances.
- (2) The following are examples of things which may need to be taken into account in making a determination under subsection (1) – 20
- (a) the type of consumer insurance contract in question, and its target market,
  - (b) any relevant explanatory material or publicity produced or authorised by the insurer,
  - (c) how clear, and how specific, the insurer's questions were, 25
  - (d) whether or not an agent was acting for the consumer.
- (3) The standard of care required is that of a reasonable consumer: but this is subject to subsections (4) and (5).
- (4) If the insurer was, or ought to have been, aware of any particular characteristics or circumstances of the actual consumer, those are to be taken into account. 30
- (5) A misrepresentation made dishonestly is always to be taken as showing lack of reasonable care.

#### *Qualifying misrepresentations*

- 4 Qualifying misrepresentations: definition and remedies**
- (1) An insurer has a remedy against a consumer for a misrepresentation made by the consumer before a consumer insurance contract was entered into or varied only if – 35
- (a) the consumer made the misrepresentation in breach of the duty set out in section 2(2), and
  - (b) the insurer shows that without the misrepresentation, that insurer would not have entered into the contract (or agreed to the variation) at all, or would have done so only on different terms. 40

- (2) A misrepresentation for which the insurer has a remedy against the consumer is referred to in this Act as a “qualifying misrepresentation”.
- (3) The only such remedies available are set out in Schedule 1.

## 5 Qualifying misrepresentations: classification and presumptions

- (1) For the purposes of this Act, a qualifying misrepresentation (see section 4(2)) is either – 5
  - (a) deliberate or reckless, or
  - (b) careless.
- (2) A qualifying misrepresentation is deliberate or reckless if the consumer – 10
  - (a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and
  - (b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.
- (3) A qualifying misrepresentation is careless if it is not deliberate or reckless. 15
- (4) It is for the insurer to show that a qualifying misrepresentation was deliberate or reckless.
- (5) But it is to be presumed, unless the contrary is shown – 20
  - (a) that the consumer had the knowledge of a reasonable consumer, and
  - (b) that the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.

### *Specific issues*

## 6 Warranties and representations

- (1) This section applies to representations made by a consumer – 25
  - (a) in connection with a proposed consumer insurance contract, or
  - (b) in connection with a proposed variation to a consumer insurance contract.
- (2) Such a representation is not capable of being converted into a warranty by means of any provision of the consumer insurance contract (or of the terms of the variation), or of any other contract (and whether by declaring the representation to form the basis of the contract or otherwise). 30

## 7 Group insurance

- (1) This section applies where – 35
  - (a) a contract of insurance is entered into by a person (“A”) in order to provide cover for another person (“C”), or is varied or extended so as to do so,
  - (b) C is not a party to the contract,
  - (c) so far as the cover for C is concerned, the contract would have been a consumer insurance contract if entered into by C rather than by A, and

- (d) C provided information directly or indirectly to the insurer before the contract was entered into, or before it was varied or extended to provide cover for C.
- (2) So far as the cover for C is concerned –
- (a) sections 2 and 3 apply in relation to disclosure and representations by C to the insurer as if C were proposing to enter into a consumer insurance contract for the relevant cover with the insurer, and 5
- (b) subject to subsections (3) to (5) and the modifications in relation to the insurer’s remedies set out in Part 3 of Schedule 1, the remainder of this Act applies in relation to the cover for C as if C had entered into a consumer insurance contract for that cover with the insurer. 10
- (3) Section 4(1)(b) applies as if it read as follows –
- “(b) the insurer shows that without the misrepresentation, that insurer would not have agreed to provide cover for C at all, or would have done so only on different terms.” 15
- (4) If there is more than one C, a breach on the part of one of them of the duty imposed (by virtue of subsection (2)(a)) by section 2(2) does not affect the contract so far as it relates to the others.
- (5) Nothing in this section affects any duty owed by A to the insurer, or any remedy which the insurer may have against A for breach of such a duty. 20
- 8 Insurance on life of another**
- (1) This section applies in relation to a consumer insurance contract for life insurance on the life of an individual (“L”) who is not a party to the contract.
- (2) If this section applies –
- (a) information provided to the insurer by L is to be treated for the purposes of this Act as if it were provided by the person who is the party to the contract, but 25
- (b) in relation to such information, if anything turns on the state of mind, knowledge, circumstances or characteristics of the individual providing the information, it is to be determined by reference to L and not the party to the contract. 30
- 9 Agents**
- Schedule 2 applies for determining, for the purposes of this Act only, whether an agent through whom a consumer insurance contract is effected is the agent of the consumer or of the insurer. 35
- 10 Contracting out**
- (1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects the matters mentioned in subsection (2) than the consumer would be in by virtue of the provisions of this Act is to that extent of no effect. 40
- (2) The matters are –
- (a) disclosure and representations by the consumer to the insurer before the contract is entered into or varied, and



- (b) any remedies for qualifying misrepresentations (see section 4(2)).
- (3) This section does not apply in relation to a contract for the settlement of a claim arising under a consumer insurance contract.

*Final provision*

|           |  |    |
|-----------|--|----|
| <b>11</b> | <b>Consequential provision</b>   | 5  |
| (1)       | Any rule of law to the same effect as the following is abolished in relation to consumer insurance contracts –   |    |
|           | (a) section 18 of the Marine Insurance Act 1906 (disclosure by assured),   |    |
|           | (b) section 19 of that Act (disclosure by agent effecting insurance),  |    |
|           | (c) section 20 of that Act (representations pending negotiation of contract).  | 10 |
| (2)       | The Marine Insurance Act 1906 is amended as follows –  |    |
|           | (a) in section 18, at the end add –  |    |
|           | “(6) This section does not apply in relation to a contract of marine insurance if it is a consumer insurance contract within the meaning of the Consumer Insurance (Disclosure and Representations) Act 2011.”;    | 15 |
|           | (b) in section 19, the existing text becomes subsection (1), and after that add –  |    |
|           | “(2) This section does not apply in relation to a contract of marine insurance if it is a consumer insurance contract within the meaning of the Consumer Insurance (Disclosure and Representations) Act 2011.”;    | 20 |
|           | (c) in section 20, at the end add –  |    |
|           | “(8) This section does not apply in relation to a contract of marine insurance if it is a consumer insurance contract within the meaning of the Consumer Insurance (Disclosure and Representations) Act 2011.”.    | 25 |
| (3)       | In section 152 of the Road Traffic Act 1988 (exceptions to duty of insurers to satisfy judgment against persons insured against third-party risks), in subsection (2) –  | 30 |
|           | (a) in paragraph (a), after “avoid it” insert “either under the Consumer Insurance (Disclosure and Representations) Act 2011 or, if that Act does not apply,”;   |    |
|           | (b) in paragraph (b), after “policy or security” insert “under that Act or”, and for “it” substitute “the policy or security”.   | 35 |
| (4)       | In Article 98A of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I.)) (exceptions to duty of insurers to satisfy judgment against persons insured against third-party risks), in paragraph (2) – |    |
|           | (a) in sub-paragraph (a), after “avoid it” insert “either under the Consumer Insurance (Disclosure and Representations) Act 2011 or, if that Act does not apply,”;   | 40 |
|           | (b) in sub-paragraph (b), after “policy or security” insert “under that Act or”, and for “it” substitute “the policy or security”.   |    |

**12 Short title, commencement, application and extent**

- (1) This Act may be cited as the Consumer Insurance (Disclosure and Representations) Act 2011.
- (2) Section 1 and this section come into force on the day on which this Act is passed, but otherwise this Act comes into force on such day as the Treasury may by order made by statutory instrument appoint. 5
- (3) An order under subsection (2) may not appoint a day sooner than the end of the period of 1 year beginning with the day on which this Act is passed.
- (4) This Act applies only in relation to consumer insurance contracts entered into, and variations to consumer insurance contracts agreed, after the Act comes into force. 10  
 In the case of group insurance (see section 7), that includes the provision of cover for C by means of an insurance contract entered into by A after the Act comes into force, or varied or extended so as to do so after the Act comes into force. 15
- (5) Nothing in this Act affects the circumstances in which a person is bound by the acts or omissions of that person's agent.
- (6) Apart from the provisions listed in subsection (7), this Act extends to England and Wales, Scotland and Northern Ireland.
- (7) In section 11 – 20  
 (a) subsection (3) extends to England and Wales and Scotland only;  
 (b) subsection (4) extends to Northern Ireland only.

## SCHEDULES

### SCHEDULE 1

Section 4(3).

#### INSURERS’ REMEDIES FOR QUALIFYING MISREPRESENTATIONS

##### PART 1

##### CONTRACTS

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##### *General*

- 1 This Part of this Schedule applies in relation to qualifying misrepresentations made in connection with consumer insurance contracts (for variations to them, see Part 2).

##### *Deliberate or reckless misrepresentations*

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- 2 If a qualifying misrepresentation 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, except to the extent (if any) that it would be unfair to the consumer to retain them.

##### *Careless misrepresentations – claims*

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- 3 If the qualifying misrepresentation was careless, paragraphs 4 to 8 apply in relation to any claim.

- 4 The insurer’s remedies are based on what it would have done if the consumer had complied with the duty set out in section 2(2), and paragraphs 5 to 8 are to be read accordingly.

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- 5 If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid.

- 6 If the insurer would have entered into the consumer insurance contract, but on different terms (excluding 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.

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- 7 In addition, if the insurer would have entered into the consumer insurance 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.

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- 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—

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

*Careless misrepresentations – treatment of contract for the future*

- |   |   |    |
|---|---|----|
| 9 | <p>(1) This paragraph—</p> <p style="margin-left: 20px;">(a) applies if the qualifying misrepresentation was careless, but</p> <p style="margin-left: 20px;">(b) does not relate to any outstanding claim.</p>  | 5  |
|   | <p>(2) Paragraphs 5 and 6 (as read with paragraph 4) apply as they apply where a claim has been made.</p>   |    |
|   | <p>(3) Paragraph 7 (as read with paragraph 4) applies in relation to a claim yet to be made as it applies in relation to a claim which has been made.</p>   | 10 |
|   | <p>(4) If by virtue of sub-paragraph (2) or (3), the insurer would have either (or both) of the rights conferred by paragraph 6 or 7, the insurer may—</p> <p style="margin-left: 20px;">(a) give notice to that effect to the consumer, or</p> <p style="margin-left: 20px;">(b) terminate the contract by giving reasonable notice to the consumer.</p> | 15 |
|   | <p>(5) But the insurer may not terminate a contract under sub-paragraph (4)(b) if it is wholly or mainly one of life insurance.</p>   |    |
|   | <p>(6) If the insurer gives notice to the consumer under sub-paragraph (4)(a), the consumer may terminate the contract by giving reasonable notice to the insurer.</p>  | 20 |
|   | <p>(7) If either party terminates the contract under this paragraph, the insurer must refund any premiums paid for the terminated cover in respect of the balance of the contract term.</p>   |    |
|   | <p>(8) Termination of the contract under this paragraph does not affect the treatment of any claim arising under the contract in the period before termination.</p>   | 25 |
|   | <p>(9) Nothing in this paragraph affects any contractual right to terminate the contract.</p>   |    |

PART 2

VARIATIONS

- |    |  |    |
|----|--|----|
| 10 | <p>This Part of this Schedule applies in relation to qualifying misrepresentations made in connection with variations to consumer insurance contracts.</p>   | 30 |
| 11 | <p>If the subject-matter of a variation can reasonably be treated separately from the subject-matter of the rest of the contract, Part 1 of this Schedule applies (with any necessary modifications) in relation to the variation as it applies in relation to a contract.</p> | 35 |
| 12 | <p>Otherwise, Part 1 applies (with any necessary modifications) as if the qualifying misrepresentation had been made in relation to the whole contract (for this purpose treated as including the variation) rather than merely in relation to the variation.</p>              | 40 |

PART 3

MODIFICATIONS FOR GROUP INSURANCE

- 13 Part 1 is to be read subject to the following modifications in relation to cover provided for C under a group insurance contract as mentioned in section 7 (and in this Part “A” and “C” mean the same as in that section). 5
- 14 References to the consumer insurance contract (however described) are to that part of the contract which provides for cover for C.
- 15 References to claims and premiums are to claims and premiums in relation to that cover.
- 16 The reference to the consumer is to be read – 10
- (a) in paragraph 2(b), as a reference to whoever paid the premiums, or the part of them that related to the cover for C,
  - (b) in paragraph 9(4) and (6), as a reference to A.

PART 4

SUPPLEMENTARY

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- 17 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 consumer insurance contracts.

SCHEDULE 2

Section 9.

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RULES FOR DETERMINING STATUS OF AGENTS

- 1 This Schedule sets out rules for determining, for the purposes of this Act only, whether an agent through whom a consumer insurance contract is effected is acting as the agent of the consumer or of the insurer.
- 2 The agent is to be taken as the insurer’s agent in each of the following cases – 25
- (a) when the agent does something in the agent’s capacity as the appointed representative of the insurer for the purposes of the Financial Services and Markets Act 2000 (see section 39 of that Act),
  - (b) when the agent collects information from the consumer, if the insurer had given the agent express authority to do so as the insurer’s agent, 30
  - (c) when the agent enters into the contract as the insurer’s agent, if the insurer had given the agent express authority to do so.
- 3 (1) In any other case, it is to be presumed that the agent is acting as the consumer’s agent unless, in the light of all the relevant circumstances, it appears that the agent is acting as the insurer’s agent. 35
- (2) Some factors which may be relevant are set out below.
  - (3) Examples of factors which may tend to confirm that the agent is acting for the consumer are –

- (a) the agent undertakes to give impartial advice to the consumer,
  - (b) the agent undertakes to conduct a fair analysis of the market,
  - (c) the consumer pays the agent a fee.
- (4) Examples of factors which may tend to show that the agent is acting for the insurer are – 5
- (a) the agent places insurance of the type in question with only one of the insurers who provide insurance of that type,
  - (b) the agent is under a contractual obligation which has the effect of restricting the number of insurers with whom the agent places insurance of the type in question, 10
  - (c) the insurer provides insurance of the type in question through only a small proportion of the agents who deal in that type of insurance,
  - (d) the insurer permits the agent to use the insurer’s name in providing the agent’s services,
  - (e) the insurance in question is marketed under the name of the agent, 15
  - (f) the insurer asks the agent to solicit the consumer’s custom.
- 4 (1) If it appears to the Treasury that the list of factors in sub-paragraph (3) or (4) of paragraph 3 has become outdated, the Treasury may by order made by statutory instrument bring the list up to date by amending the sub-paragraph so as to add, omit or alter any factor. 20
- (2) A statutory instrument containing an order under sub-paragraph (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.



# Consumer Insurance (Disclosure and Representations) Bill [HL]

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## B I L L

To make provision about disclosure and representations in connection with consumer insurance contracts.

*Lord Sassoon*

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