



September 2020

Consumer Insurance Contracts Act 2019 Commenced

The majority of the provisions of the [Consumer Insurance Contracts Act 2019](#) (the “**Act**”) have been commenced, effective 1 September 2020.

Introduction

The Act, which was detailed at Bill stage in our previous article [here](#), introduces a range of provisions which seek to further balance the contractual relationship between consumers and insurers in Ireland. In this regard, the Act has many similarities to the Consumer Insurance (Disclosure and Representations) Act 2012 in the United Kingdom, although the scope of the Irish Act is broader.

As outlined in our previous article, the definition of ‘consumer’ in the Act follows the definition in the Financial Services and Pensions Ombudsman Act 2017, which includes individuals and small businesses with a turnover of less than €3 million, provided such persons shall not be a member of a group having a combined turnover greater than €3 million. As such, the Act will have widespread application in the Irish insurance industry.

Commenced Provisions

The sections which have been implemented with effect from 1 September 2020 are summarised as follows:

- Section 7 prevents insurers rejecting a claim on the basis that a consumer does not have an ‘insurable interest’ in the subject matter of the policy.

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- ▣ Sections 11 and 13 deal with the right to withdraw from a contract of insurance (cooling off periods) and the cancellation of a contract of insurance.
- ▣ Section 14(6) requires the insurer to notify the consumer in plain language of any alteration to the terms and conditions of their policy in reasonable time before renewal.
- ▣ Section 15 replaces the requirement of utmost good faith at a post-contractual stage with new provisions, including that an insurer may refuse a claim if the subject matter of the policy has altered to such a degree that it cannot be said to cover the new risk.
- ▣ Sections 16 to 18 (other than section 18(4)) outline specific requirements in respect of claims handling duties, including provisions regarding deferring payment on property claims and proportionate remedies.
- ▣ Section 19 provides that any clause which seeks to convert a representation made by a consumer into a warranty shall be invalid and that any terms which impose continuing restrictive obligations on a consumer shall be treated as 'suspensive conditions' – i.e. the insurers liability is suspended for the duration of the breach.
- ▣ Sections 21 and 22 outline the rights of a third party to a contract to claim against an insurer, and sections 23 to 25 deal with the subrogation of insurance contracts.

Deferred Provisions

The commencement of the following, more onerous, sections has been deferred until 1 September 2021 to allow insurers sufficient time to update their systems and processes to comply with them:

- ▣ Section 8 abolishes the duty of good faith at the pre-contractual stage. The consumer will instead be required to answer, truthfully and with reasonable care, a series of questions asked by the insurer.
- ▣ Section 9 provides proportionate remedies for misrepresentation by a consumer. The applicable remedy will depend on whether the misrepresentation was innocent (insurer is required to pay the claim), fraudulent (insurer may avoid the contract) or negligent (the insurer must do what it would have done had it been aware of the full facts).
- ▣ Section 12 requires the insurer to provide a consumer with a schedule detailing their premiums paid and claims made over the previous five years.
- ▣ Section 14 (1) – (5) outline the obligations placed on consumers and insurers on renewal of a contract. The consumer will no longer be required to furnish any additional information of relevance at this stage, unless the insurer asks them specific questions which they must answer honestly and with reasonable care.

The commencement order does not yet indicate when Section 18(4) - which provides that an exclusion of coverage for loss or damage caused by a criminal or intentional act or omission only applies to the person who caused the loss or damage, or colluded or consented to the act or omission, and that the insured may only recover their proportionate interest in the subject property – will be commenced.

Comment

The commencement of the Act marks a significant change for the Irish insurance industry.

Insurance companies must immediately ensure that they have revised all of their consumer insurance documents, systems and processes to comply with the sections of the Act which have been commenced with effect from 1 September 2020. The Central Bank of Ireland has been empowered by the Act to issue a code of practice on the form of a contract of insurance and any other requirements related to such a contract under the Act, which will hopefully be of assistance in that regard

Although commencement of the remaining sections of the Act has been deferred until 1 September 2021, insurers should nevertheless begin preparing for those changes now so that they are in a position to implement them also within the time remaining.

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