An Bille um Chonarthaí Árachais i leith Tomhaltóirí, 2017
Consumer Insurance Contracts Bill 2017

Mar a tionscnaiodh
As initiated
AN BILLE UM CHONARTHAÍ ÁRACHAIS I LEITH TOMHALTÓIRÍ, 2017
CONSUMER INSURANCE CONTRACTS BILL 2017

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[No. 3 of 2017]
ACTS REFERRED TO

Companies Act 2014 (No. 38)
Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 (No. 4)
Data Protection Acts 1988 and 2003
Life Assurance Act 1774 (14 Geo 3, c. 48)
Life Insurance (Ireland) Act 1866 (29 & 30 Vict., c. 42)
Marine Insurance Act 1906 (8 Edw. 7 c. 41)
Bill

entitled

An Act to reform the law of consumer insurance contracts and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act—

“average consumer” means a consumer who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors; and if a contract of insurance is directed at a particular group of consumers, “average consumer” shall be read as “the average member of that group”; and if the contract of insurance would be likely materially to distort the economic behaviour only of a clearly identifiable group of consumers who are natural persons, and whom the insurer could reasonably be expected to foresee as being particularly vulnerable because of their mental or physical infirmity, age or credulity, “average consumer” shall be read as “the average member of that vulnerable group”;

“consumer” means—

(a) a natural person who is acting for purposes that are wholly or mainly outside his or her trade, business, craft or profession, or

(b) a person or group of persons having an annual turnover of €3 million or less in the financial year preceding the year in which such person or persons enters into a contract of insurance, provided that such person or persons shall not be a member of a group of persons having a combined turnover greater than €3 million,

and includes both a consumer who at the pre-contractual stage of a contract of insurance proposes to enter into a contract of insurance and also a consumer who has entered into a contract of insurance, and includes, where relevant, an “average consumer”;

“contract of insurance” means, except where otherwise provided in this Act, a contract of life insurance or non-life insurance made between an insurer and a consumer;

“fraudulent misrepresentation” means a misrepresentation that is false or misleading in any material respect and which the consumer either—
(a) knows to be false or misleading, or
(b) consciously disregards whether it is false or misleading, and “fraudulent” or “fraud” shall be construed accordingly;

“group of persons” means—
(a) a company incorporated under the Companies Act 2014, or
(b) an unincorporated body, including a charity, club, partnership, sole trader or trust;

“insurer” means an insurance undertaking licensed by the Central Bank of Ireland to provide life insurance or non-life insurance in the State, or an undertaking otherwise lawfully carrying on the business of an insurance undertaking in the State;

“Minister” means the Minister for Finance;

“turnover” shall be determined by calculating the income received from the sales and services of the person or group of persons, falling within the ordinary activities of the person or group of persons after deduction of sales rebates;

“writing” includes on paper or other suitable durable medium, including where made available by easily accessible and retrievable online means or, where agreed by the insurer and the consumer, by email or SMS text.

Scope of Act
2. (1) Except where otherwise provided, this Act applies to an insurance contract, whether life insurance or non-life insurance, entered into between an insurer and a consumer.

(2) This Act does not alter or affect any rights or obligations concerning or arising from—
(a) the duties of an insurance broker or insurance intermediary,
(b) a contract of reinsurance, or
(c) a contract of marine, air or transport insurance.

(3) No provision of the Marine Insurance Act 1906 applies to a contract of insurance to which this Act applies.

(4) No provision of the Life Assurance Act 1774, as extended to Ireland by the Life Insurance (Ireland) Act 1866, applies to a contract of insurance to which this Act applies.

Regulations and Codes of Practice
3. (1) The Minister may make Regulations for the purpose of giving full effect to this Act, including with respect to the form of, or any other requirements related to, a consumer insurance contract as set out in this Act.

(2) The Central Bank of Ireland may issue a Code of Practice concerning the form of, or any other requirements related to, a consumer insurance contract as set out in this Act.

Effect of Codes of Practice
4. A code of practice, whether made under statutory authority or otherwise, which contains
practical guidance that would assist a court or other adjudicatory body such as the Financial Services Ombudsman in determining any issue before it in connection with a consumer insurance contract to which this Act applies, shall be admissible for that purpose and may be taken into account.

**Insurable interest**

5. (1) A claim by a consumer under an otherwise valid contract of insurance shall not be rejected by the insurer by reason only that the consumer does not have, or did not have at the time when the contract was entered into, an interest in the subject-matter of the contract.

(2) Where the consumer is required, because the contract of insurance is also a contract of indemnity, to have an interest in the subject-matter of the contract, the interest required shall not extend beyond a factual expectation either of an economic benefit from the preservation of the subject matter, or of an economic loss on its destruction, damage or loss that would arise in the ordinary course of events.

(3) An insurer is not relieved of liability under the contract of insurance by reason only that the name of the person who may benefit under the contract is not specified in a policy document.

**Pre-contractual duties of consumer and insurer**

6. (1) The duties in this section replace, at the pre-contractual stage of a consumer contract of insurance, the principle of utmost good faith (*uberrima fides*) and any duty of disclosure (including any duty on the consumer to volunteer information) that applied prior to the coming into force of this section (whether that principle or duty arose at common law or under an enactment).

(2) The pre-contractual duty of disclosure of a consumer is confined to providing responses from questions asked by the insurer, and the consumer shall not be under any duty to volunteer any information over and above that required by such questions.

(3) Where the insurer requests the consumer at the pre-contractual stage to provide information to the insurer, the insurer shall be under a duty to ask specific questions, in writing, and shall not use general questions.

(4) It shall be presumed, unless the contrary is shown, that the consumer knows that a matter about which the insurer asks a specific question is material to the risk undertaken by that insurer or the calculation of the premium by that insurer, or both.

(5) (a) Where the insurer asks questions these shall be drafted in plain and intelligible language, and the onus of proving that the questions are plain and intelligible shall rest with the insurer.

(b) Where there is an ambiguity or a doubt about the meaning of a question the interpretation most favourable to the consumer shall prevail.

(6) An insurer may use the remedies available under this Act (including the remedy to repudiate liability or to limit the amount paid on foot of the contract of insurance) only if it establishes that non-disclosure of material information was an effective cause of the insurer entering into the relevant contract of insurance and on the terms...
on which it did.

(7) (a) The consumer shall be under a duty to answer all questions posed by the insurer honestly and with reasonable care (the test of reasonable care being by reference to that of the average consumer).

(b) In determining whether the consumer has complied with this duty, regard shall be had to the following matters:

(i) the type of insurance contract in question and its target market;

(ii) any relevant explanatory material or publicity produced or authorised by the insurer;

(iii) how clear and specific are the insurer’s questions;

(iv) whether the consumer is represented by an agent; and

(v) that some consumers can be expected to be in possession of more information than others.

(8) The test of what is material, and consequently the scope of questions that the insurer may ask the consumer, are without prejudice to—

(a) the requirements of the Data Protection Acts 1988 and 2003, and

(b) the provisions of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.

(9) Every insurer shall, before a contract of insurance is entered into, or renewed, inform the consumer in writing of the general nature and effect of the pre-contractual duty of disclosure.

(10) (a) An insurer shall be deemed to have waived any further duty of disclosure of the consumer where it fails to investigate an absent or obviously incomplete answer to a question.

(b) The waiver in paragraph (a) does not apply where the non-disclosure arises from fraudulent, intentional or reckless concealment.

Proportionate remedies for misrepresentation

7. (1) This section sets out remedies that are proportionate to the effects of any misrepresentation on the interests of the insurer and the consumer.

(2) Where a claim is made under a contract of insurance and where the consumer has discharged the duty under section 6 to answer questions honestly and with reasonable care but where an answer involves an innocent misrepresentation, the insurer shall be required to pay the claim made and shall not be entitled to avoid the contract on the ground that there was a misrepresentation.

(3) Where a claim is made under a contract of insurance and where the consumer has discharged the duty under section 6 to answer questions honestly and with reasonable care but where an answer involves a negligent misrepresentation (that is, not a deliberate or reckless misrepresentation), the remedy available to the insurer shall reflect what the insurer would have done had it been aware of the full facts and shall be based on a compensatory and proportionate test.
(4) Without prejudice to the generality of subsection (3), where an answer given by the consumer involves a negligent misrepresentation—

(a) if the insurer would not have entered into the insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but shall return the premiums paid,

(b) if the insurer would have entered into the 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,

(c) if the insurer would have entered into the 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,

(d) where there is not any outstanding claim under the insurance contract, the insurer may either—

(i) give notice to the consumer that in the event of a claim it will exercise the remedies in paragraphs (a) to (c), or

(ii) in the case of a non-life insurance contract only, terminate the contract by giving reasonable notice to the consumer.

(5) Where a claim is made under a contract of insurance and where an answer by the consumer involves a fraudulent misrepresentation or where any conduct by the consumer involves fraud of any other kind, the insurer shall be entitled to avoid the contract of insurance.

**Form of contract of insurance and information to be provided by insurer**

8. (1) Within a reasonable time before a consumer is bound by a contract of insurance, the insurer shall provide the consumer in writing with the following pre-contractual information where relevant to the specific contract of insurance:

(a) the name and address of the contracting parties;

(b) the name and address of the consumer and of the beneficiary;

(c) the name and address of the intermediary, if any;

(d) the subject matter of the insurance and the risks covered;

(e) the sum insured and any deductibles;

(f) the amount of the premium or the method of calculating it;

(g) when the premium falls due as well as the place and mode of payment;

(h) the contract period and the liability period;

(i) the right to revoke the application or to terminate the contract, including in accordance with this Act;

(j) the law applicable to the contract or, if a choice of law is permitted, the law proposed by the insurer;
(k) the existence of an out-of-court complaint and redress mechanism for the consumer and the methods for having access to it; and

(l) the existence of guarantee funds or other compensation arrangements.

(2) Within a reasonable time after concluding a contract of insurance, the insurer shall provide the consumer in writing with the following contractual information where relevant to the specific contract of insurance:

(a) the completed application or proposal form, if any;

(b) the insurance policy document; and

(c) the information required under subsection (1), unless that information is already included in the insurance policy.

(3) Where, although an insurer has complied with subsection (2), the consumer subsequently applies to the insurer for a second or subsequent copy of one or all of the documents referred to in subsection (2), the insurer shall provide the consumer with the document or documents and may charge a reasonable fee to cover its expenses in so providing a second or subsequent copy.

(4) The terms of a contract of insurance are not confined to the documents required by subsection (2), and other terms (if any) of the contract need not be reduced to writing and may be proved by any means, including oral testimony.

(5) (a) The documents required by subsection (1) and subsection (2) shall be drafted in plain, intelligible language.

(b) Where there is an ambiguity or doubt about the meaning of a term in any such document, the interpretation most favourable to the consumer, or beneficiary, as appropriate, shall prevail.

(6) Any formalities, such as prescribed notices, notification and forms, in a consumer insurance contract shall be brought to the attention of the consumer at the commencement of the contract and shall comply with the requirements in section 17.

Right to withdraw from contract of insurance by notice: cooling-off period

9. (1) Subject to subsection (2), a consumer may avoid a contract of insurance by giving notice in writing to the insurer, in the case of non-life insurance within 14 working days and in the case of life assurance within 30 working days (the “cooling-off” periods), after receipt of acceptance or delivery of the post-contractual documents, whichever is the later.

(2) The right to avoid a contract of insurance under subsection (1) does not apply—

(a) where the duration of the contract is less than one month,

(b) where an existing contract is renewed on substantially the same terms and conditions as the original agreement, or

(c) the contract is preliminary insurance, liability insurance or group insurance.

(3) Where the consumer avoids the contract of insurance under subsection (1), the insurer shall not impose any financial cost on the consumer other than the cost of the premium for the period of cover.
Renewal of contract of insurance

10. (1) In the case of a non-life insurance contract, the insurer shall, not less than 15 working days prior to the date of expiry of a policy of insurance—

(a) where the insurer wishes to invite a renewal, issue to the consumer in writing a notification of renewal of the policy of insurance, or

(b) issue to the consumer in writing a notification that it does not wish to invite a renewal, unless in the case of this paragraph the insurer has reason to believe that the consumer would not wish to renew the policy.

(2) In the case of a non-life insurance contract, the insurer shall, where it is giving notification of renewal of the policy in accordance with subsection (1)(a), provide in writing to the consumer the terms of the renewal.

(3) In the case of a life insurance policy (other than an industrial assurance policy) and acquiring a surrender or maturity value, the insurer shall provide the consumer with an annual written statement which shall contain—

(a) current premium payable,

(b) opening policy surrender value,

(c) current surrender or maturity value,

(d) closing policy surrender value,

(e) amount paid in by consumer in the year,

(f) details of charges related to risk benefits deducted in the year (if any),

(g) other charges deducted in the year,

(h) investment growth in the year,

(i) details of risk benefits covered (if any), and

(j) such further information as the insurer considers appropriate.

(4) In the case of industrial assurance policies and acquiring a surrender or maturity value, the insurer shall provide the consumer, in respect of the policy concerned, with an annual written statement which shall contain—

(a) the current surrender or maturity value and the current premium payable for a standard policy of that type,

(b) guidance on how to calculate, specific to that consumer, the current surrender or maturity value and premium payable in respect of the policy, and

(c) such further information as the insurer considers appropriate.

(5) This section is without prejudice to more detailed requirements set out in other enactments concerning the provision of information in the circumstances specified in subsections (1) to (4).

Cancellation of contract of insurance

11. (1) Where, in accordance with this section, an insurer notifies a consumer that the insurer
is cancelling a contract of insurance, the insurer shall repay to the consumer the balance of the premium for the unexpired term of the contract.

(2) Any notification by the insurer under this section shall be by recorded delivery (which may be by email, SMS text or other electronic means using the internet where the insurer can establish receipt of the notification by the consumer).

(3) The insurer shall not impose any financial cost on the consumer where, in accordance with this section, a contract of insurance is cancelled.

Duties of consumer and insurer at renewal

12. (1) The duty of disclosure in section 6 shall not be taken to imply that a consumer who has on a previous occasion discharged that duty of disclosure is under an obligation at renewal of the contract of insurance to provide the insurer with any additional information, whether concerning matters that have changed or otherwise, unless the insurer has expressly required the consumer to do so in accordance with subsection (2).

(2) Where an insurer intends that the consumer is to provide additional information at renewal concerning a particular matter, it shall either—

(a) ask the consumer a specific question in writing regarding the matter, or

(b) request the consumer in writing to update information previously provided concerning that matter, which the insurer shall specifically describe and shall provide to the consumer a written copy of the matter previously disclosed.

(3) Where the insurer requests the consumer at renewal to provide information to the insurer, the insurer shall be under a duty to ask specific questions, in writing, and shall not use general questions.

(4) The consumer shall be under a duty to respond honestly and with reasonable care, (which has the same meaning as in section 6), to any requests by the insurer at the renewal of the contract of insurance and, if the consumer does not provide any new information in response to the insurer’s request and where the consumer continues to pay the renewal premium, it shall be presumed that the information previously provided has not altered.

(5) The renewal by the insurer of the contract of insurance shall not, in itself, be taken to cure any previous breach of any duty of disclosure arising under this Act.

(6) The insurer shall, within a reasonable time before renewal of a contract of insurance (and in any event no later than 15 days before renewal), notify the consumer in writing of any alteration to the terms and conditions of the policy, using plain intelligible language in doing so.

Post-contractual duties of consumer and insurer

13. (1) The duties in this section replace, at the post-contractual stage of a consumer contract of insurance, the principle of utmost good faith (uberrima fides) that applied prior to the coming into force of this section (whether that principle arose at common law or under an enactment).
(2) A consumer shall be under a duty to pay the premium within a reasonable time, or in accordance with the terms of the contract, provided those terms comply with the requirements of section 17.

(3) An insurer may refuse a claim made by a consumer under a contract of insurance where there is a change in the subject matter of the contract of insurance, including as described in an “alteration of risk” clause, and circumstances have so changed that it can properly be said by the insurer that the new risk is something which, on the true construction of the policy, it did not agree to cover.

(4) (a) An “alteration of risk” clause in a contract of insurance shall apply only in circumstances where the subject matter of the contract of insurance has altered.

(b) An “alteration of risk” clause shall be void where it purports to apply where there is a modification only of the risk insured.

(5) Any clause in a contract of insurance that refers to a “material change” shall be interpreted as referring to changes that take the risk outside that which was within the reasonable contemplation of the contracting parties when the contract of insurance was concluded.

(6) An insurer who intends to exclude certain matters from coverage under the contract of insurance shall do so explicitly in writing prior to the commencement of the contract.

Claims handling: duties of consumer and insurer

14. (1) The consumer shall cooperate with the insurer in the investigation of insured events, including by responding to reasonable requests for information in an honest and reasonably careful manner.

(2) The consumer shall notify the insurer of the occurrence of an insured event within a reasonable time or in accordance with the terms of the contract, provided those terms comply with the requirements of section 17.

(3) Where non-compliance by the consumer with a specified notification period does not prejudice the insurer, the insurer shall not be entitled to refuse liability under the claim on that ground alone.

(4) Without prejudice to any other duties in this section, the insurer shall be under a duty to handle claims promptly and fairly.

(5) An insurer shall not engage in either of the following in relation to a consumer’s claim on an insurance policy—

(a) requiring the consumer to produce documents irrelevant to the validity of the claim, or

(b) persistently failing to respond to the consumer’s correspondence on the matter, in order to dissuade the consumer from exercising contractual rights in respect of that claim.

(6) The insurer shall pay any sums due to the consumer in respect of the claim within a reasonable time.

(7) Where it is not possible to quantify the total value of the claim within a reasonable time but where part of the total value has been quantified, the insurer shall pay that
part to the consumer within a reasonable time.

(8) If, after a claim has been made under a contract of insurance, the consumer or the insurer becomes aware of information (including information that would otherwise be subject to privilege) that would either support or, as the case may be, would prejudice the validity of the claim made by the consumer, the consumer or, as the case may be, the insurer shall be under a duty to disclose such information to the other party.

Proportionate remedies and claims handling

15. (1) Where an insurer unreasonably withholds payment of a valid claim or unreasonably delays making a payment under a valid claim, the consumer may, in addition to the right to enforce payment of the sums due and any right to interest on those sums, seek damages in accordance with the general law of contract for any consequential loss suffered as a result, and for any non-pecuniary loss and damages, including for stress.

(2) Where a claim made by a consumer under a contract of insurance contains information that is false or misleading in any material respect and which the consumer either knows to be false or misleading or consciously disregards whether it is false or misleading, the insurer shall be entitled to refuse to pay the claim and shall be entitled to terminate the contract.

(3) A valid claim made under a policy is not affected where, under the same policy, the consumer makes a subsequent fraudulent claim or where fraudulent evidence or information is submitted or adduced in its support.

(4) Where an insurer becomes aware that a consumer has made a fraudulent claim, the insurer may, as soon as is practicable after becoming aware of that fact, notify the consumer in writing that it is avoiding the insurance contract, and if the insurer so notifies the consumer, the insurance contract shall be treated as having been terminated with effect from the date of the submission of the fraudulent claim (referred to in this subsection as “the date of the fraudulent act”), whereupon—

(a) the insurer may refuse all liability to the consumer under the insurance contract in respect of any claim made after the date of the fraudulent act, and

(b) the insurer need not return any of the premiums paid under the insurance contract.

(5) (a) Notwithstanding any other provision of this Act, where the consumer makes a fraudulent claim or where fraudulent evidence or information is submitted or adduced in its support or where a contract of insurance contains a term or condition excluding coverage for loss or damage to property caused by a criminal or intentional act or omission of a consumer or any other person, the exclusion applies only to the claim of a person—

(i) whose act or omission caused the loss or damage,

(ii) who abetted or colluded in the act or omission, or

(iii) who consented to the act or omission and knew or ought to have known that the act or omission would cause the loss or damage.

(b) Nothing in paragraph (a) shall be interpreted as allowing a person whose property is insured under the contract of insurance to recover more than that
person’s proportionate interest in the lost or damaged property.

(c) A consumer whose coverage under the contract of insurance would be excluded but for paragraph (a) shall cooperate with the insurer in respect of the investigation of the loss, including—

(i) by submitting a statutory declaration if requested by the insurer, and

(ii) by producing for examination at a reasonable time and place designated by the insurer documents specified by the insurer that relate to the loss.

(6) An insurer shall not be entitled to claim against the consumer the cost of investigating a fraudulent claim.

Representations by consumer and terms that reduce the risk being underwritten (replacing insurance warranties)

16. (1) The provisions in this section replace, in a consumer contract of insurance, the law concerning insurance warranties that applied prior to the coming into force of this section (whether that law arose at common law or under an enactment).

(2) Any statement made by a consumer in or in connection with a contract of insurance, being a statement made by or attributable to a consumer with respect to the existence of a state of affairs or a statement of opinion, shall have effect solely as a representation made by the insurer to the insurer prior to entering into the contract.

(3) Any term in a consumer contract of insurance which purports to convert any statement referred to in subsection (2) into a warranty (as understood in the law concerning insurance warranties prior to the coming into force of this section), including by means of a declared “basis of contract” clause or by any comparable clause (including one described as a warranty, a future warranty, a promissory warranty or a continuing warranty), shall be invalid.

(4) In a consumer insurance contract, any contract term however described that imposes a continuing restrictive condition on the consumer during the course of the insurance contract shall be treated as a suspensive condition in that, upon a breach of such a condition, the insurer’s liability is suspended for the duration of the breach but if the breach has been remedied by the time a loss has occurred, the insurer shall (in the absence of any other defence to the claim) be obliged to pay any claim made under the contract of insurance.

(5) (a) This subsection applies to any term in a consumer contract of insurance however described that has the effect of reducing the risk underwritten by the insurer related to—

(i) a particular type of loss,

(ii) loss at a particular time, or

(iii) loss in a particular location.

(b) Without prejudice to the generality of subsection (4), any breach by the consumer of the type of contract term referred to in paragraph (a) shall only suspend the liability of the consumer in respect of that particular type of loss, or loss at a particular time or loss in a particular location, as the case may be, and if the
breach has been remedied by the time a loss has occurred, the insurer shall (in the absence of any other defence to the claim) be obliged to pay any claim made under the contract of insurance.

Unfair or onerous terms

17. (1) (a) An insurer who seeks to rely on an unfair or otherwise onerous term shall, in order to incorporate the term into the contract, take reasonable steps to bring such a term to the attention of the consumer.

(b) In determining whether a term is unfair or otherwise onerous, regard is to be had to whether it is one which in all the circumstances was a term that is, or ought reasonably to have been, known to or in contemplation of the insurer and the consumer both at the pre-contractual stage and when the contract of insurance was entered into.

(2) (a) A term in a consumer contract of insurance shall not in itself be regarded as unfair where the subject matter of the term has actually been considered by the insurer in the calculation of the premium and where the term has been drawn to the attention of the consumer in writing.

(b) Paragraph (a) shall apply without prejudice to Regulation 4 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995).

(3) In determining whether a term is unfair or otherwise onerous, regard is to be had in particular to any of the following which appear to be relevant—

(a) the strength of the bargaining positions of the insurer and the consumer relative to each other,

(b) whether the consumer had an inducement to agree to the term,

(c) whether the contract of insurance was supplied to the special order of the consumer, and

(d) the extent to which the insurer has dealt fairly and equitably with the consumer whose legitimate interests the insurer has to take into account.

(4) Without prejudice to the generality of subsections (1) to (3), the following non-exhaustive types of terms are presumed (the presumption being rebuttable) to be unfair or otherwise onerous terms:

(a) terms that are not fully intelligible to the consumer, terms which cross refer to legal provisions not disclosed in the contract, and provisions that use small print;

(b) terms that exclude or limit liability for non-performance or defective performance, and one-sided performance obligations;

(c) terms that include evidentiary obstacles, onerous rules on maintaining and proving a claim, arbitration or mediation clauses, and clauses that otherwise enable slow payment of a claim;

(d) terms that confer on the insurers unilateral rights to cancel, particularly when this can be done without the consumer being able to arrange cover or recover the premium;
(e) terms under which the insurer, without good cause, may unilaterally vary either the cover or the premium, or assign the policy; and

(f) terms that impose a disproportionate penalty for breach by the consumer.

Right of third party to claim against insurer
18. (1) Where a person (in this section referred to as “the person”) is insured under a contract of insurance against a liability which the person may incur to a third party, and where—

(a) the person has died, or cannot be found, or is insolvent, or

(b) for any other reason it appears to a court to be just and equitable to so order,

the rights of the person under the contract against the insurer in respect of the liabilities shall, notwithstanding anything in any enactment or rule of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Accordingly, a third party, in the circumstances described in subsection (1), has a right to recover from the insurer, in accordance with the contract of insurance, the amount of any loss suffered by the third party even though the third party is not a party to the contract of insurance.

(3) Where a third party reasonably believes that the person has incurred a liability to which this section applies, the third party shall be entitled, by way of notice in writing, to seek and obtain information from the insurer or from any other person who is able to provide it (neither of whom shall unreasonably refuse such information) concerning—

(a) the existence of a contract of insurance that covers the supposed liability or which might be regarded as covering it,

(b) if there exists such a contract, who the insurer is,

(c) the terms of the contract, and

(d) whether the insurer has informed the person that the insurer intends to refuse liability under the contract in respect of the person’s supposed liability.

(4) A third party shall be entitled to issue proceedings directly against the insurer to enforce the terms of the contract of insurance without having first established the liability of the person, but before the terms of the contract can be enforced against the insurer in the proceedings the third party shall be required to establish the person’s liability.

(5) (a) Where a third party proceeds directly against an insurer, anything done by the third party which, if done by the person, would have amounted to or contributed to fulfilment of a condition of the insurance contract is to be treated as if done by the person.

(b) Without prejudice to paragraph (a), the third party has, in relation to the third party’s claim, the same obligations to the insurer as the third party would have if the third party were the person, and may discharge the person’s obligations in relation to the loss.
(c) The insurer has the same defences to an action brought by the third party as the insurer would have in an action by the person.

(d) Without prejudice to paragraph (c), the insurer shall be entitled to set off any liabilities incurred by the person in favour of the insurer against any liability owed by the insurer to the third party.

(6) The rights of a third party in this section shall not be subject to a term in a contract of insurance that requires the person to provide information or assistance to the insurer if that term cannot be fulfilled because the person is an individual who has died or cannot be found; but “term that requires the insured person to provide information or assistance to the insurer” shall not include a term that requires the person to notify the insurer of the existence of a claim under the contract of insurance.

(7) The rights of a third party in this section shall not be subject to a term in a contract of insurance that requires the prior discharge by the person of the person’s liability to a third party.

(8) Nothing in this section shall be interpreted as requiring that the third party be in existence either at the time the contract of insurance was entered into or at the time of assent to such a contract by another third party.

(9) In this section, “cannot be found”—

(a) means, in the case of an individual, a missing person, that is, a person who is observed to be missing from his or her normal patterns of life, where those who are likely to have heard from the missing person are unaware of his or her whereabouts and where the circumstances of the person being missing raise concerns for the person’s safety and well-being, and

(b) includes, in the case of a company, an insolvent company, and where such a company has been struck off the register of companies the third party shall (subject to the other requirements of this section) not be required to restore it to the register before proceeding directly against the insurer.

(10) In the case of an insolvency, moneys that would otherwise be payable to the person under the policy shall be applicable only to discharging in full all valid claims by the third party against the person in respect of which those moneys are payable, and no part of those moneys shall be assets of the person or applicable to the payment of the debts (other than those claims) of the person in the insolvency or in the administration of the estate of the person, and no such claim shall be provable in the insolvency or in the administration of the estate of the person.

(11) In this section, “insolvency” means—

(a) in the case of an individual—

(i) entering into a Debt Relief Notice,

(ii) entering into a Debt Settlement Arrangement,

(iii) entering into the Personal Insolvency Arrangement, or

(iv) becoming bankrupt,

(b) in the case of a corporate body—
(i) entering into examinership,
(ii) entering into receivership, or
(iii) winding up,

or

(c) in the case of a partnership, being dissolved.

(12) Where, in respect of any one act of negligence or any one series of acts of negligence collectively constituting one event, there are two or more claimants and the total of the sums claimed for damages for injury to property or for which judgment has been recovered for damages for such injury exceeds the sum which the insurer or guarantor has insured or guaranteed, the liability, as regards each claimant, of the insurer or guarantor in relation to such damages shall be reduced to the appropriate proportionate part of the sum insured or guaranteed.

(13) In this section, “the person” includes an individual, a partnership, or any corporate body.

(14) In this section, a “third party” means a consumer who is or may be entitled to benefit under the terms of a contract of insurance, whether by way of indemnity or as a person who incurs an injury or loss to which the contract of insurance applies.

(15) It is irrelevant for the purposes of this section whether or not the liability of the insured person is or was incurred voluntarily.

**Subrogation: modification in family and personal relationships and in employment**

19. (1) (a) This subsection applies where an insurer is liable under a contract of insurance in respect of a loss and but for this subsection the insurer would be entitled to be subrogated to the rights of the consumer against some other person (in this subsection referred to as “the other person”) and the consumer has not exercised those rights and might reasonably be expected not to exercise those rights by reason of—

(i) a family or other personal relationship between the consumer and the other person, or

(ii) the consumer having expressly or impliedly consented to the use, by the other person, of a motor vehicle that is the subject matter of the contract.

(b) This subsection does not apply where the conduct of the other person that gave rise to the loss was serious or wilful misconduct.

(c) Where the other person is not insured in respect of that other person’s liability to the consumer, the insurer does not have the right to be subrogated to the rights of the consumer against the other person in respect of the loss.

(d) Where the other person is so insured, the insurer may not, in the exercise of the insurer’s rights of subrogation, recover from the other person an amount that exceeds the amount that the other person may recover under the other person’s contract of insurance in respect of the loss.

(e) (i) A consumer need not comply with a condition requiring the consumer to
assign those rights to the insurer in order to be entitled to payment in respect of the loss and an insurer shall not purport to impose such a condition on the making of such a payment or, before making such a payment, invite the consumer so to assign those rights, or suggest that the consumer so assign them.

(ii) An assignment made in compliance with such a condition or in pursuance of such an invitation or suggestion is void.

(2) An insurer should not be entitled to exercise rights of subrogation against an employee of the insured employer except when it proves that the loss was caused by such a person intentionally or recklessly and with knowledge that the loss would probably result.

Subrogation: distribution of recovered funds

20. (1) This section applies where—

(a) an insurer is liable under a contract of insurance in respect of a loss,
(b) the insurer has a right of subrogation in respect of the loss, and
(c) an amount is recovered (whether by the insurer or the consumer) from another person in respect of the loss.

(2) (a) If the amount is recovered by the insurer in exercising the insurer’s right of subrogation in respect of the loss, the insurer is entitled under this paragraph to so much of the amount as does not exceed the sum of—

(i) the amount paid by the insurer to the consumer in respect of the loss, and
(ii) the amount paid by the insurer for administrative and legal costs incurred in connection with the recovery.

(b) If the amount recovered exceeds the amount to which the insurer is entitled under paragraph (a), the consumer is entitled under this paragraph to so much of the excess as does not exceed the consumer’s overall loss.

(c) If the amount recovered exceeds the sum of—

(i) the amount to which the insurer is entitled under paragraph (a), and
(ii) the amount (if any) to which the consumer is entitled under paragraph (b),

the insurer is entitled to the excess.

(3) (a) If the amount is recovered by the consumer, the consumer is entitled under this paragraph to so much of the amount as does not exceed the sum of—

(i) the consumer’s overall loss, and
(ii) the amount paid by the consumer for administrative and legal costs incurred in connection with the recovery.

(b) If the amount recovered exceeds the amount to which the consumer is entitled under paragraph (a), the insurer is entitled to so much of the excess as does not exceed the amount paid by the insurer to the consumer in respect of the loss.
(c) If the amount recovered exceeds the sum of—
   (i) the amount to which the consumer is entitled under paragraph (a), and
   (ii) the amount (if any) to which the insurer is entitled under paragraph (b),

the consumer is entitled to the excess.

Contracts affecting subrogation and third parties

21. (1) Where a contract of insurance includes a provision that has the effect of excluding or limiting the insurer’s liability in respect of a loss because the consumer is a party to an agreement that excludes or limits a right of the consumer to recover damages from a person other than the insurer in respect of the loss, the insurer may not rely on the provision unless the insurer clearly informed the consumer in writing, before the contract of insurance was entered into, of the effect of the provision.

(2) For the purposes of any matter related to subrogation under this Act, a reference to a consumer includes a reference to a third party.

Effect of failure to comply with Act

22. (1) Without prejudice to the remedies provided for in section 7 and section 15, and subject to subsection (2), a court of competent jurisdiction may in its discretion—

   (a) where a consumer is in breach of any duties under this Act (other than those to which section 7 and section 15 apply) order that the sum otherwise recoverable in a claim under an insurance contract shall be reduced in proportion to the breach involved, or

   (b) where an insurer is in breach of any duties under this Act (other than those to which section 7 and section 15 apply) order that the sum otherwise payable in a claim under an insurance contract shall be increased in proportion to the breach involved.

(2) Where there has been a breach by the consumer or, as the case may be, by the insured of any duty under this Act, the court may decline to make any order under subsection (1) where—

   (a) the breach of the duty was not deliberate, and

   (b) it would be just and equitable in the circumstances to dispense with compliance with the duty for the purposes of subsection (1).

(3) A term or condition of a consumer contract of insurance is void if it purports to impose on the consumer the burden of proving that the insurer has complied or not complied with an obligation imposed on the insurer in accordance with this Act (including those to which section 7 and section 15 apply).

Short title and commencement

23. (1) This Act may be cited as the Consumer Insurance Contracts Act 2017.

(2) This Act comes into operation 18 months after enactment.
Consumer Insurance Contracts Bill 2017

Bille um Chonarthaí Árachais i leith Tomhaltóirí, 2017

Bille

(mar a tionscnaíodh)

dá ngairtear

Acht chun an dlí conarthaí árachais i leith
tomhaltóirí a athchóiriú agus do dhéanamh
socrú i dtaoibh nithe gaolmhara.

An Teachta Piaras Ó Dochartaigh a thug isteach,
19 Eanáir, 2017

An Act to reform the law of consumer insurance
contracts and to provide for related matters.

Introduced by Deputy Pearse Doherty,
19th January, 2017