Insurance Ireland Submission to Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on the Consumer Insurance Contracts Bill 2017 - Private Members Bill

12th September 2018

Insurance Ireland supports the objectives of the Consumer Insurance Contracts Bill which is aimed at reforming and modernising the law on consumer insurance contracts and updating the relevant legislation. Many of the provisions of the Bill will help clarify the roles and responsibilities of both parties to an insurance contract. As a general comment, insurers continue to develop clearer and more explicit statements of fact while also bearing in mind the legal nature of insurance contracts and the regulatory framework that insurers must operate within.

The Bill is legally complex and cuts across a number of fundamental and well-established legal insurance principles such as insurable interest and subrogation, for example, where there is a potential impact on consumers and insurers. The attached appendix outlines some practical examples of the key principles of insurance and how they operate in practice.

We would have concerns about the unintended consequences which might result. Noting that the majority of claims received by insurers are genuine and that care needs to be taken that there is no knock-on effect in the fight against fraud and the impact this would have on the cost of claims.

This note contains our high-level concerns. There are many areas in the Bill which our members consider to be unclear from the point of view of their practical impact on processes and procedures. Some anticipated scenarios are included in the appendices to illustrate the points raised in addition to more detailed questions, which require clarification, in respect of the Bill's proposals.

Overlap

There is a significant overlap of the Bill with existing legislative and other requirements. For example, current requirements in relation to the information to be provided to customers include:

- The Life Assurance Provision of Information Regulations 2001 - Section 10
- Direct Marketing Regulations – Section 8,9 and the Consumer Protection Code (CPC)

- The new PRIIPs Key Information Document which came into effect in January 2018 in relation to life investment products – Sections 8,10,12,17
- The new standardised Insurance Product Information Document (IPID) for non-life insurance customers, which is coming into effect on 1st October. - Section 8, 10, 12, 17
- The Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007 covering non-life renewals Section 10,12 and CPC
- Claim Handling – Overlap between CPC and Sections 14 and 15 of the Bill
  The Health Insurance Amendment Act deals with Health insurance.
- Unfair Contract Terms in Consumer Contracts Directive – Section 17

Some of these requirements have become law since the Law Reform Commission report was published in 2015.

The Central Bank of Ireland's Consumer Protection Code (which has the force of law) contains extensive requirements in such areas as claims handling and the renewal of contracts. II would like to point out that the CPC is applicable across the financial services sector as a whole and impacts on all providers, whereas this Bill seeks to make changes which would affect insurance contracts only.

The proposal in respect of the cooling off period for insurance policies (life, health and non-life) is already contained in Distance Marketing Regulations. In addition, certain provisions of the Bill contradict current rules. For example, Section 9(3) says that there can be no cost to the consumer other than the cost of the premium for the period of cover. Current rules allow insurers in the case of investment policies to refund the actual value at the time the cancellation is requested. This means that an individual who invests money and seeks to cancel purely because markets fall soon after can only claim back the value of the policy. The Bill potentially raises equity issues as, for example, the money to pay the full refund may come at the expense of customers who stay in a pooled fund.

Having similar requirements providing for substantially the same issue in two different enactments will result in additional legal complexity and compliance costs with no material improvement in the position of the consumer.

Scope

It is worth noting that although the Bill is termed the Consumer Contracts Bill, the definition applies to the vast majority of commercial contracts in the SME space by including businesses with a turnover of up to €3m.

The UK Insurance Act 2015 reformed the law in relation to non-consumer policyholders. A "consumer" in this instance refers to insureds who are individuals that purchase insurance which is unrelated to their trade, business or profession.

The legislation in Ireland should follow the UK approach - i.e. all commercial contracts are non-consumer contracts. Otherwise this would require substantially different policy wordings for commercial insurance products for small firms than for similar firms with higher turnover. In addition, clarity is need on how the concept in the Bill of an "an average consumer" is to be applied to a corporate body.

In relation to life assurance contracts, the intention seems to be that only policies which give rise to payments on certain insured events i.e. death, disability or serious illness are covered by the legislation. Therefore, other savings and investment policies should be clearly stated

to be outside the scope. Such savings and investment policies have robust regulatory rules to ensure strong consumer protection.

It is not clear whether the Bill is intended to affect contracts already in force or to apply only to contracts entered into on or after a future date when the Bill is enacted. It is important that the legislation does not seek to amend the terms and conditions of existing contracts as this would be retrospective legislation.

Insurable Interest

The Bill proposes that a claim under a contract of insurance cannot be rejected on the grounds that the consumer does not have insurable interest.

The requirement for insurable interest goes to the heart of insurance contracts. The principle is that an individual should only be able to insure against the possibility of an event which has the potential to result in a financial loss to them.

For non-life contracts, the requirement for insurable interest is relevant at the outset and in the event of a claim.

For life assurance contracts, insurable interest must be satisfied at the time the contract is entered into.

For non-life, it is the insured's interest in the subject matter of insurance that is insured. In the event of any claim the payment made to an insured cannot exceed the extent of his/her interest. The principle of indemnity is intrinsically linked to the principle of insurable interest and it is contrary to public policy for insurers to make payments under insurance contracts where no insurable interest exists. The wording here is so wide that it suggests that a person with no interest to the policy could make a claim. It is uncertain how this could be applied in practice and what precedents could be set as the integrity and scope of a contract may be in question.

The UK in its review of insurance contract law has kept this principle, as it was agreed to be the main insurance principle. There should be work towards defining the meaning more clearly, rather than abolishing it altogether. From stakeholder responses to the UK Law Commissions' last consultation (June 2018) on updating the law of insurable interest, it was clear that there was little demand for reform of the law in the area of indemnity and non-life insurance as it is codified in common law similar to Ireland.

In relation to life assurance policies, the question of whether or not insurable interest exists is established at the outset and would be a matter for the insurer to determine. If the insurer has concerns in relation to insurable interest it may not be prepared to issue a policy in that form and nothing in legislation should impact on the commercial ability of an insurer to decide whether or not to accept an application. It is important that Section 5(1) does not have the effect of restricting in any way the right of an insurer to assess insurable interest at outset and to decide whether it is prepared to accept the risk. However, once the life assurance contract has been entered into, the lack of an insurable interest should not represent grounds for rejecting a claim.

Omitting this requirement would leave insurance contracts open to abuse by means of fraud or other moral hazard. There could be multiple payouts on a claim which could far exceed the actual loss. The conferral of an 'insurable interest' on a potentially broad class of persons fails to recognise one of the intrinsic conditions of all insurance contracts – namely the safekeeping of that property. If a non-owner of property is deemed to have an insurable

interest in that property or subject-matter, in all likelihood, the absence of ownership of that property will mean that that person has no control over the property and therefore is not in a position to ensure the safekeeping of the property.

The requirement of an insurable interest for indemnity contracts maintains the distinction between insurance and gambling and avoids undesirable social risks such as the potential for an increase in invalid or even fraudulent insurance claims. The current market practice works well for both the insured and the insurer.

Proportionate remedies for misrepresentation

The Bill seems to envisage three categories of claims

A. innocent
B. negligent
C. and fraudulent.

Section 7(3) refers to "negligent misrepresentation that is not deliberate or reckless misrepresentation" but this idea of deliberate or reckless misrepresentation is not covered subsequently. We would suggest that this "deliberate or reckless" category is intended to be addressed in C above. In the UK where a similar regime applies, the categories are innocent, careless and deliberate/reckless. We would have concerns that categorising serious non-disclosure as "fraudulent" might suggest that this covers only cases where fraud is established in the criminal courts (with all the associated costs/time issues). This in our view sets the bar too high - the terminology in 7(5) should instead refer to "deliberate or reckless" misrepresentation, otherwise this provision could result in claims being paid which should not, leading to an increase in the cost of insurance generally and penalising honest policyholders.

The above categorisations would benefit from additional clarity and examples of what falls into the different categories. These could best be addressed by a Code of Practice or guidance notes - we would suggest that the scenarios that insurers meet in practice are too varied to cover in legislation.

The dividing line between innocent and negligent misrepresentation may be difficult in all cases to determine. For this reason, we would argue that the remedies available under 7(4)(b) and 7 (4) (c) ought to be available in cases of innocent misrepresentation.

Subrogation: Modification in family and personal relationships and in employment

Subrogation is a right that is normally exercised by an insurer who, having paid a loss that has arisen under a policy between the insurer and an insured, steps into the shoes of the insured in order to eliminate or reduce the loss in question. The insurer is able to obtain the benefit of any rights and remedies available to the insured against third parties and may in fact sue any third party in the insured's name.

The section of the Bill is of considerable concern to our members as it could impinge on an insurer's right to enforce the full terms and conditions of the policy against a third-party, and a broad cohort of people could potentially fall within the personal relationship category.

Insurers should not be prevented from exercising their rights where for example a family member has deliberately set fire to the family home and has means against which an insurer may recover from. This is a fundamental principle of insurance and the insured should be able to step into the footsteps of the insured to make appropriate decisions where required.

The section on Road Traffic Accident claims 19. (1) (a)(ii) appears to fall out of scope of the subrogation reforms outlined in the Law Reform Commission's Consultation Paper in 2011. Clarity is sought as to why such claims were included in the Law Reform Commission's Report in 2015 and this Bill.

Implementation, Lead-in time

This Bill is likely to result in insurers having to review and amend application forms, policy literature, policy terms and conditions, I.T systems, and to train staff accordingly. These changes would represent significant reform to insurance law with many practical consequences for consumers and industry on how contracts would be entered into. There will be significant implementation costs, which are ultimately borne by consumers.

Appendix

Insurable Interest: Is defined as the legal right to insure arising out of a financial relationship recognised at law, between the insured and the subject-matter of insurance. The subject-matter is the item, event or liability being insured i.e. car, house etc.

Example: A young person purchases a car and insures it under the name of their parent, who has more driving experience, in order to get cheaper insurance. A claim could be declined if it is uncovered that the insured (parent) is not the legal owner of the car and therefore, has no insurable interest in the car.

Another example would be to pose the question is a person entitled to insure their neighbour's property? If so, in the event of a fire or other loss event in relation to that property, a question arises as to what legal right would the person (the neighbour holding an insurance policy) or his/her loss adjuster have to enter that property to assess the loss. Under the current Constitutional constraints, it would appear that no such right could exist. If the property cannot be accessed, it will not prove possible for the neighbour's loss be validated.

The conferral of an 'insurable interest' on a potentially broad class of persons fails to recognise one of the intrinsic conditions of all insurance contracts – namely the safekeeping of that property. If a non-owner of property is deemed to have an insurable interest in that property, in all likelihood, the absence of ownership of that property will mean that that person has no control over the property and therefore is not in a position to ensure the safekeeping of the property.

Likewise, in the area of Life Assurance, without the need for insurable interest to be verified at the point of policy inception, an extreme result would be that any member in society could insure any other person for financial gain.

Indemnity: means that, following a loss, the insured receives enough financial compensation to return them to the position they enjoyed immediately prior to loss i.e. no better, no worse. This principle along with insurable interest is used to determine compensation.

Subrogation: Deals with the right of an insurer to recover its claims payments from another source i.e. the right of one person, having indemnified another under a legal obligation to do so, to stand in the place of that other person and avail himself of all the rights and remedies of that other person, whether already enforced or not.

For example, if an individual has a problem with broken drains that are the responsibility of the local authority, the insurance company may pay to fix the drains and will then look to recover the costs from the local authority, or for instance in a case where a family member deliberately sets fire to the family home and has means for the insurer to recover against them.

Cooling-off Period: A certain amount of time a customer has to change their mind and cancel a policy.

SECTION	WORDING	COMMENT	RELEVANT LEGISLATION
SECTION 1 - INTERPRETATION			
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"	Could this be considered subjective.There is a risk that each insurer has a different meaning of average consumer depending on the client base and product offering,which varies among insurers and the lines of business underwritten. A reference to vulnerable consumer is made within this definition. There should be clarity on what is defined as 'average' vulnerable consumer. Clarity is need for insurers to assess "Social, cultural and linguistic" factors? Suggest amendment to exclude such factors or guidance on application of the terms.	
"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	This is a wider definition of a 'personal consumer' than say for example CPC, which doesn't include the 'mainly outside' wording.	
	(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,	This definiton brings in the vast majority of commercial contracts in the SME space. The UK Insurance Act 2015 reformed the law in relation to non-consumer policyholders. A "consumer" refers to the insureds who are individuals that purchase insurance which is unrelated to their trade, business or profession. The legislation in Ireland should follow the UK approach - i.e. all commercial contracts are non-consumer contracts. Otherwise this would require substantially different policy wordings for commercial insurance products than for similar firms with higher turnover. The challenge for insurers is how/what steps they will take (or be able to take) to identify that a partnership/association/trust has turnover of less than €3M (noting the implications of a contract falling within the scope of this proposed legislation). The Bill as drafted also doesn't recognise the difficulties in applying equivalent standards to individual consumers and corporate consumers, for example how is the definition of an average consumer to be applied to a corporate body?	
	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		
	(a) a company incorporated under the Companies Act 2014, or		
"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;	CPC confirms its scope to apply to companies authorised, regulated or licenced by the Central Bank but also companies authorised, registered or licenced in another EU or EEA member state. Clarity is needed that the latter entities will be incorporated in their definition of an insurer. Clarity required that this includes insurers operating on an FOS basis from outside of 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;	The FSO definition of turnover varies from this and for example excludes VAT and other taxes. S.I. No. 164/2014 - Central Bank Act 1942 (Financial Services Ombudsman Council) (Amendment) Regulations 2014. Does reference to sales rebates make sense and could this add complexity for commercial underwriters and customers ?	
"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.	Suggest amendment as highlighted : "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, or where the consumer has provided an email address and/or mobile number, by email or SMS text."	
SECTION 2 - 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(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.		
2(3)	No provision of the Marine Insurance Act 1906 applies to a contract of insurance to which this Act applies.	Clarity required around meaning of "transport" insurance. More specificity needed as this possibly should be motor insurance. Definitions should be consistent with existing insurance legislation. In relation to life assurance contracts, the intention seems to be that only policies which give rise to payments on certain insured events i.e. death, disability or serious illness are covered by the legislation. Therefore, other savings and investment policies should be stated to be outside the scope.	
2(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.		
SECTION 3 - REGULATIONS AND CODE 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.		
3(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.		
SECTION 4 - EFFECT 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.		
SECTION 5 - 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.	The requirement for insurable interest goes to the heart of insurance contracts. It is in the insured's interest in the subject matter of insurance that is insured. In the event of any claim the payment made to an insured cannot exceed the extent of his/her interest. The principle of indemnity is intrinsically linked to the principle of insurable interest and it must be contrary to public policy for insurers to make payments under insurance contracts where no insurable interest exists. The basis of an insurance contract would be seriously undermined should this principle be altered and if Insurable Interest is tampered with there would be an increased risk of moral hazard such as arson or fraud. The wording here is so wide that it suggests that a person with no interest to the policy could	

5(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.	The application of the wording is unclear. In relation to life assurance policies the question of whether or not insurable interest exists is established at outset and would be a matter for the insurer to determine. If the insurer has concerns in relation to insurable interest it may not be prepared to issue a policy in that form. It is important that 5(1) does not have the effect of restricting in any way the right of an insurer to assess insurable interest at outset and to decide whether it is prepared to accept the risk or impinge on an insurers freedom to underwrite. Insurable Interest is the cornerstone of Insurance and the basis of Insurance contracts. The UK kept this principle, as it was agreed to be the main insurance principle. There should be work towards defining the meaning more clearly, rather than abolish it altogether. The Indemnity principle should still apply, whereby an Insurer does not have to take on the risk of a policy if it is not satisfied that the proposer demonstrates enough insurable interest. In practice for Non-Life Insurers it will be necessary for the beneficiary of the contract to evidence their insurable interest in the subject matter at both the inception and claim stage.	
5(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.		
SECTION 6 - 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).	As a general comment Insurers continue to develop clearer and more explicit statements of fact focussing on consumer needs while also bearing in mind the legal nature of insurance contracts. This Section also overlaps with Section 4.35 of the Consumer Protection Code.	
6(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.	Whilst we recognise the need for clear and concise questions, The onus should remain on the proposer to present the risk to the insurer in an honest and fair fashion and to disclose information which they know or ought to know, given that in many instances the consumer will have the information needed for insurers to make underwriting decisions. In many instances, particularly in relation to SME business insurance, it is extremely difficult, if not impossible, to ask every pertinent question without a comprehensive and fair reflection of the risk being presented for which insurance is being requested.	
6(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.	The requirement that the insurer shall be under a duty to ask specific questions, in writing, and not use general questions may result in an increased set of questions being provided to customers, affecting documentation length and average handling times and perhaps being perceived as less customer centric. There is a concern that it may also create more opportunity for fraud. An increasing proportion of personal lines business with consumers conducted in the industry today is over the phone or via other digital channels. As a consequence, to require questions to be posed "in writing" (6(3) would appear to be inconsistent with how many customers chose to engage with insurers. All calls are recorded and notes of conversations are recorded in a permanent format as required by the CPC.	
6(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.		
6(5)(a)	(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.		
6(5)(b)	(b) Where there is an ambiguity or a doubt about the meaning of a question the interpretation most favourable to the consumer shall prevail.	This already applies to an extent and is codified under common law under the "contra preferentum principle" and this protection for the consumer should prevail i.e where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interests of the party who provided the wording- the insurer in this case.	
6(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.		
6(7)(a)	(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).		
6(7)(b)	(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	Il feel this runs contrary to 2(2)a	
	(v) that some consumers can be expected to be in possession of more information than others.	This contradicts 'average customer' and this language as it is currently worded in the Bill is ambiguous and difficult to determine.	
6(8)	The test of what is material, and consequently the scope of questions that the insurer may ask the consumer, are without prejudice to—	In relation to life assurance, a key concern is that standard should not be applied to contracts which came into force before the legislation was enacted. These contracts could have been in force for many years and to apply the standards in this bill would in our view constitute retrospective legislation.	
	(a) the requirements of the Data Protection Acts 1988 and 2003, and	It may be helpful to include a reference to GDPR, enacted since 25th May 2018	
	(b) the provisions of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.		
6(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.	There is significant overlap with Distance Marketing Regulations, Distribution Directive disclosure requirements and Renewal Regulation Requirements.	
6(10)(a)	(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.	Il would suggest that this is the common law position.	
6(10)(b)	(b) The waiver in paragraph (a) does not apply where the non-disclosure arises from fraudulent, intentional or reckless concealment.		
SECTION 7 - 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.	The Bill seems to envisage 3 categories of claims A. innocent B. negligent C. and fraudulent. 7(3) does refer to "negligent misrepresentation that is not deliberate or reckless misrepresentation" but this idea of deliberate or reckless misrepresentation is not covered subsequently. We would suggest that this "deliberate or reckless" category is intended to be addressed in C above. In the UK where a similar regime applies, the categories are innocent, careless and deliberate/reckless. We would have concerns that categorising serious non-disclosure as "fraudulent" might suggest that only in those cases where fraud is established in the criminal courts (with all the associated costs/time issues) could a policy be voided. This in our view sets the bar too high - the terminology in 7(5) should instead refer to "deliberate or reckless" misrepresentation, otherwise this provision could result in claims being paid which should not, leading to an increase in the cost of life assurance and penalising honest policyholders. The above categorisations would benefit from additional clarity and examples of what falls into the different categories. These could best be addressed by a Code of Practice or guidance	
7(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.	More clarity is required with respect to the definitions and distinctions between innocent and negligent misrepresentation. There is a lot of ambiguity surrounding these terms, in case law and the lack of clarity and specification around these terms could increase disputes and litigation, with the costs ultimately borne by all policyholders.	
7(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.		
7(4)	Without prejudice to the generality of subsection (3), where an answer given by the consumer involves a negligent misrepresentation—		
7(4)(a)	(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,		
7(4)(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,		
7(4)(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,		
7(4)(d)	where there is not any outstanding claim under the insurance contract, the insurer may either—	One could argue that the remedies should be applied to the policy immediately. For example, if a provider carries out underwriting quality assurance on cases (no claim submitted) and discovers negligent misrepresentation where the company would not have entered into the contract on any terms, the company may wish to void the contract immediately rather than continue to take premiums. We would welcome clarity on this matter.	
	(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.		
7(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.		
SECTION 8 - FORM OF CONTRACT 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:	This is already largely covered by existing requirements (e.g. CPC, Life Disclosure Regulations, PRIIPS, KIID, Solvency II) and imminent new rules (IPID for Non-Life products under IDD). Introducing another statutory requirement which overlaps to a great extent with existing requirements will cause confusion and additional expense with no material improvement to the consumer's rights.It also appears to conflict with fact that the intermediary is the agent of the consumer and not the insurance company. Where the intermediary is involved in the sale, they will have primary responsibility for pre-contractual information. All of these disclosure requirements should be left to the Central Bank to enforce and amend appropriately.	Insurance Distribution Directive Consumer Protection Code Distance Marketing Regulations
	(a) the name and address of the contracting parties;	Il would query whether this is feasible in circumstances where coverage is required at short notice or the consumer chooses to purchase cover immediately? This section should be consistent with the Consumer Protection Code and Distance Marketing Regulations which allow for situations where immediate cover is required. Consumers usually wish to have immediate cover in place, especially for motor insurance policies	
	(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;	The "Method" of calculating premium is commercially sensitive information for each individual insurer.	
	(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.		
8(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;	For Life, this should only be for risk business, where customers are currently given a copy of the answers they provided on their application form. Non-risk business (pensions / investments) should fall outside the requirements of this.	
	(b) the insurance policy document; and		
	(c) the information required under subsection (1), unless that information is already included in the insurance policy.		

8(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.		
8(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.	Concern regarding the inclusion of oral testimony as terms of a contract of insurance, and there being no requirement to reduce such terms to writing. providing all terms of the contract on a durable medium is required under CPC.	
8(5)(a)	(a) The documents required by subsection (1) and subsection (2) shall be drafted in plain, intelligible language.		
8(5)(b)	(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.		
8(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.	Overlap and duplication of requirements with CPC, and Insurance Distribution Directive and Renewal Regulations	
SECTION 9 - 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.	This is already sufficiently covered in existing legislation and we would therefore propose that this section takes into account existing legislation. Why are the time limits for withdrawal being extended? i.e. from 14 days to 14 working days and from 30 days to 30 working days. 30 working days is about 1.5 months which seems an excessive length of time for someone to be able to withdraw from the contract, while also contradicting the Distance Marketing Regulations.	
9(2)	The right to avoid a contract of insurance under subsection (1) does not apply—	In the case of motor insurance, there must be an obligation on the insured to return the motor certificate and disc. 30 days start "after....." This needs to be the date of issue or customer could potentially argue against non-delivery and have indefinite period.	
	(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	Clarification required that this does not run contrary to the Distance Marketing Regulations (S.I. No. 853/2004 - European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004)	
	(c) the contract is preliminary insurance, liability insurance or group insurance.		
9(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.	As stated previously life assurance investment policies should be outside the scope of this legislation. Specifically, the current cooling off rules permit the insurer to return the value of the investment at the time of cooling off rather than the amount originally invested. This prevents a situation where a customer invests money, then sees that investment markets and the value of the investment have fallen, and seeks to use the cooling off legislation to reclaim the full amount originally invested. Section 9 should permit Insurers' to charge administrative cost for voiding a consumer's contract, at their request within the proposed cooling off period.	
SECTION 10 - 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—	There seems to be considerable overlap with other legislation etc. Requirements under Section 10 appear to be adequately covered under CPC and the Renewal Regs. Overlap with IPID and cost of motor insurance recommendations 2&3. Strong overlap in both Life and Non-Life in terms of existing requirements, particularity CPC. Also Overlap with Section 5 of the Health Insurance Amendment Act 2016 and the Renewal of Health Insurance Contracts	
	(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.		
10(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.		
10(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.		
10(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—	Our understanding is that this type of business is no longer being underwritten and is disproportionate for new renewals.	
	(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.		
10(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).		
SECTION 11 - 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.	Insurer should not have to provide a return premium in cases where the policy has incurred a claim in excess of the unearned portion of the premium.	
11(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).	Electronic means is becoming the preferred of method of communication of consumers. We do not believe it is reasonable (or in certain cases possible) to establish receipt of notification. In our view, it ought to be sufficient to provide evidence that notification of cancellation was issued to the last known email address, mobile number etc.	
11(3)	The insurer shall not impose any financial cost on the consumer where, in accordance with this section, a contract of insurance is cancelled.	For avoidance of doubt, in circumstances where the consumer (as opposed to the insurer) chooses to cancel the contract outside of the cooling off period, the insurer should be able to retain the right to impose a cancellation fee to reflect the cost borne by the insurer in undertaking such a transaction.	
SECTION 12 - 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).		

12(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.	This is likely to result in a substantial additional administrative burden on both the consumer and the insurer and will result in significant additional costs for the insurer which will be passed on to the consumer. We would suggest that this is not what consumers, who are looking for a seamless experience at renewal, would want.	
12(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.		
12(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.		
12(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.	Is this requirement requesting that any previous experience acquired/disclosed cannot be used for the policy being incepted this year?	
12(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.		
SECTION 13 - 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).		
13(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.	Under normal circumstances premiums must be paid prior to inception or renewal of a policy. Query what is meant by "reasonable time" as unintended consequences may arise here. Insurers should not be obliged to provide backdated cover.	
13(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.		
13(4)(a)	(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.		
13(4)(b)	An "alteration of risk" clause shall be void where it purports to apply where there is a modification only of the risk insured.		
13(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.		
13(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.	Overlap and duplication of requirements with CPC, and Insurance Distribution Directive. We would advocate that the consumer is afforded adequate protection under the same. Clarification required that the Distance Marketing Regulations apply	
SECTION 14 - 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.	Again, there is an overlap with section 7 of CPC. In terms of all sections relating to Claims Handling. The current CPC provisions and protections afforded are sufficient. Insurers have statutory duties under the Consumer Protection Act 2007.	
14(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.		
14(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.		
14(4)	Without prejudice to any other duties in this section, the insurer shall be under a duty to handle claims promptly and fairly.		
14(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	For avoidance of doubt, and for purposes of fraud prevention, relevant documents in this context need to include those documents that the insurer would require validating any disclosures/assertions made by the insured in obtaining the insurance	
	(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.	We would query why this is proportionate. It could have an impact on all lines of business and on the claims handling and delivery process. It is very vague and no timelines given on what is deemed reasonable. Already have CPC Guidelines on Claims Processing, FSO etc	
14(6)	The insurer shall pay any sums due to the consumer in respect of the claim within a reasonable time.	This should be amended to where Liability is accepted by the Insurer in respect of a valid claim.	
14(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.		
14(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.		
SECTION 15 - 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.	In the absence of agreement to pay a particular sum, the consumer should be required to fall back on the dispute mechanisms contained in the policy. The wording in the legislation needs to afford proper time for insurers to investigate and evaluate a claim without being deemed unreasonable.Such damages are not currently priced for or quantifiable. Clarification is required that this clause would only apply to claims settlement that has been agreed and does not refer to claims that are being disputed or still being investigated	
15(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.		
15(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.		
15(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—	Recommend substituting "avoiding" with "terminating" or "cancelling"	
	(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	Need to consider implications of Road Traffic Act which currently provides for 10 days' notice of cancellation from the date of issue of cancellation notice, in order to protect innocent third parties.	

	(b) the insurer need not return any of the premiums paid under the insurance contract.	Insurers may in certain circumstances be entitled to recover any monies paid out under the claim	
15(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—	In order to avail of the protections under this section, the party claiming under the policy should retain some burden of proof to demonstrate their innocence.	
	(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.		
15(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.		
15(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—	In order to avail of the protections under section 15, innocent party claiming should also be obliged to report any criminal activity/conduct to the an Garda Siochana and assist with their enquiries.	
	(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.		
15(6)	An insurer shall not be entitled to claim against the consumer the cost of investigating a fraudulent claim.	This proposal effectively removes a fraud deterrent. The rationale for this proposal in the LRC Report was that "these types of costs are an inherent cost of an insurer's business and in any event in many cases policyholders will not be in a position to pay these costs. Although this may be the case, and the latter may be a reason why an Insurer decides not to pursue costs, it is not a justifiable rationale for removing the right of Insurers' to pursue such costs. Insurers should not be deterred from pursuing fraudsters. This seems to suggust insurers cannot seek costs where a claim is fraudulent and it runs counter to government moves to deter the making of fraudulent claims and the proposed introduction of the Garda Insurance Fraud Investigation Group and runs counter to the Cost of Motor Insurance Working Group recommendations.	
SECTION 16 - 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).	This section has significant impact on the provision of commercial products in Ireland and needs to be fully considered.	
16(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 consumer to the insurer prior to entering into the contract.	Concern that this could lead to a dilution of the policyholders duty of care.	
16(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.	There may be an increased moral hazard issue as a result of this.	
16(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.	This proposed change runs contrary to the technological advances made in the insurance sphere. E.g.insurtech and telematics etc	
16(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.		
16(5)(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.	Suggest that the following text is added to the end of the text "provided the breach did not give rise to the subsequent claim."	
SECTION 17 - 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.	This is this already covered by Unfair Contract Terms legislation and general principles of CPC. - Overlap should be avoided. This provision should apply to new contracts only otherwise the legislation will be seeking to have retrospective effect.	
17(1)(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.		
17(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.		
17(2)(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).		
17(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.		
17(4)	Without prejudice to the generality of subsections (1) to (3), the following nonexhaustive 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;	We would be concerned by any presumption that arbitration or mediation clauses (which are widespread in the industry for cost and time saving/efficiency reasons) are presumed to be unfair or onerous. This appears to go further than the existing Unfair Terms in Consumer Contracts Regulations	

	(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.		
SECTION 18 - RIGHT OF THIRD PARTY TO A CLAIM AGAINST INSURER			
	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—	The meaning of when a "person cannot be found" needs to be defined so there is certainty around what time period is sufficient	
	(a) the person has died, or cannot be found, or is insolvent, or		
18(1)	(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.	A third party should not have the right to re-activate (through payment of a premium) a policy which has been correctly cancelled.	
18(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.		
	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,		
18(3)	(b) if there exists such a contract, who the insurer is,		
	(c) the terms of the contract, and	Clarity is required regarding to what extent Section 18 (3) (c) would apply and how this can be reconciled with existing data protection requirements	
	(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.		
18(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.		
18(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.		
18(5)(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.		
18(5)(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.		
18(5)(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.		
18(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.		
18(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.		
18(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.		
	In this section, "cannot be found"—		
18(9)	(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.		
18(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.		
	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		
18(11)	(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.		
18(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.		
18(13)	In this section, "the person" includes an individual, a partnership, or any corporate body.		
18(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.		
18(15)	It is irrelevant for the purposes of this section whether or not the liability of the insured person is or was incurred voluntarily.		
SECTION 19 - 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	This section is not very clear. Insurers should not be prevented from exercising rights where for example a family member has deliberately set fire to the family home and has means against which the insurer may recover. How is a personal relationship defined?? How broad is that definition.	
	(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.	Road Traffic Accident claims appeared to fall out of scope of the subrogation reforms outlined in the Law Reform Commission's Consultation Paper. Clarity is sought as to why such claims were included in the Law Reform Report and this Bill. MIBI provisions would have to be reviewed and considered in conjunction with this requirement.	
19(1)(b)	This subsection does not apply where the conduct of the other person that gave rise to the loss was serious or wilful misconduct.		
19(1)(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.		
19(1)(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.		
19(1)(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.		
19(1)(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.		
SECTION 20 - SUBROGRATION: 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.		
20(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.		
20(2)(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.		
20(2)(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.		
20(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.		
20(3)(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.		
20(3)(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.		
SECTION 21 - 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.	Again, more clarity required with respect to this section.	
21(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.		
SECTION 22 - 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.		
22(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).		
22(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).		
SECTION 23 - SHORT TITLE AND COMMENCEMENT			
23(1)	This Act may be cited as the Consumer Insurance Contracts Act 2017.		
23(2)	This Act comes into operation 18 months after enactment.		