



Consumer Insurance Contracts Act 2019

August 2021



The consumer insurance contracts act 2019 – information note

The majority of the provisions of the Consumer Insurance Contracts Act 2019 (the “Act”) came into effect on 1 September 2020. Sections 8, 9, 12 and 14(1-5) will come into effect on 1 September 2021.

It is important for you to be aware of the key provisions of the Act and how such provisions may affect you. Please see below an outline of the key provisions of the Act, save for Section 18(4). There is currently no commencement date set for Section 18(4).

Subject to minor exclusions, the Act applies to life and general insurance contracts entered into, varied or renewed after the 1 September 2020. The Act does not apply to reinsurance contracts.

The Act applies to insurance contracts entered into with “consumers” being individuals, unincorporated bodies (such as sole traders, partnerships and charities) and incorporated bodies with a turnover of less than €3 million, provided such businesses are not members of a group having a combined turnover greater than €3 million.

Section of the Act	Outline of provision
7	<p>Insurable Interest:</p> <p>An insurer can no longer reject a claim from a consumer on the basis that the consumer does not have an insurable interest in the subject matter of the contract. A consumer will still be required to demonstrate loss in order to make a valid claim. An insurer is not relieved of their liability because the person who may benefit under the contract is not specified.</p> <p>Where the insurance contract is also a contract of indemnity, a consumer may be required to have an interest in the subject matter.</p>
8	<p>Pre-Contractual Duties of Consumer and Insurer:</p> <p>The duties in this section replace the principle of utmost good faith (pre-contract). The consumer’s duty of disclosure is limited to providing responses to questions asked by an insurer. There is no duty on a consumer to volunteer any information above or beyond what is required by the questions asked.</p> <p>Insurers are under a duty to inform the consumer (on paper or another durable medium) of the general nature and effect of the pre-contractual duty of disclosure, before a contract is entered into or renewed (as the case may be).</p> <p>An insurer must ask specific questions in plain and intelligible language (also on paper or another durable medium). Where there is ambiguity in the meaning of a question, the interpretation most favourable to the consumer must be taken.</p> <p>The consumer is under a duty to answer all questions honestly and with reasonable care (the test of reasonable care being by reference to that of the average</p>

	<p>consumer). Where an obviously absent or incomplete answer to a question is provided, an insurer will be deemed to have waived any further duty of disclosure where the insurer fails to take steps to investigate and/or clarify such response. This waiver, however, will not apply in cases of fraudulent, intentional or reckless concealment on the part of the consumer.</p> <p>In determining whether the consumer has complied with this duty, regard shall be had to, amongst other 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 the circumstances of that representation; and (v) that some consumers can be expected to be in possession of more information than others.</p> <p>There are certain remedies available to an insurer under the Act (including the remedy to repudiate liability or to limit the amount paid on foot of the contract of insurance) which may only be used where the insurer can establish that the non-disclosure of material information by a consumer was an effective cause of the insurer entering into the relevant contract of insurance (and on the terms on which it did).</p>
9	<p>Proportionate Remedies for Misrepresentation:</p> <p>Where a consumer has complied with their duty under Section 8 by answering all questions raised in an honest and reasonable manner, but has nonetheless made a misrepresentation, in the event of a claim the insurer has certain remedies available depending on the type of misrepresentation involved. The applicable remedy under this section will depend on whether the misrepresentation was (i) innocent (that is, one that was neither negligent nor fraudulent); (ii) negligent; or (iii) fraudulent.</p> <p>If the misrepresentation is innocent then the insurer shall not be entitled to avoid the contract on the grounds of misrepresentation.</p> <p>If the misrepresentation is negligent (and not fraudulent) then the insurer's remedy will reflect what it would have done upon receiving the full facts. If the insurer would not have entered into the contract, it can avoid the contract and refuse all claims but must return the premiums paid. If it would have entered into the contract on different terms then the contract will be treated as if entered into on those terms. If the insurer would have charged a higher premium, it may proportionately reduce the amount paid on a claim.</p> <p>Where there has been no claim made but the insurer becomes aware of a negligent misrepresentation, it can give notice to the consumer that if a claim is made then it will exercise any of the negligent misrepresentation remedies. If the contract is for non-life insurance cover the insurer may terminate the contract with reasonable notice.</p> <p>If the misrepresentation is fraudulent or the consumer has taken part in fraudulent conduct of any kind, the insurer can avoid the contract.</p>
10	<p>Provision of Information and Interpretation:</p> <p>The insurer must provide the consumer with the completed application or proposal form within a reasonable time after concluding a contract of insurance.</p> <p>If an ambiguity arises in respect of such documentation, the interpretation most favorable to the consumer (or beneficiary) shall prevail.</p>
11	<p>Cooling Off Period:</p> <p>A consumer may cancel a contract of insurance, by giving notice in writing to the insurer, within 14 days of being notified of the conclusion of the contract. The insurer cannot impose any costs on the consumer other than premium for the relevant period of cover. The giving of this cancellation notice by the consumer will have the effect of</p>

	<p>releasing the consumer from any further obligation arising from the contract of insurance.</p> <p>This right to cancel does not apply where the contract is for less than one month. This provision does not affect the notice periods provided under Solvency II Regulations or in the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.</p>
12	<p>Renewal of Contract of Insurance:</p> <p>When the insurer is issuing a renewal notice of a non-life insurance policy to a consumer, it must also provide details of any premiums paid and claims paid on foot of the contract in the past 5 years (excluding health insurance contracts). This section only relates to premiums paid and claims paid between the consumer and insurer issuing the renewal notice.</p> <p>Where there has been any mid-term adjustments to the contract in the past 5 years, the information provided relating to premiums paid may be an annualised figure for the relevant year combined with a qualifying statement that this may not be the actual premium paid in the relevant year.</p>
13	<p>Cancellation of Contract:</p> <p>Where the insurer cancels a contract of insurance, the insurer must repay the balance of the premium to the consumer without imposing any financial cost on the consumer. The insurer must also provide the reason for the cancellation.</p>
14(1-6)	<p>Duties of Consumer and Insurer at Renewal:</p> <p>Upon a renewal, a consumer is not under any duty to supply additional information concerning matters that have changed or otherwise, unless the insurer expressly requests that the consumer to do.</p> <p>If the insurer does require additional information regarding a particular matter, it must request this information by way of specific questions, or it must request the consumer to update previously provided information concerning that matter (on paper or another durable medium). The consumer is under a duty to respond to such requests honestly and with objectively reasonable care (the test of reasonable care being by reference to that of the average consumer). If no new information is provided upon request and the renewal premium is paid, an insurer can presume the information previously provided has not changed.</p> <p>The renewal by the insurer of the contract of insurance shall not, in itself, be taken to remedy any previous breach of any duty of disclosure by the consumer under the Act. The insurer must notify the consumer of any alteration (on paper or other durable medium) to the terms and conditions of a policy at least 20 days in advance of renewal.</p>

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Post-Contractual Duties of Consumer and Insurer:

The consumer is under a duty to pay the premium within a reasonable time (or otherwise in accordance with the terms of the insurance contract).

Any duty that existed under the principle of utmost good faith (post contract) is removed.

If an insurer intends to exclude certain matters from coverage under the contract of insurance, the insurer must do so explicitly in writing prior to the commencement of the contract.

The Act allows an insurer to refuse a claim where there is a change in the subject matter of the contract of insurance. An insurer may refuse a claim where the change in the subject matter, has effectively changed the risk to one which the insurer has not agreed to cover.

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Claims Handling:

Insurers will be required to (i) handle claims promptly and fairly; (ii) engage with the insured and allow them to submit evidence; and (iii) notify the insured at the conclusion of the matter the amount for which a claim has been settled or otherwise disposed of and the reasons for same.

Claim settlement payments must be paid to the consumer within a reasonable time.

Consumers are required to cooperate with the insurer with the investigation of insured events. An insurer cannot refuse liability solely on the basis that the consumer has failed to comply with a specified notification period, unless the late notification prejudices the insurer.

If after a claim has been made the consumer or the insurer becomes aware of information that would either support or, prejudice the validity of the claim made by the consumer, both parties shall be under a duty to disclose this information to the other party.

If an insurance contract contains a provision stating that the insurer is not obliged to pay the full claim settlement amount until any repair, replacement or reinstatement work has been completed and specified documents have been furnished to the insurer, this provision will be void unless prior to the contract being entered into (and again at the time of the claim), the insurer brought this provision to the attention of the consumer (on paper or other durable medium).

If a consumer makes a claim containing information which is false or misleading, and where the consumer knows that such information is false or misleading, or consciously disregards whether it is false or misleading, the insurer may refuse to pay the claim and terminate the contract.

Where a consumer has made a fraudulent claim and the insurer becomes aware, the insurer must notify the consumer that they are avoiding the contract. A contract of insurance will be treated as being terminated from the date of the submission of any fraudulent claim. Subsequent to the date of the fraudulent act the insurer may refuse all liability in respect of any claim made, and the insurer is under no obligation to return any premium paid by the consumer.

19	<p>Representations by Consumers:</p> <p>Warranties are to be replaced by representations prior to entry into the insurance contract. Any term in an insurance contract which purports to convert any statement into a warranty will be invalid.</p> <p>Continuing restrictive conditions are replaced with suspensive conditions whereby if there is a breach of any condition under an insurance contract by the consumer, the insurer's liability is suspended for the duration of the breach. If the breach is remedied at the time of the occurrence of a loss then the insurer will be liable to pay the claim.</p>
20	<p>Unfair or Onerous Terms:</p> <p>The Act extends the EC (Unfair Terms in Consumer Contracts) Regulations 1995 to consumers under the Act, to ensure that consumers are not bound by unfair terms i.e. terms which are significantly imbalanced in favour of the insurer.</p>
21-25	<p>Third Parties:</p> <p>Insurers' subrogation rights are more limited.</p> <p>In limited circumstances third parties will, essentially, be able to "step into the shoes" of the insured to recover against the insurer where the insured is deceased, insolvent, or in circumstances where the court so directs.</p> <p>The rights of the insured person may vest in the third party even though the third party is not a party to the contract of insurance. This third party will have a right to recover from the insurer the amount of any loss suffered by the third party, where the third party reasonably believes that the insured person has incurred a liability the third party will be entitled to seek and obtain information from the insurer or from any other person who is able to provide it concerning (i) the existence of the insurance contract; (ii) the identity of the insurer; (iii) the terms of the contract of insurance; and (iv) whether the insurer has informed the insured person that the insurer intends to refuse liability under the contract.</p>
26	<p>Effect of Failure to Comply with the Act:</p> <p>A court of competent jurisdiction can reduce the pay-out to the consumer where a consumer is in breach of their duties under the Act, in proportion to the breach involved.</p>

The above information is for information purposes only and is not to be taken as legal advice or guidance. For more information, please see the Act (<http://www.irishstatutebook.ie/eli/2019/act/53/enacted/en/pdf>) or speak to your legal advisor.



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