

# INSURANCE BILL MAKES PROGRESS THROUGH UK LEGISLATIVE PROCESS



**On 27 January 2015, the Insurance Bill (the Bill) was sent to a Committee of the House of Commons (UK) following completion of its passage through the House of Lords (UK), during which the Bill was reviewed by a Special Public Bill Committee (the Committee) and some significant amendments were made.**

The amendments include:

1. Most significantly, the addition of a clause which limits an insurer's remedy for a breach of a term where the term is not relevant to the actual loss suffered.
2. In the context of an insured's knowledge and the duty of fair presentation, limiting the carve-out for confidential information which is held by an agent of an insured and which does not have to be disclosed to an insurer.
3. Clarifying an insurer's remedies in the event of fraudulent claims being made under a group insurance contract.

## Background

By way of background, the Bill was introduced into Parliament in July 2014 as part of the second stage of the joint review of insurance contract law by the Law Commission and the Scottish Law Commission (the Commissions), the first stage of which resulted in the Consumer Insurance (Disclosure and Representations) Act 2012. The Bill proposes reforms in areas such as disclosure in business insurance, warranties and an insurer's remedies for fraudulent claims. The Bill will introduce new law (replacing the existing common law) and will also amend parts of the Marine Insurance Act 1906.

In July last year, HFW published a Briefing on the Bill which explained its principal proposals in detail. The Briefing can be found here: [www.hfw.com/The-Insurance-Contracts-Bill-July-2014](http://www.hfw.com/The-Insurance-Contracts-Bill-July-2014)



## Amendments made by the House of Lords

The latest version of the Bill, which was presented to the House of Commons on 16 January 2015, can be found here: [www.publications.parliament.uk/pa/bills/cbill/2014-2015/0155/15155.pdf](http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0155/15155.pdf)

The key amendments that have been made by the House of Lords are as follows:

### Terms not relevant to the actual loss

The most significant change is the addition of Clause 11 on terms which are not relevant to the actual loss. This clause limits an insurer's remedy for a breach of a contractual term (such as a warranty) by the insured to circumstances where the loss suffered by the insured is of the kind contemplated by the term, or at the time or place contemplated by the term. If an insured which is in breach of a term can show that its non-compliance with the term could not have increased the risk of the loss which actually occurred, and in the circumstances in which it occurred, the insurer cannot rely on this breach to exclude, limit or discharge its liability.

The clause is intended to apply only to terms which refer to specific risks; it would not apply to terms which define the risk as a whole. A warranty that a production plant has a working fire alarm system would be a term which refers to a specific risk (that of fire), whereas a warranty that the premises are not used for manufacturing explosives would define the risk as a whole. The clause further restricts the ability of an insurer to rely on a breach of warranty to limit or discharge its liability. As explained in our previous Briefing, the Bill significantly alters the status of warranties in insurance contracts by rendering them



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suspensive conditions, meaning that cover is only suspended during the period of the breach.

A different version of this clause was included in an early draft of the Bill but was removed following consultation before the Bill was introduced into Parliament. Although stakeholders generally agreed on the policy behind the clause, agreement could not be reached on the wording of the clause. The new clause was prepared by the Commissions following further consultation with stakeholders.

### Knowledge of the insured

Some tweaks have been made to the provisions of the Bill which define the knowledge of the insured for the purposes of placement. The Bill provides that an insured knows what is known by the individuals who are responsible for placing the insurance, which includes agents of the insured.

Under the previous version of the Bill, an insured was not treated as knowing confidential information held by an agent which was acquired through a business relationship with someone other than the insured.

However, the House of Lords has amended Clause 4 of the Bill to limit this exclusion to business relationships with a person who is not connected with the contract of insurance. A person who is connected with a contract is defined by the Bill as including any insured or beneficiary of the contract and, in the context of reinsurance, any such persons who are connected with the underlying contract(s) of insurance.

The amendments are technical rather than substantive and aim to clarify that, for example, a broker which is involved in placing both the insurance and the reinsurance cannot withhold confidential information from the



reinsurer on the grounds that the broker acquired this information through its relationship with a beneficiary of the underlying insurance.

A second purpose of the amendment seems to have been to answer the question of whether the Bill applies to reinsurance, an issue which was raised during the Commissions' consultations on the draft Bill. It was stated by Lord Newby, the member of the Committee who introduced the amendment, that *"by specifically making provision for reinsured risks on the face of the Bill, this provision helps to make it clear that the Bill generally applies to reinsurance, without leading to the problems in defining insurance or explicitly applying the Bill to reinsurance."*

#### Remedies for fraudulent claims: group insurance contracts

Clause 13 provides an insurer with remedies in respect of a fraudulent claim which is made by one insured under a group insurance contract. The remedies are contained in Clause 12 and, under the version of the Bill that was introduced into Parliament, applied only where the cover provided

would have been a consumer contract if the insurer and the fraudulent insured had entered into an individual insurance contract. However, the House of Lords has amended Clause 13 to provide that the remedies apply regardless of whether the cover provided would have been a consumer or non-consumer contract.

The House of Lords has also added a new Clause 18 to explain how the Bill's provisions on contracting out apply to Clause 13. Clause 18 states that any term in a group insurance contract which contracts out of Clause 13 is invalid (in respect of a consumer insured) or is subject to the transparency requirements in Clause 17 (in respect of a non-consumer insured).

This is consistent with the position in Clauses 15 to 17 of the Bill, which provide that a term in a consumer contract which contracts out of the Bill's provisions on warranties or fraudulent claims is invalid, and any term in a non-consumer contract which varies the Bill's provisions is subject to the transparency requirements in Clause 17. This does not apply to a term in a non-consumer contract which contracts out of Clause 9 (the prohibition on basis clauses), which is automatically invalid.

#### Next steps

During proceedings in the House of Lords, the Committee heard evidence from industry bodies, legal experts and other interested parties. David Hertzell, the former Law Commissioner who was responsible for the Bill, was also called to give evidence on the Bill. The Committee members intensely scrutinised the wording of the Bill and debated a number of its provisions. Given this thorough scrutiny, it seems unlikely that many, if any, further amendments to the Bill will be made by the House of Commons.

The Bill is due to be considered in a Committee of the whole House on Tuesday 3 February. We understand that the House of Commons will also debate the report stage and third reading of the Bill on the same day.

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