

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 1430 HOURS TUESDAY 17 MAY 2011

A Bill to balance the rights of consumers and insurers

The Consumer Insurance (Disclosure and Representations) Bill, introduced into the UK Parliament on 16 May by HM Treasury, stems from recommendations made by the Scottish Law Commission and the Law Commission. The Bill reflects industry best practice and aims to give consumers greater confidence in the insurance industry. The Bill clarifies the law that governs what consumers should tell insurers when they take out a policy. It replaces the existing rules, which are over 100 years old, with legislation that is fit for today's consumer insurance market.

Under the provisions of the Bill:

- Insurers must ask for any information they may need to assess the risk being insured.
- Consumers must answer these questions honestly and reasonably. If they do so the claim should be paid.
- If consumers' answers are dishonest or reckless, insurers can refuse all claims and retain any premium.
- But, consumers who make careless mistakes when answering insurers' questions might still be entitled to have some of their claim paid, because their entitlement will depend on what the insurer would have done had it known the true facts at the time the policy was taken out.

Professor Hector MacQueen, the Commissioner leading the project at the Scottish Law Commission, said:

"We are delighted to see this Bill introduced into Parliament. As the law stands, consumers are expected to predict what information an insurer might consider relevant. Under the reforms proposed by the two Commissions, the rights, duties and expectations of both parties are clearly established."

David Hertzell, the Law Commissioner who is leading the project at the Law Commission for England and Wales, said:

"The Consumer Insurance Bill achieves a long-needed balance between the interests of consumers and insurers. This is the first time that consumer groups and the insurance industry have reached a consensus on the issue of pre-contract

disclosure. It is a notable achievement that will improve consumer protection while also enhancing the reputation of the insurance industry.”

The Association of British Insurers (ABI), whose members provide around 90 per cent of domestic insurance services, is also supporting the Bill. Nick Starling, Director of General Insurance and Health at the ABI, said:

“We are optimistic that this Bill will introduce into law what is already seen as best practice among the majority of insurers who strive to treat their customers openly and fairly. By making such good practice common, the Bill will bring greater transparency and certainty, and improve consumers’ faith in the insurance industry.”

The Bill is being introduced via the procedure used for uncontroversial Law Commission Bills. The procedure is intended to reduce the time that Law Commission Bills spend on the floor of the House of Lords by providing for certain stages to be carried out in Committee. This allows the Bills to be considered and scrutinised despite the pressures of Parliamentary time.

The Consumer Insurance (Disclosure and Representations) Bill derives from the Report “Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation”, which was produced jointly by the two Law Commissions in December 2009. This is part of a wider joint project to reform insurance law. The Law Commissions are to publish a second consultation paper reforming business insurance law and other issues later in the year.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Drummond Young, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Patrick Layden QC TD, and Professor Hector L MacQueen. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting Mrs Gillian Swanson, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gsi.gov.uk).