

15 Contracting out: consumer insurance contracts [j304]

- (1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects any of the matters mentioned in subsection (2) than the consumer would be in by virtue of the provisions of this Act is to that extent of no effect.
- (2) The matters are those dealt with in the following provisions of this Act –
 - (a) section 9 (breach of warranty),
 - (b) section 10 (terms relevant to particular descriptions of loss),
 - (c) Part 4 (fraudulent claims and late payment),
 - (d) section 14 (good faith).
- (3) In subsection (1) –
 - (a) references to a contract include a variation,
 - (b) references to the consumer include any person referred to as “C” in section 12.
- (4) This section does not apply in relation to a contract for the settlement of a claim arising under a consumer insurance contract.

16 Contracting out: non-consumer insurance contracts [j305]

- (1) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the matters provided for by this Act (other than those referred to in subsections (2) and (3)) than the insured would be in by virtue of the provisions of this Act is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.
- (2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects the matters set out in subsection (3) than the insured would be in by virtue of the sections mentioned there is to that extent of no effect.
- (3) The matters referred to in subsection (2) are—
 - (a) representations to which section 8 applies, and
 - (b) deliberate or reckless breaches of the term implied by section 13(1).
- (4) In subsections (1) and (2)—
 - (a) references to a contract include a variation, and
 - (b) references to the insured include any person referred to as “C” in section 12.
- (5) For the purposes of subsection (3)(b), a breach is deliberate or reckless if the insurer—
 - (a) knew that it was in breach, or
 - (b) did not care whether or not it was in breach.
- (6) This section does not apply in relation to a contract for the settlement of a claim arising under a non-consumer insurance contract.

17 The transparency requirements [j306]

- (1) In this section, “the disadvantageous term” means such a term as is mentioned in section 16(1).
- (2) The insurer must take sufficient steps to draw the disadvantageous term to the insured’s attention before the contract is entered into or the variation agreed.
- (3) The disadvantageous term must be clear and unambiguous as to its effect.
- (4) In determining whether the requirements of subsections (2) and (3) have been met, the characteristics of insured persons of the kind in question, and the circumstances of the transaction, are to be taken into account.
- (5) The insured may not rely on any failure on the part of the insurer to meet the requirements of subsection (2) if the insured had actual knowledge of the disadvantageous term.