

Business Requirements Consumer Insurance Contracts Act Outline and Implementation

The legislation was signed into law in December 2019, the **Consumer Insurance Contracts Act 2019 (CICA)**.

The Act has two starting dates for different provisions the first date was the 1st September 2020 and the second is going to be the 1st September 2021 which are the more onerous conditions and processes necessary to be implemented namely Sections 8, 9, 12 and 14(1) – (5).

The Act is intended to improve the position for consumers and to make it more difficult for insurers to decline claims, with new proportionate remedies for misrepresentation and for dealing with claims, the replacement of the concept of warranties and the altering of the concept of insurable interest. The Act is intended to correct what has been considered by some to be an imbalance in the precontractual burden imposed on consumers and shifts the burden to the underwriter to make sufficient and appropriate enquiries when considering whether and on what terms to write a risk. The Act makes significant changes to the pre and post contract stages of the insurance transaction, as well as the claims process.

Eligibility

Note the legislation is aimed at “consumers”, defined as natural persons and sole traders/ partnerships/corporate entities with an annual turnover of €3m or less.

The main points of the new legislation are the removal of the principle of utmost good faith, disclosure at renewal, changes in relation to ‘insurance warranties’, third parties and liability, subrogation rights and a clampdown on technical avoidance of claims such as with **late notification that has not prejudiced the insurer**.

Insurable interest

Under the terms of the Act, a claim under an otherwise valid contract of insurance may no longer be rejected on the basis of a consumer not having a valid interest in the subject matter of the contract at the time the contract was entered or at the time of the loss. A policyholder will still be required to demonstrate loss in order to make a valid claim. The Act does acknowledge that a consumer may be required to have an interest in the subject matter of a contract of insurance where that insurance contract is a contract of indemnity.

Fraudulent misrepresentation

Traditionally insurers could avoid the contract of insurance and the payment of any claim following “deliberate or reckless misrepresentation”, however under CICA this remedy is reserved for “fraudulent misrepresentation”, a higher threshold that will be more difficult for insurers to prove.

Therefore Insurers entering into contracts of insurance with consumers in the Irish market are impacted by changes to Irish law that came into effect on 1 September 2020. These changes impact on contracts issued and varied from that date.

The key sections which came into effect on 1 September 2020 include:

- The abolition of the insurable interest principle as a pre-requisite to a consumer making a valid claim (Section 7) **(claims)**
- As the Act modifies the concept of insurable interest, an otherwise valid claim cannot be rejected by the insurer only because the party claiming is deemed not to have an interest in the subject matter of the contract. The Act will require an interest where the contract of insurance is also a contract of indemnity, but this is not to extend beyond a factual expectation of the economic benefits or losses that would arise in the ordinary course of events
- A 14 day cooling off period for consumers with no cancellation right under Solvency II or the EC (Distance Marketing of Consumer Financial Services) Regulations 2004 (Section 11) **(Product Literature)**

- **14-day cooling-off period** –The Act provides a new 14 day cooling off period for some contracts of insurance, with the consumer being given a right to cancel with no cost other than the premiums applicable to that period

- **Claims handling** duties and proportionate remedies (Sections 16 – 18) **(claims)**

- The Act puts an obligation on the consumer to cooperate with the insurer in investigation of insured events, including responding to reasonable requests for information in an honest and reasonably careful manner and notifying the insurer of occurrence of an insured event in reasonable time. However, unless non-notification within such reasonable time prejudices the insurer, it will not be a valid ground for the insurer to refuse liability. The insurer must inform the consumer where a claim is settled or otherwise disposed of and the amount of the settlement. Following the making of a claim, where either party becomes aware of information that could support or prejudice the claim, this information must be disclosed
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- The invalidation of clauses that convert a representation into a warranty (e.g. ‘basis of contract’ clauses) (Section 19) **(Product Literature & Claims)**
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- Modifications to subrogation and third-party rights (Sections 21 – 25)
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- The Act allows third parties to benefit from the rights of the insured party in limited circumstances (e.g. where the insured party is deceased) where liability is incurred by the insured party to a third party. Policy proceeds are to be ring fenced in the event of the insolvency or bankruptcy of the insured. In such circumstances, the third party has the right to seek to recover loss suffered against the insurer and may commence an action against the insurer before liability against the insured party has been established

Sections 8, 9, 12 and 14(1)-(5) of CICA will not be commenced until **1 September 2021**. These are CICA’s more onerous provisions and, for the most part, require systems and process changes by insurers, which we are working very hard on at present. These sections include:

- The introduction of a statutory duty to answer all questions posed by the insurer ‘*honestly and with reasonable care*’ in place of the contractual duty of ‘*utmost good faith*’ (Section 8).

Precontractual duties of consumer and insurer in respect to misrepresentation.	Section 8 abolishes the principle of utmost good faith and replaces it with a statutory duty on consumers to answer questions honestly and with reasonable care.	Only affects business that is individually insured, with proposal forms etc. Not appropriate where business is sold on a delegated authority scheme basis.
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- Proportionate remedies for misrepresentation by reference to whether it was innocent, negligent, or fraudulent (Section 9).

Remedies for misrepresentation	Section 9 , which introduces proportionate remedies for consumer misrepresentation and distinguishes between three classes of misrepresentation: innocent, negligent and fraudulent. Similar to the concept of “careless misrepresentation” under English law, the remedy available to the insurers under the 2019 Act for negligent misrepresentation depends on what action the insurer would have taken if the misrepresentation had not been made.	This is a matter for claims to consider as part of validation. Need to look at the definition for Fraud .
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- Increased duties for insurers at renewal stage (e.g. for non-life contracts, insurers must provide a schedule of all premiums and claims paid for the preceding 5 years) (Section 12)
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- Changes to disclosure duties at renewal stage (Section 14 (1) – (5))
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We do not foresee as many changes in our product and Distribution lifecycle as the traditional non-life Insurers in practice especially as not many consumers of LEI products have proposal forms or require risks to be individually assessed.

Key sections of the Act which impact (or not) on ROI literature are as follows

Phase 1 (wef 1 September 2020)	
Section	Comment
<p>The abolition of the insurable interest principle as a pre-requisite to a consumer making a valid claim (Section 7) (claims).</p> <p><i>As the Act modifies the concept of insurable interest, an otherwise valid claim cannot be rejected by the insurer only because the party claiming is deemed not to have an interest in the subject matter of the contract. The Act will require an interest where the contract of insurance is also a contract of indemnity, but this is not to extend beyond a factual expectation of the economic benefits or losses that would arise in the ordinary course of events.</i></p>	<p>No impact on literature.</p> <p>Although this changes the established general principle of insurable interest, this is unlikely to affect LEI as we're insuring the legal rights of defined individuals.</p> <p><i>"The person who has taken out this policy (the policyholder) and any member of their family who always lives with them. Anyone claiming under this policy must have the policyholder's agreement to claim".</i></p>
<p>14 day cooling off period for consumers with no cancellation right under Solvency II or the EC (Distance Marketing of Consumer Financial Services) Regulations 2004 (Section 11) (Product Literature)</p> <p><i>The Act provides a new 14 day cooling off period for some contracts of insurance, with the consumer being given a right to cancel with no cost other than the premiums applicable to that period.</i></p>	<p>Impact on literature already agreed and implemented/being implemented.</p> <p>Wording already includes 14 days cancellation notice period but changed to the following:</p> <p>a) You may cancel the policy:</p> <ul style="list-style-type: none"> i) within 14 working days of the date of its purchase (cooling-off period) with a refund of premium on a pro rata basis. In these circumstances the insurer shall not impose any financial cost on you other than the cost of the premium for that period of insurance; (the time on risk) ii) at any other time by giving us at least 14 working days written notice. In these circumstances you may be entitled to a partial refund of the premium subject to the individual terms of business between you and the person who sold you this policy. Please contact them directly for full details of charges. No refund of premium shall be allowed if a claim has been or is later accepted by us. Notice of cancellation by you shall release you from any further obligation arising from the policy. <p>b) We can cancel this policy at any time as long as we tell you at least 14 working days beforehand.</p>

Phase 1 (wef 1 September 2020)	
Section	Comment
<p>Claims handling duties and proportionate remedies (Sections 16 – 18) (claims)</p> <p><i>The Act puts an obligation on the consumer to cooperate with the insurer in investigation of insured events, including responding to reasonable requests for information in an honest and reasonably careful manner and notifying the insurer of occurrence of an insured event in reasonable time. However, unless non-notification within such reasonable time prejudices the insurer, it will not be a valid ground for the insurer to refuse liability. The insurer must inform the consumer where a claim is settled or otherwise disposed of and the amount of the settlement. Following the making of a claim, where either party becomes aware of information that could support or prejudice the claim, this information must be disclosed.</i></p>	<p>Currently completed by the claims team and product and underwriting and other stakeholders, impact on literature.</p>
<p>The invalidation of clauses that convert a representation into a warranty (e.g. 'basis of contract' clauses) (Section 19) (Product Literature & Claims)</p> <p>Modifications to subrogation and third-party rights (Sections 21 – 25)</p> <p><i>The Act allows third parties to benefit from the rights of the insured party in limited circumstances (e.g. where the insured party is deceased) where liability is incurred by the insured party to a third party. Policy proceeds are to be ring fenced in the event of the insolvency or bankruptcy of the insured. In such circumstances, the third party has the right to seek to recover loss suffered against the insurer and may commence an action against the insurer before liability against the insured.</i></p>	<p>No impact on literature.</p> <p>Wordings already have a condition relating to claims under this policy by a third party:</p> <p><i>Apart from us, you are the only person who may enforce all or any part of this policy and the rights and interests arising from or connected with it.</i></p>

Phase 2 (wef 1 September 2020)	
Section	Comment
Introduction of a statutory duty to answer all questions posed by the insurer 'honestly and with reasonable care' in place of the contractual duty of 'utmost good faith' (Section 8)	No impact on literature. Although this changes the established general principle of insurable interest, this is unlikely to affect LEI as we're insuring the legal rights of defined individuals. <i>"The person who has taken out this policy (the policyholder) and any member of their family who always lives with them. Anyone claiming under this policy must have the policyholder's agreement to claim".</i>
Proportionate remedies for misrepresentation by reference to whether it was innocent, negligent, or fraudulent (Section 9)	Impact on literature.
Increased duties for insurers at renewal stage (e.g. for non-life contracts, insurers must provide a schedule of all premiums and claims paid for the preceding 5 years) (Section 12)	No impact on Literature. Q. Does this relate to business sold on an add-on basis?
Changes to disclosure duties at renewal stage (Section 14 (1) – (5))	No impact on Literature.

CICA Phase 2 from 1st September 2021 – one of the provisions of CICA is that we must show all claims notified and premiums paid with the past 5 years to our agents which need to go the ultimate policyholder. We have taken the view that calls on the legal advice and Counselling helplines are services attaching to our policies and not claims. The scheme breakdown policies are built around the main legal expenses policy where combined but even where they are not, they are sold alongside motor policies by MGAs and Brokers and are simply the provision of a service attaching to those motor policies or an enhancement to those motor insurance policies.

For scheme business, we will be sending out the Claims Statement letter to agents to populate as appropriate as we do not get involved in the renewal process. We will be issuing a claims report detailing the claims as appropriate where a payment has been made under the scheme, from which the enclosed letter can be populated as appropriate, the table explicitly states:

Roadside / home emergency assistance benefits, where part of your policy, and claims where no payments have been made or anticipated to be made throughout the course of the policy have not been displayed

The Provision of information in relation to claims made but no payments made will do nothing to assist the consumer and may potentially mislead the consumer into the mistaken belief that these claims made, did impact on their premium.

On an ongoing basis we will send a monthly report of all claims to our intermediaries/business partners to integrate this into their own renewal process for September 2021 renewals and onwards.

Where cover is embedded, we rely on the underlying overall cancellation condition.

ARAG Legal Protection Limited is registered in Republic of Ireland number 639625. Registered address:

Europa House, Harcourt Centre, Harcourt Street, Dublin 2, D02 WR20.

ARAG Legal Protection Limited is regulated by the Central Bank of Ireland.

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