



Draft Insurable Interest Bill

June 2018

Response form

This optional response form is provided for consultees' convenience in responding to the questions on the draft bill and its impact.

We are happy to receive simple yes/no answers but more detailed comments would also be helpful. You do not have to respond to every question. Answers are not limited in length (the box should expand, if necessary, as you type).

We invite responses by **14 September 2018**.

Please send your completed form by email to:

commercialandcommon@lawcommission.gov.uk

Privacy Notice

Under the General Data Protection Regulations (May 2018), the Law Commissions must state the lawful bases for processing personal data. The Commissions have a statutory function, stated in the 1965 Act, to receive and consider any proposals for the reform of the law which may be made or referred to us. This need to consult widely requires us to process personal data in order for us to meet our statutory functions as well as to perform a task, namely reform of the law, which is in the public interest. We therefore rely on the following lawful bases:

(c) Legal obligation: processing is necessary for compliance with a legal obligation to which the controller is subject

(e) Public task: processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

Law Commission projects are usually lengthy and often the same area of law will be considered on more than one occasion. The Commissions will, therefore retain personal data in line with our retention and deletion policies, via hard copy filing and electronic filing, and, in the case of the Law Commission of England and Wales, a bespoke stakeholder management database, unless we are asked to do otherwise. We will only use personal data for the purposes outlined above.

Freedom of information

We may publish or disclose information you provide us in response to our papers, including personal information. For example, we may publish an extract of your response in our publications, or publish the response in its entirety. We may also share any responses received with Government. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commissions. The Law Commissions will process your personal data in accordance with the General Data Protection Regulations, which came into force in May 2018.

Any concerns about the contents of this Privacy Notice can be directed to: enquiries@lawcommission.gov.uk.

Chapter 2: Explaining the draft Insurable Interest Bill

Q1 Do consultees have any further comments on clause 1 of the draft Bill (Definitions)?

Yes

No

Other

Faculty considers that in Clause 1 of the draft Bill the definition of 'a contract of life-related insurance' needs to encompass the life or health of individuals within a class of individuals in order to allow for group insurance. The definition is entirely singular throughout its several components. It is arguable that Section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010, which means that words in the singular include the plural, may have the necessary effect; but it may be worth considering inserting 'or a class of individuals' after the word 'individual' on both occasions on which it appears. This would put the matter beyond doubt. It might also sit more easily with Faculty's suggestions about sub-clause 2(5) of the draft Bill below.

Q2 Do consultees consider that the updated drafting in clause 2(3)(b) is sufficiently flexible to cover all relevant group schemes?

Yes

No

Other

Faculty considers that the drafting of Clause 2(3)(b) should be sufficiently flexible to cover those who are likely to require insurable interest. The application of Section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010 allows the section to be read, if necessary as –

'the individuals who are the subject of the contract are members of a pension or other group scheme'.

Others in the insurance market may be better placed to comment on whether the

sub-clause adequately covers any more specialised schemes.

Q3 Do consultees consider that it is useful to provide that the insured has an insurable interest where the policy is for the benefit of the life insured or their nominee?

Yes No Other

Faculty considers that sub-clause 2(3)(c) is useful. Although it may cover many circumstances in which insurable interest is already provided by sub-clause 2(3)(a)(1), there may be a range of circumstances in which it should be possible to take out contracts of insurance for the benefit of others without giving rise to any moral hazard.

Q4 Do consultees envisage a situation in which an insured should not have insurable interest in these circumstances, or where this clause could be abused?

Yes No Other

Faculty favours a broad permissive approach to insurable interest. Faculty is not convinced that the risk of abuse outweighs the benefit of making insurance products available as widely as possible to those with interests which they feel they need to protect. Faculty is not convinced by the moral hazard argument. The greatest moral hazard probably arises within relationships which are permitted under Clause 2(3) of the draft Bill. Any notion that the law of insurance should be used to proscribe gambling contracts ought to be seen as outdated.

Q5

Do consultees consider that clause 2(4) is appropriately framed to cater for all the types of trust commonly used?

Yes

No

Other

Faculty considers that the moral hazard argument should have little application to trustees. Trustees by definition would not personally benefit from the proceeds of insurance. There is little need to insist on any restriction of the circumstances which could amount to insurable interest for, at least, independent professional trustees. Faculty considers that the definition in sub-clause 2(4) that the 'truster would have had an insurable interest' may not adequately cater for some circumstances.

(a) It may not adequately cater for a *mortis causa* trust when the truster is not alive at the time of the taking out of the insurance contract. A similar difficulty may arise in a situation where a beneficiary comes into existence after the death of the trustee. These potential difficulties are emphasised by the list of circumstances which give rise to an insurable interest for a truster in sub-clauses 2(3)(a)(i) to (iii).

(b) Sub-clause 2(4) may not allow a trustee to take out life assurance or key person insurance for risks which may affect the trust patrimony. It is not clear how Clause 2(2) would allow a trustee to take out insurance to protect the trust estates as the truster would not suffer economic loss. It is the trust estate which in this example would suffer economic loss.

(c) The requirement that the truster would have had insurable interest at the time of commencement of the insurance also creates potential difficulties for trustees exercising powers of investment, appointment or variation in all of which circumstances new life insurance policies might be desirable. Although sub-

clause 2(3) may permit the taking out of insurance on the lives of family members, it would not permit insurance on the lives of non-family members.

One can envisage that the lives and health of key persons or the life of non-family beneficiaries may need to be insured for quite legitimate reasons.

These concerns might be assuaged by the draft Bill making express provision (i) that the test in relation to the trust looks at the insurable interest as if the trust were alive at the time of the commencement of the policy and (ii) that trustees have insurable interest if they are taking out insurance to protect the trust estate or for protection in relation to trust liability to any beneficiaries or potential beneficiaries.

Q6 Do insurance contracts cater for “mid-term beneficiaries” under the current law? If so, how?

Yes

No

Other

Faculty considers this is a question for the insurance market.

Q7 Do consultees agree that clause 2(5) caters adequately for “mid-term beneficiaries”?

Yes

No

Other

Faculty considers that it is desirable to make specific provision for insurable interest in the case of mid-term beneficiaries. Faculty, however, sees no need to restrict that provision to contracts of insurance which specifically provide for additions to the category. Faculty considers that it ought to be sufficient for the

draft Bill to provide that reference to a class of individuals connotes that there is an insurable interest for those who fall within that class from time to time during the periods of cover under the insurance policy.

Q8 The words in brackets at the end of clause 2(5) are intended to cover lives not yet in existence, such as future grandchildren. Do consultees consider that those words are required?

Yes

No

Other

Faculty considers that the words in parenthesis in sub-clause 2(5) should be included for the avoidance of doubt to prevent arguments that the reference to individuals includes only those in existence at the time of commencement of the insurance.

Q9 Do consultees think it is necessary to explicitly exclude marine insurance contracts, given that the draft Bill is now limited to life-related insurance contracts?

Yes

No

Other

Faculty considers that it is unnecessary explicitly to exclude marine insurance as the draft Bill makes it clear that it only applies to life-related insurance.

Q10 Do consultees agree that it is necessary to retain section 1 and section 4 of the Life Assurance Act 1774 in order to cover non-life insurances to which that Act applies? Can consultees give any examples of insurances which would be caught?

Yes

No

Other

Faculty understands that since the case of *Siu Yin Kwan v Eastern Insurance* [1994] 2 AC 199 it is generally considered that indemnity insurance is not subject to the 1774 Act. However the Act of 1774 may still apply to parametric insurance as it is by nature insurance on 'events' and the insured often has no direct insurable interest. As Faculty considers that the traditional restraints of insurable interest are unsuited to parametric insurance, which insurance ought legitimately to be available, it would be better not to save Section 1 of the 1774 Act. The effect of that section which is now being replaced for life-related insurance ought not to be left to affect any policies other than life-related insurance.

Chapter 3: The impact of our proposals

Q11 Do consultees agree that our proposals for reform, as set out in the draft Bill, would make the insurance market work better?

Yes

No

Other

Faculty considers this is a question for the insurance market.

Q12

We believe that our proposals will allow for the development of new products in the UK insurance market, and will remove the commercial disadvantages potentially suffered by insurers who currently comply with the law. Do consultees agree? Do consultees foresee any other benefits?

Yes

No

Other

Faculty considers this is a question for the insurance market.

Q13

Are consultees able to give any indication of the monetary value of these, or any such, benefits?

Yes

No

Other

Faculty considers this is a question for the insurance market.

Q14

We believe that the costs to business of such reform would be minimal. We welcome evidence as to the potential costs.

Faculty considers this is a question for the insurance market.