



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**. **Deadline extended to 31 October 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 (Definit

Yes No Other

Yes: We consider that the definition of “a contract of life-related insurance” is very widely drawn. We are concerned that it could potentially be construed as covering liability insurance, such as employers liability insurance which may not have been the intention of the Law Commission.

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

Yes, although we do not have particular expertise on group pension 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

No, we do not think it is useful to have this provision in clause 2(3)(b) as it is rather widely drawn and could lead to uncertainty. It is not necessary to have this as an example in a non-exhaustive list of circumstances where an insured has an insurable interest.

Q4W 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

We cannot envisage circumstances where an insured would not have such an insurable interest or where this could be abused.

Q5 Do consultees consider that clause 2(4) is appropriately framed to cater for all the types of trust commonly used?

Yes No Other

Yes. We would suggest redrafting this clause so it reads

“in any circumstances where the settlor or trustee of the trust

has or would have had an insurable interest for the purposes of that contract.”

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

Yes No Other

We do not have sufficient expertise regarding this market to comment on this.

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

Yes No Other

We do not have sufficient expertise regarding this market to comment on this.

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

It is probably not necessary to state “including individuals who are not not in existence at that time” but it may be appropriate for those words to remain so there is no doubt about this.

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

No. We do not think it is necessary to expressly exclude marine insurance contracts from the draft Bill.

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

Yes.

We cannot give any examples of insurances which would be caught.

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

Yes.

We would repeat our comments given in our response to the earlier draft of this Bill regarding the effect of an insured giving an untrue statement or misleading statement about the insurable interest in commercial insurance. We agree that this should make the contract void where the insured knows the statement is untrue or misleading or does not care whether or not the statement is true or misleading. In the present draft Bill the possibility of retention of premium by an insurer only applies to consumer insurance “except to the extent that it would be unfair to the insured for the insurer to retain the premiums”. We would suggest that position should be the same for commercial insureds as is proposed for consumer insureds.

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

We do not consider that we can usefully comment on this, though we can envisage that some of the proposals may result in the development of new insurance products.

Q13

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

Yes

No

Other

No

Q14

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

We are not in a position to comment on this