



**Law  
Commission**  
Reforming the law

  
**Scottish Law Commission**  
*promoting law reform*

## **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 **31 October 2018**.

Please send your completed form by email to:

[commercialandcommon@lawcommission.gov.uk](mailto:commercialandcommon@lawcommission.gov.uk)

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## 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**

Yes.

We note that the definitions of insurer and insured are intended to be consistent with those in the Insurance Act 2015. However, the words “or would be if the contract were entered into” which appear in the definitions in s.1 of the 2015 Act have been omitted here. The reason for this difference of approach is unclear but we consider that it would be helpful to include the additional wording here to ensure consistency.

We are also concerned about the potential breadth of the definition of “life-related insurance” as there is a question as to whether this would cover liability. The introduction to chapter 4 of the covering note indicates that it is not meant to cover, for example, professional indemnity, occupiers’ liability, employers or motor insurance where a third party makes a claim. Indeed, we are aware that the Scottish Law Commission has previously acknowledged concerns that there was a potential confusion here although eventually decided that it was not necessary specifically to exclude them. We think further consideration should be given to this point: it would be clearer and neater for the introductory definition to mirror clause 5 of the Bill, which refers to the Bill not affecting Marine insurance and to specifically exclude both marine and general indemnity insurance. The clarity this would achieve should reduce the risk of satellite litigation.

### **Additional comment: cl.2 Insurable interest**

At present the order of the legislation could cause confusion for those who do not specialise in insurance law as to whether insurable interest as defined in the Bill applies only to life insurance contracts. At present insurable interest as set out at 2(1) could be read as applying to contracts of insurance more generally and resetting the definition of insurable interest for indemnity insurance. It would be helpful if the limitation of the scope of the legislation to life-related contracts (which we note might potentially contain indemnity insurances) were explicitly set out. Altering the title of the legislation could also assist in this regard.

We welcome the modernisation of the definition of insurable interest in the context of life insurance contracts. The extension to include cohabitants, children, grandchildren and those treated as such recognises modern family structures and is a positive

development. It will also bring greater certainty to existing commercial relationships where there might previously have been some doubt as to the basis for insurance.

However, we note that the definition of “child” or “grandchild” does not appear to limit the ability to take out such insurance by reference to age of the individual who is the subject of the contract. It may well be helpful for adult children, perhaps particularly younger adults, or those with incapacity, to be able to be insured by their parents, particularly in relation healthcare or life-related aspects of a travel policy. However, it is difficult to see why an adult parent should be able to insure an adult child in such circumstances when the converse is not possible. This might be relevant where an adult is *de facto* responsible for a parent’s care, or would be if the parent were to become ill, but the cost of that care is uncertain and might be difficult to determine in such a way as to comply with the requirements of clause 2(2).

We also consider that there is a need to take the interests of vulnerable individuals into account when considering close family relationships. A disabled person is likely to receive significant support from family members (parents, siblings etc) which will include a definite financial aspect. For example, being driven by family members rather than having to pay for taxis or other transport. This would lead to an insurable interest of a slightly different nature to family members without disabilities. In addition, there is the question of family discretionary trusts having an insurable interest in family members. Where such a trust is responsible for providing funds to a disabled person, the amount of funds needed by that person will be less than would be the case if close family support was removed.

Finally, in relation to 2(3), we consider that the opening lines of the sub-clause (lines 15 and 16) may also lead to uncertainty. Sub-clause 2(3)(a)-(e) set out specific instances in which a person will be deemed to have an insurable interest for the purposes of life insurance, other than where they have an insurable interest as a result of anticipated economic loss. However, the drafting says that such circumstances “include...in particular” those circumstances. It is therefore not, on the face of it, an exhaustive list but there are no criteria to assess what other circumstances could create such an interest.

**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

No.

2(3)(b) refers to a scheme “which is administered by the insured”. However, pensions and group schemes, while they may be administered by the insured as a trustee, can also be administered by third parties. The drafting should be amended to take account of this.

For occupational pension schemes, the trustees will normally appoint an administrator so the wording would be better to end as 'which is administered by or on behalf of the insured (whether as a trustee or otherwise)'.

For personal pension schemes, the trustee normally acts as a 'bare trustee' in holding the assets and the administration is conducted by a scheme administrator who is acting in their own right and not as a delegate of the trustee. Adapting the wording along the above lines will not therefore work for these types of scheme as the trustee is not conducting or delegating the administration. The link to administration is, however, probably sensible for other group schemes.

Although 'individual' should be interpreted as 'individuals' given that it relates to a group scheme and given clause 2(5), we consider that it would be preferable to reflect the reality in the drafting.

We therefore suggest that 2(3)(b) is split into two as follows –

[Other circumstances in which an insured has an insurable interest include, in particular, circumstances where...]

'(b) the individuals who are the subjects of the contract

(i) are members of a pension scheme or workplace-related life assurance scheme;  
or

(ii) are members of a group scheme other than a pension scheme or workplace-related life assurance scheme

Of which the insured is a trustee, manager or administrator.

**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

Yes.

We consider that it is useful to include this provision.

**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**

Clause 2(3)(c) would seem to cover, for example, contracts for the benefits of employees and seems to be sensible.

However, we consider that it could be open to abuse if pressure were exerted on the subject of the insurance to nominate the party taking out insurance to receive the benefit of the policy.

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

Yes

No

**Other**

We consider that it would be helpful for clause 2(4) to be wider in scope, although we recognise that drafting to cover all potential beneficiaries could give rise to potential for abuse.

We consider that it would be helpful to extend the clause to actual beneficiaries of a trust ie beneficiaries who are entitled to any capital or income (as opposed to being on the list of potential beneficiaries). Our understanding of the current position in Scotland is that trustees have an insurable interest in a beneficiary of a trust but it is possible that such a beneficiary does not fall within the class detailed in 2(4) eg it could be a friend or children of a friend of the settlor who is the beneficiary and the settlor would not have an insurable interest in that beneficiary. In these circumstances, the trustees might not have an insurable interest in that beneficiary. Clause 2(4) should therefore be amended, at the least, to add that the trustees have an insurable interest in any beneficiary who has an interest in the capital and/or income of the trust.

Furthermore, the wording on trusts at clause 2(4) is complex. It might be preferable to set out a separate provision dealing explicitly with trusts, which could also make it easier to provide for the intended consequences and ensure that the provision takes account of any differences between the jurisdictions in terms of trust law.

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

Yes

No

Other

We consider that the case of *Feasey v Sun Life Assurance Co of Canada* indicates that mid-term beneficiaries can be covered by the existing law (it is also a case of the Courts arguably extending the list of those in whom there can be an insurable interest). However, we consider that it is useful to include this clarification in the Bill.



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

**Yes**

No

Other

Yes.

**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**

We welcome the inclusion of insurable interest for a category or description of individuals as set out in clause 2(5). The words in brackets provide additional certainty and should be included without the brackets.

**Additional comment: s.3 Effect of untrue statements**

We consider that further provision is needed to cater for situations where life-related insurance products contain an investment component. Potential for abuse could arise where the value of investments had fallen and the value of the product was therefore lower than the value of the payments. There would also need to be recognition or any withdrawals which had been made over the period the policy was thought to be in place.

**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**

This clarification is probably helpful (see further our additional comments in relation to clause 2 above) but there should be consistency in terms of exclusions relating to both marine insurance contracts and indemnity contracts generally to avoid creating further confusion.

**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

We consider that these provisions should be retained.

## 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**

We have no comment on this question.

**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 have no comment on this question.

**Q13**

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

Yes

No

**Other**

We have no comment on this question.

**Q14**

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

We have no comment on this question.