

## EXPLANATORY STATEMENT

### **Issued by authority of the Minister for Revenue and Financial Services**

*Insurance Act 1973*

*Insurance Contracts Act 1984*

*Terrorism Insurance Act 2003*

*Insurance Contracts Regulations 2017*

*Insurance Contracts and Other Laws (Repeal and Consequential Amendments) Regulations 2017*

Section 132 of the *Insurance Act 1973*, Section 78 of the *Insurance Contracts Act 1984* and section 43 of the *Terrorism Insurance Act 2003* provides that the Governor-General may make regulations prescribing matters required or permitted by the respective Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

The purpose of the *Insurance Contracts Regulations 2017* (the ‘Regulations’) is to remake and improve the *Insurance Regulations 1985* prior to their ‘sunsetting’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. Legislative instruments made in the 1980s registered on the Federal Register of Legislation on 1 January 2005, such as the *Insurance Contracts Regulations 1985*, will be automatically repealed on 1 April 2018. Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument.

The Regulations remake and improve the *Insurance Contracts Regulations 1985*, by simplifying language and restructuring provisions for ease of navigation. The changes include:

- making language and formatting changes to reflect contextual changes and align with current drafting practices, such as referring to ‘sections’ rather than ‘regulations’
- restructuring provisions and using more headings to improve readability;
- simplifying some definitions to improve clarity (for example ‘warlike activities’);
- removing redundant provisions that refer to periods of time that have passed;
- providing appropriate transitional arrangements.

These changes do not alter the substantive meaning or operation of the provisions.

Further details of the Regulations are set out in Attachment A.

The purpose of the *Insurance Contracts and Other Laws (Repeal and Consequential Amendments Regulations) 2017* (the ‘Consequential Regulations’) is to support the Regulations by:

- updating the *Insurance Regulations 2002* to refer to the appropriate provisions in the Regulations instead of the *Insurance Contracts Regulations 1985*;
- updating the *Terrorism Insurance Regulations 2003* to refer to the appropriate provisions in the Regulations instead of the *Insurance Contracts Regulations 1985*; and
- repealing the *Insurances Contracts Regulations 1985* as it is being remade by the Regulations.

The Regulations and the Consequential Regulations are legislative instruments for the purposes of the *Legislation Act 2003*.

The Regulations and Consequential Regulations both commence on 1 April 2018.

## **ATTACHMENT A – Details of the *Insurance Contracts Regulations 1985***

This Attachment sets out further details of the *Insurance Contracts Regulations 2017* (the ‘Regulations’). All references are to the Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Insurance Contracts Regulations 1985*, as identified by the finding table at [Attachment B](#).

Changes of a minor or machinery nature, such as updating section numbers, the increased use of headings and references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the Regulations make changes that require further explanation, these are identified and explained in this Attachment.

### **Part 1 – Preliminary**

#### *Section 1 – Name of Regulations*

This section provides that the title of the Regulations is the *Insurance Contracts Regulations 2017*.

#### *Section 2 – Commencement*

This section provides that the Regulations commence on 1 April 2018.

#### *Section 3 – Authority*

This section provides that the Regulations are made under the *Insurance Contracts Act 1984* (the ‘Act’).

#### *Sections 4 and 5 – Definitions*

These sections contain defined terms used in the Regulations. Section 4 has been updated to simplify and provide greater clarity on terms like ‘home building’, ‘personal belongings’, ‘residential building’, and ‘warlike activities’. Section 4 also creates a separate definition for ‘residing family member’ instead of incorporating the meaning within other definitions.

### **Part 2 – Disclosures and misrepresentations**

#### **Division 1 – Insured’s duty of disclosure**

Sections 6 to 9 (inclusive) replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the finding table at [Attachment B](#)). The language used in these sections has been updated to reflect current drafting practices and more closely align with the relevant provision in the Act. A redundant provision that refers to past dates has also been removed.

#### **Division 2 – Remedies for non-disclosure and misrepresentations by insured**

### *Section 10 – Prescribed rate of interest*

This section replicates the corresponding provision in the *Insurance Contracts Regulations 1985* (please refer to the finding table at [Attachment B](#)), with a minor change to the title by removing the legislative reference, as it is already mentioned in the section, to simplify and improve readability of the section.

### Division 3 – Key Facts Sheets

Sections 11 to 13 (inclusive) replicate the corresponding provision in the *Insurance Contracts Regulations 1985* (please refer to the finding table at [Attachment B](#)), with some minor wording and structural changes to make the provisions clearer and to improve readability.

## **Part 3 – The contract**

### Division 1 – Standard cover

#### *Section 14 – Purpose of Division*

This section has been added to indicate that the overall purpose of the division is prescribe the ‘minimum amount’, ‘prescribed contract’ and ‘prescribed event’ applicable as standard cover for various types of insurance contracts.

#### *Sections 15 to 32*

These sections replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the finding table at [Attachment B](#)), with some minor wording and structural changes to make the provisions clearer and to improve readability.

## **Division 2 and 3**

Sections 33 to 37 (inclusive) replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the finding table at [Attachment B](#)), with some minor changes that are not intended to change its effect.

## **Part 4 – Claims**

Sections 38 and 39 replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the finding table at [Attachment B](#)), with some minor changes that are not intended to change its effect.

## **Part 5 – Transitional matters**

### *Section 40 – Things done under the Insurance Contracts Regulations 1985*

This section provides for transnational arrangements to deal with the change from the *Insurance Contracts Regulations 1985* to these Regulations. Under the transitional rules if a notice or a document was given or made for the purposes of the *Insurance*

*Contracts Regulations 1985*, it will continue to apply as intended once that instrument is repealed and replaced with the Regulations.

### **Schedules 1 to 5**

The disclosure statements, fact sheets and forms in these schedules replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the finding table at Attachment B), with some minor changes that are not intended to change their effect.

## ATTACHMENT B – Finding Table

As a result of some of the changes described above, it became necessary to renumber provisions of the Regulations. This Explanatory Statement includes a finding table to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to the old law are to the *Insurance Contracts Regulations 1985*. References to the new law are to the *Insurance Contracts Regulations 2017*. Also, in the finding table, ‘no equivalent’ means that this is a new provision that has no equivalent in the old law.

<b><i>Old law</i></b>	<b><i>New Law</i></b>
<i>Insurance Contracts Regulations 1985</i>	<i>Insurance Contracts Regulations 2017</i>
1	1
no equivalent	2
no equivalent	3
2	4
2A	5
2B	6
3	7
3A	8
3B	9
4	10
4A	11
4B	12
4C	13
no equivalent	14
5	15
6	16
7	16
8	17
9	18
10	19
11	19
12	20
13	21
14	22
15	22
16	23
17	24
18	25
19	25
20	26
21	27
22	28
23	28
24	29
25	30

26	31
27	31
28	32
29	This provision has been removed as it is no longer required
29A	33
29C	33
29D	34
29B	35
30	36
31	37
32	38
33	39
no equivalent	40
40	Transitional provisions have been removed as they are no longer required
41	Transitional provisions have been removed as they are no longer required
Schedule 1 (Writing to inform of duty of disclosure)	Schedule 1 (Writing to inform of duty of disclosure)
Schedule 1A (Writing to inform persons to be insured by others)	Schedule 2 (Writing to inform persons to be insured by others)
Schedule 1B (Writing to remind of duty of disclosure)	Schedule 3 (Writing to remind of duty of disclosure)
Schedule 2 (Words to inform of duty of disclosure for eligible contracts of insurance)	Schedule 4 (Words to inform of duty of disclosure for eligible contracts of insurance)
Schedule 3 (Key Facts Sheets)	Schedule 5 (Key Facts Sheets)