

Client briefing - The Insurance Act

The Insurance Act 2015 - what businesses need to know

The Insurance Act is a piece of legislation designed to modernise Britain's insurance industry. The current regulations which govern the contracts between businesses and insurers are over 100 years old. The Insurance Act received Royal Assent on 12th February 2015 and will come in to force on 12th August 2016.

The areas of legislation which are affected by the Act are as follows:

- disclosure and misrepresentation
- proportionate remedies
- warranties
- fraudulent claims.

To read the Insurance Act 2015 in full go to www.legislation.gov.uk.

What the reforms mean for businesses

The aim of the Act is to remove rules which no longer reflect good commercial practice and balance the interests of the insured and insurer to put both parties in a neutral position. The Government estimates businesses will benefit by about £100 million over the next ten years through lower litigation and transaction costs.

What has changed

1. Disclosure and misrepresentation in business insurance contracts

When obtaining insurance under the current law business owners are required to disclose anything which may influence an insurer in

deciding whether to accept the risk and at what premium.

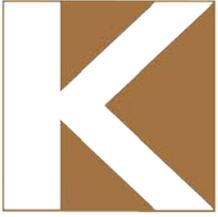
Under the new Act, a new 'duty of fair presentation' applies and whilst there is still a requirement to disclose all information which a business ("the insured") knows or ought to know, in the absence of full disclosure the duty is still met if the insurer is provided with sufficient information to enable them to ask more questions. This puts the insured and the insurer in a more balanced position.

In gathering the information to disclose, a business is expected to undertake a reasonable search of the information available to them, and the Act provides clarity around who must be included within this search (where applicable):

- Senior management within the business i.e. anyone who plays a significant role in the making of decisions about how the businesses activities are to be managed or organised
- A person for whom cover is provided by the insurance
- Anyone who is responsible for the procurement of the insurance.

Information should be presented in a manner which is clear and accessible, the intention is to prevent 'data dumping' where excessive information is sent to insurers with the expectation that they will pick out what they need. The duty of fair presentation applies to new business and renewals from 12th August 2016. It also applies to mid-term adjustments effective from 12th August 2016, even if the policy was taken out before that date.





2. Remedies for non-disclosure or misrepresentation

Currently in the event of a non-disclosure or misrepresentation, the insurer is able to treat the policy as if it had never existed and refuse to pay any claims.

The new Act brings in a fairer, more proportionate approach whereby if the breach was deliberate or reckless the insurer can still walk away from the policy, refuse to pay any claims and retain the premium. If the breach was not deliberate or reckless, the remedy available depends on what the insurer would have done had the full information been available to them when the policy was taken out.

Available remedies

- If the insurer would not have accepted the risk, then it can cancel the policy from inception, refuse to pay all claims but must return the premium
- If the insurer would have accepted the risk but on different terms, the policy is treated as if those different terms had been applied
- If the insurer would have charged a higher premium, it can proportionately reduce the amount it pays on a claim.

3. Warranties

A warranty is a term in an insurance contract which must be strictly complied with. Under the current law, if a warranty is breached, the insurer is discharged from all liability as from that date, even if there is no connection to a claim and the breach can be rectified.

After the new Act comes in to force, in the event that a warranty is breached, the insurer's liability will be suspended rather than discharged. If the insured can rectify the breach, cover is restored.

Where a warranty or other term has been breached, an insurer will not be able to decline continued cover if the insured can prove that there was no causative connection between the breach and the loss. The Act also

abolishes 'basis of contract' clauses, a statement an insurer can add to documentation which automatically transforms statements made by the insured into a warranty.

4. Remedying fraudulent claims

The new Act clarifies the remedy available to an insurer in the event of a fraudulent claim. The insurer has the option to terminate the contract from the time of the fraudulent act and is not responsible to pay the claim. If the insurer had made any payment in respect of the claim, it is able to recover those payments. However, the insurer would remain liable for any genuine losses prior to the fraudulent claim.

Next steps for businesses

The Act will come into effect in August 2016, extending to every commercial insurance policy written in the United Kingdom (with certain exceptions). We recommend you should start to think about how the changes will affect you; such as what information you may need to disclose, who holds this information within your business and how you might capture it.

What we're doing

We are working with insurers and other partners to ensure our processes, procedures and documents are ready for the Act. Should you have any questions or wish to discuss please contact our office.

