

## Insurance Act 2015: An Introductory Guide

On the 12<sup>th</sup> August 2016 a new piece of legislation will affect all Commercial Insurance policies. The Insurance Act 2015 will require businesses to make fundamental changes to ensure that their insurance policies are effective and that their claims are paid in full.

The Act transforms Commercial Insurance Law in the UK and is the most significant reform to insurance contract law for over a hundred years. It applies to all business insurance policies (governed by the laws of England, Wales, Scotland and Northern Ireland) which are taken out, renewed or varied on or after 12<sup>th</sup> August 2016.

### **Why is Commercial Insurance Law being changed?**

The Act is seeking to create a new and fairer balance between insured and insurer. Whilst accurate disclosure by you as the insured party remains central to the new law, the Act provides for a more reasonable approach for insurers to follow in the event of a breach of policy requirements and/or your duty to present information to your insurer. This is intended to give you more protection in the event that an insurer seeks to reject a claim and generally make it easier for businesses to get their claim paid by insurers.

The intention is for businesses to get fairer outcomes in the event of a claim **but only if they demonstrate an adequate approach to disclosing information about their risk to insurers before the insurance is agreed.**

### **What changes does the new Act introduce?**

Under the current law, policyholders have a duty to disclose “all material facts” and an insurer can avoid a policy entirely if there has been a non-disclosure of relevant information – this means that claims will not be paid.

Under the new law, if the insurer believes that there has not been a “fair presentation” it may now have to deal with any claims, but this will depend on the seriousness of the breach of the duty of disclosure:-

- If the non-disclosure is deliberate or reckless, the insurer can still avoid the policy, refuse to deal with claims, and keep the premium.
- If the non-disclosure is innocent, but the insurer would not have taken the risk if it knew the true facts, it can still avoid the policy and refuse to deal with claims, but it must return the premium.
- If the non-disclosure is innocent, and the insurer would have provided cover, but at different terms, it will pay the claim, but make adjustments in proportion to the degree of breach.

**It is therefore essential that you provide a “fair presentation” when making any request for insurance.**

### ***Fair Presentation***

As there are so many potential differences between businesses, it is impossible to specify every piece of information that could be required and the Act therefore does not define exactly what constitutes a “fair presentation”. It does however clarify the nature of information that is required, and how it should be obtained.

There are 3 key elements that constitute a fair presentation:-

### ***Complete and Accurate***

In line with the current law, you must fully disclose all material information that could influence the insurer’s decision to offer cover to you, or at what terms. You must highlight unusual activities or known areas of concern that could adversely affect the business.

### ***Clear and Accessible***

The information must be presented in a manner that is reasonably clear and accessible. The dumping of large amounts of data without drawing the attention of the underwriter to key points is now unacceptable within the new statute.

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## ***Reasonable Search***

Where the policyholder is not an individual, the Act makes it clear that the company must provide information which it ought to know following a “reasonable search” of information available to it. This means that it is not just information known to the person within the organisation who is responsible for placing the insurance, but also other members of “senior management” who play significant roles in the company’s activities and decision making, and also external parties such as managing agents or consultants to the business.

## ***What should businesses do in order to comply with the Act?***

In order that you can make a “fair presentation” to the insurer, you should :-

- understand the risk that is to be insured, as that will identify what information is relevant to the underwriter
- identify who counts as “senior management” within the business, and also any external sources that hold any relevant information
- make sure that “senior management” and other sources of information provide it to the person responsible for placing the insurance
- engage with your insurance Broker to discuss your specific requirements and to understand what is expected of you
- start the process early enough to ensure that the appropriate information is identified and provided to your broker/insurer in a timely manner

## ***Benefits of the Act***

### ***Proportionate Remedies***

- Rather than avoiding the policy in full due to non-disclosure, the insurer may have to pay the claim in part based on the proportion of the premium paid when compared to the premium that would have been required based on the true facts. If the premium would have doubled, you have only paid half the required premium and would therefore receive half of any claim. Whilst this is not an ideal situation, there is already talk in the industry that some insurers may decide to pay claims in full where there is innocent non-disclosure. We expect to hear more about this as the Act implementation date draws nearer.

### ***Warranties to be abolished***

- Under the current law, a policy can be avoided from the time a Warranty is breached, and even if it is subsequently rectified, the policy remains invalid. Under the new Act, Warranties must be replaced with “Suspensive Conditions” under which cover will only be suspended during the period the condition is being breached, but will be in place once the breach has been rectified.

### ***Terms not Relevant to the Loss***

- Under the current law a claim can be refused due to non-compliance with a policy condition. Under the new Act, the insurer cannot refuse to deal with a claim due to non-compliance with a condition if such non-compliance could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

In practice, the amount and quality of information that policyholders, and their brokers, will be required to provide to insurers will increase and key to this will be the close working relationship between yourselves and Butterworth Spengler.

You should therefore be prepared to spend longer discussing the details of your organisation with us, and focus on the key requirements of the Act with a view to identifying every activity and circumstance within your business that is relevant to achieving a “fair presentation” of your risk.

We will be there to guide and assist you through this process and please do not hesitate to get in touch with your contact at Butterworth Spengler if you have any queries.