

The Insurance Act 2015

Live on the
12 August 2016.

What does it
mean for you?



Prepare. Protect. Prosper.

This new legislation is designed to help provide you with better, fit-for-purpose protection so that you can insure your organisation with confidence. It relates to commercial insurance contracts, both existing and new, and applies to all contracts written on behalf of a commercial entity. The new Act more fairly represents the interests of both insurer and insured.

As your broker, we will work with you to ensure that the objectives of the Act are achieved.

The three key changes

1. Duty of fair representation.

This requires you to disclose material facts which could impact your insurance requirements. It seeks that you:

- identify the risks which you and your senior managers know, or reasonably ought to know, about risks in your business
- provide sufficient information to enable insurers to ask questions regarding circumstances which you think might be material before they make their decision

A material fact is one which influences the insurer before making their decision to accept the risk.

Provided you offer the information clearly and do not misrepresent material facts, and enable the insurer to ask questions, you will have met your obligations.

Remedies.

Future changes as a result of the Act will mean insurers' remedies (responses) to breaches of fair presentation must be proportional to the breach, rather than permitting complete avoidance of insurance. Now, if you fail to make a fair representation:

- insurers' remedies will depend on what they would have done had it been presented fairly - such as changing the premium, varying the policy or changing an excess for example, and on that basis a claim may proceed
- avoidance of your insurance has been abolished in the event of a breach unless the misrepresentation was deliberate or reckless

2. Warranties

These are specific terms you must comply with for your insurance to work, such as checking fire protection to an agreed schedule or physically attending on site to check security.

Remedies

The act means that a breach of warranty cannot entirely release the insurer from any liability. Provided that:

- any warranty breach is remedied before an actual loss, then cover remains intact
- any warranty breach which did not actually increase the risk of the specific loss being claimed for, then your insurer cannot decline the claim. For example, a warranty breach relating to theft cannot prevent a claim for fire

Further, “basis of contract” clauses which took specific pre-contractual information and converted it into policy terms can no longer be used. The practice of using these to avoid claims given that some risks may arise, even though you could not reasonably have known about them, will end.

3. Fraudulent claims

The Act changes the law by requiring insurers to:

- Pay claims incurred prior to any proven fraudulent act

Remedies

Insurers will be able to:

- decline an entire claim after a fraudulent act has been identified
- remain responsible for paying other claims up to the point of that fraudulent act. However from the date, the insurer may then terminate the policy whilst retaining any premium paid and pay no further claims after the date the fraud was committed

Something to note when renewing your insurance

Insurers can contract-out of the Act. In exceptional circumstances, insurers can opt-out of the Act and offer other terms provided that it is made evidently and absolutely clear to you that they have done so. Your agreement must be clearly acknowledged before the insurance is agreed.

For the full story

This document provides a very brief outline to the changes you are likely to see as a result of the Act and what this means for you. The Act in full can be found at:

<http://www.legislation.gov.uk/ukpga/2015/4/contents/enacted>

How we can help you

As your insurance intermediary we are well placed to help you. We will help you meet your obligations when we talk about your renewal or when incepting new insurance, so that we can ensure the correct information is passed to your insurers.

Remember this applies to all commercial insurance from 12 August 2016.

If you have questions, please contact us:
Call **01242 866906**
Visit **endsleigh.co.uk/business**

The information held within this document does not constitute legal advice.

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