

# Insurance Act 2015



## What is it?

The Insurance Act came into force on 12 August 2016 and it affects all Commercial Insurance policies coming into force after that date or any changes to current policies after that date.

The Insurance Act replaces the Marine Insurance Act 1906.

The new legislation looks to reflect the way the Insurance Market has evolved and create a new and fairer balance between Policyholders and Insurers.

## What do you need to do?

Under the Act insurance contracts will still be based on good faith and you will have a duty to make a fair presentation of the risk to insurers which will include disclosure of :-

- ✓ Every material circumstance which, as an insured, you are expected to know or ought to know about the risk you are looking to insure.
- ✓ Sufficient information to put a prudent insurer on notice that it needs to make further enquiries to reveal those material circumstances.

You must ensure that any information you provide is correct to the best of your knowledge having conducted a reasonable search for information. This may require you to obtain or verify information with other people within your business who may know, or have access to information about your business or the insurance risk.

This may include key decision makers or those with responsibility for arranging your insurance (including us as your Broker) or other parties that carry out outsourced function for your business.

For example :-

- Senior Managers and those accountable for managing functions relevant to the risk
- People normally involved in arranging insurance for the business
- People covered by the insurance eg sub-contractors
- Employees who have specialist knowledge of processes and procedures
- Outsourced contractors and service provider

## What happens if I make a misrepresentation?

In the event that you make a misrepresentation of information which is considered to be deliberate or reckless ie you were aware that you were making a misrepresentation or you did not care whether or not you were misrepresenting the risk, an insurer will be allowed to avoid (cancel) the policy. This means that any claims you make will not be paid and you will not be refunded your insurance premium.

If you make a misrepresentation that is not deliberate or reckless ie you carried out your duty to make a fair presentation but made an honest mistake or omission there are a number of things an insurer can do to achieve a fair outcome :-

- If the insurer can prove that it would not have written the policy at all had it known this information, the insurer can avoid the policy but the premiums will be refunded to you.
- If the insurer would have accepted the risk but on different terms eg added certain warranties or conditions, the contract is to be treated as if it included those terms.
- If the insurer would have written the policy but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

## **Warranties & Terms**

The Act also includes changes to the way that the law deals with insurers rights in the event of breaches of policy warranties and terms. These changes affect both commercial and personal insurance policies.

Clauses which have the effect of turning representations made by you into a warranty will be prohibited under the Act.

An insurer will no longer be able to avoid a policy where a breach of warranty occurs; instead cover will be suspended for the period that you are in breach of the warranty. This means that, where possible, you may be able to change things to be able to comply with the warranty and continue with the insurance cover, however insurers will not be responsible for a loss during any period where cover was suspended for a breach of warranty.

The insurer cannot avoid a policy, limit or discharge its liability for non-compliance with any terms which are not relevant to the loss or did not increase the risk of loss which has occurred.

**To ensure that you remain fully protected, you must continue to advise us of any warranty on the policy that you cannot comply with**

An insurer may want to contract out of certain areas of the Act subject to your understanding and agreement and we will advise you of the implications should this situation arise.

As your Insurance Broker you can rest assured that we are on hand to help you understand your obligations under the Act and to guide you through the process of gathering the information needed to make a fair presentation. We will then present this information to insurers on your behalf in a way which is clear and accessible.

If you would like to discuss the Insurance Act or any other insurance matter, please contact us.