



## Insurance Act

The Insurance Act 2015 is the most significant update to commercial insurance law in the last 100 years, overhauling principles originally laid down by the Marine Insurance Act 1906.

The Act is the culmination of several years' work by the Law Commission in conjunction with insurers, brokers and customers. It is designed to reflect the requirements of a modern insurance market and reflects best practice in the UK insurance industry.

BBi welcomes the changes brought about by the Act which better reflects the needs of our customers.

The Insurance Act 2015 mainly applies to commercial insurances (non-consumers) and will apply by law to contracts issued, renewed or varied after 12th August 2016 provided such contracts are governed by the laws of the United Kingdom (England, Wales, Scotland or Northern Ireland).

As the intention of the Act is to create a more balanced relationship between insurer and customer, some insurers have immediately applied the benefits of the Act to affected Commercial customers as though the Act were already in effect.

The Act updates the law in the following areas:

### Pre-contractual disclosure: The Duty to Make a Fair Presentation

Under the current law the policyholder is required to disclose all 'material facts' relevant to the risk.

Material facts are defined as being those which a 'prudent insurer' would take into account in their assessment or acceptance of a risk. Failure to comply with this duty allows insurers to avoid the contract, in effect treating the policy as though it had never existed

The Insurance Act 2015 replaces this duty of disclosure with a revised duty to make a 'fair presentation' of the risk. This requires the policyholder to undertake a reasonable search of the information available to them and defines what a policyholder knows or ought to know. If this duty is breached the Act puts in place a new range of proportionate remedies which insurers can apply dependent upon the action they would have taken had the correct information been disclosed. If the failure in disclosure is deliberate or reckless, or if insurers would not have entered into the contract at all, insurers remain entitled to avoid the contract entirely.

### Warranties

Under the current law a breach of a warranty in an insurance contract allows the insurer to avoid any liability under the policy from the point of the breach, even if this had been corrected. Insurers were also entitled to avoid liability even when the breach was not relevant to the type of loss actually suffered.

The Insurance Act 2015 changes the effect of breach of a warranty so that cover remains in place for a valid claim arising after a breach has been remedied. In addition breach of a warranty no longer has any effect on insurer's liability for valid losses unrelated to the breach.

### Insurer's Remedies for Fraudulent Claims

If a fraudulent claim is submitted, Insurers will have the right to refuse any claim arising after the fraudulent act. Previously valid claims are unaffected.

If a member of a group insurance makes a fraudulent claim the right to refuse claims resulting from the fraud will only apply to the fraudulent individual and not to the other members or the insurance policy as a whole.



## Basis of Contract Clauses

Basis of Contract Clauses have the effect of converting pre-contractual information supplied to insurers into warranties. Under the Insurance Act 2015, such clauses have been abolished.

Going forward, where warranties are applied these must be expressly stated in the policy and will be interpreted as detailed under the 'Warranties' section above.

## Contracting Out

The Act allows the parties to an insurance contract to agree different terms to those detailed in the Act, subject to certain restrictions.

Where an insurer relating to your insurance programme has contracted out further details will be provided along with the terms.

## Duty of Fair Presentation

Under English law, you owe a duty of disclosure to the insurer which includes your duty to make a fair presentation of the risk. A 'fair presentation' is one:

- which clearly discloses all material circumstances which the Insured's Senior Management, including persons responsible for the Insured's insurance, know or ought to know following a reasonable search or which is sufficient to make the insurer ask questions about the risk. A circumstance is material if it would influence an insurer's judgment in determining whether to take the risk and, if so, on what terms. If you are in any doubt whether a circumstance is material we recommend that it should be disclosed;
- which discloses information in a manner which is clear and accessible to a prudent insurer (i.e. no 'data dumping');
- in which every material representation as to a matter of fact is substantially correct and every material representation as to a matter of expectation or belief is made in good faith.

Failure to disclose a material circumstance may entitle an insurer to:

- in some circumstances, avoid the policy from inception and in this event any claims under the policy would not be paid;
- impose different terms on your cover;
- and/or proportionately reduce the amount of any claim payable.

This duty applies:

- before your cover is placed;
- when it is renewed; and
- at any time that it is varied.

Your policy wording may also provide that this duty continues for the duration of the policy.

For the purposes of the Insurance Act 2015 'Senior Management' means - those individuals who play significant roles in the making of decisions about how the Insured's activities are to be managed or organised.

You should contact us immediately for assistance if you are unsure whether information may be material, or if it comes to your attention that you may have not disclosed full and accurate information.