The Insurance Act 2015

Customer guide

Until this year, the central statute underpinning UK insurance law was contained in the Marine Insurance Act 1906. This legislation was passed in a world with no electric lighting or telephones, let alone negligence law. Our lives and our businesses have changed dramatically in the century since, and the Insurance Act 2015 updates the core framework of insurance for the modern age, bringing it into line with international best practice.

The changes come into force on 12 August 2016. The new law will apply to any policy issued, renewed or amended after that date. Significant changes are being made to disclosure of material information, remedies for breach, warranties and the ability of insurers to contract out their responsibilities. Let's take a closer look…

1 Duty of disclosure becomes Duty of Fair Presentation

At present, the insured is obliged to disclose all 'material information' prior to entering an insurance contract. This placed the onus on the policyholder to understand what information an insurer would consider material. A new Duty of Fair Presentation replaces this principle.

1. The new duty
   The Duty of Fair Presentation requires the policyholder to disclose every material circumstance which they either know or ought to know. However, the law provides that in the absence of this, the insured should provide disclosure that would 'put a reasonable insurer on notice that it needs to make further enquiries' in order to reveal the material circumstances. This means the insured and insurer will enter a dialogue to discover material facts.

2. Identifying material information within a business
   The new Duty of Fair Presentation means that a business will need to disclose a wider range of information than was necessary under the Duty of Disclosure. This includes information known to the senior management of the business and also to brokers and others who are responsible for insurance arrangements.

Information that should be disclosed includes that which would be revealed by a reasonable search of material available to the insured, including data held at any location within the organisation, and that held by people outside the organisation.

In practice, this will mean that businesses should spend a little longer looking through their files to identify relevant information and discussing this with their brokers.

3. Who should be asked about material information?
   The new law does not require that every single person in an organisation should be asked about information that might affect the insurance risk rating. This is restricted to senior management, but there is no definition of who is included in this category. For some organisations it might be obvious; others should confer with brokers or insurers to confirm who will be included.

   Outsourcing contractors may also hold material information which should be disclosed to the insurer. This might include providers of services such as IT, security, and management consultants.

4. Further inquiries by insurers
   An insured will meet the Duty of Fair Presentation where enough information has been provided to enable insurers to ask further questions to reveal material information. For example, if a business reports that it has had four health and safety incidents in the last year but an insurer fails to ask about the severity and circumstances, the insurer will not be able to claim that the insured fail to inform them, so long as the information was made reasonably obvious.

2 A wider range of breach remedies

Until now, the breach of any warranty made in pre-contractual disclosure could give the insurer grounds to treat a policy as having never existed. The new law introduces a wider range of remedies which are proportionate to the breach in question.

1. Reckless or deliberate breach
   If a breach is held to be deliberate or reckless, the insurer is entitled to avoid the policy. The insurer does not have to repay the premium but the policyholder is required to repay any payments made under the policy.

2. Proportionate remedies for breach
   If a breach was not deliberate or reckless, insurers can now choose from a range of remedies depending on the circumstances. These include avoidance of the policy, variation of the terms of the policy, and reduction of the claim.

The remedy of avoidance can be utilised by an insurer where they would not have offered insurance at all had there been a fair presentation of the level of risk prior to contract. Documentation showing the terms on which insurance would be refused by an underwriter will be useful in employing this remedy.

Variation of the terms of the insurance can be applied where the insurer would have applied certain terms or exclusions had there been fair presentation of the level of risk. If payments have been made to the insured under terms which would have been excluded, the policyholder will need to repay these sums.

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Reduction of the claim can be pursued where a higher premium would have been charged if all material information had been disclosed. A proportionate reduction can be made to the claim to reflect this.

3 Warranties become suspensory conditions

Warranties are contained in the terms which form an insurance policy. Under the present law, breach of a warranty means an insurer is entitled to discharge their liability to the policyholder, even if the breach is remedied or has no impact on the loss incurred. Under the new law, a more nuanced approach will be taken to breach of warranty.

1. A policyholder can remedy a breach of warranty
   As with the current law, under the new legislation the insurer will not be obliged to pay a claim if the insured is in breach of a relevant warranty. However, the policyholder can now remedy the breach and the insurer will once again be liable under the policy. This means the warranty is a suspensory condition; liability is suspended for the duration of the breach only.

2. Insurers can only rely on breaches which are relevant to the loss
   If the policyholder breaches a warranty but this has no connection to the loss suffered, the insurer will still be liable to pay the claim. At present, the claim could be refused because of the breach of the irrelevant warranty.

4 The end of basis clauses

At present, the information entered into an insurance form represents the 'basis' of the contract. Each representation is a basis clause, which the policyholder warrants to be true. If the information turns out to be incorrect, the insurer is entitled to repudiate the policy and refuse to pay out, even if the basis clause is irrelevant to the claim.

Under the new Act, basis clauses are no longer permitted. There is no scope to opt out of this provision under the law.

5 Opting out of the Act

By mutual agreement, insurers and businesses can opt out of the provisions of the Insurance Act 2015, with the exception of the part about basis clauses. This opt-out provision only applies to non-consumer contracts.

In order to contract out, the insurer must draw the change to the insured's attention prior to entering the contract, and the alternative term must be unambiguous and clear. Usually, the insurer will need to spell out the effect of the new term.

Are you ready for the impact of the Insurance Act 2015? Now is the time to make preparations. Why not talk to Stride about what the Act will mean for you?

Please note this information is a brief summary of the act and the new requirement contains a lot of detail. If you would like to know more or have any queries please contact us.

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