

Important notice – Insurance Act 2015

How the insurance Act affects you

You may have heard about a change in the law regarding insurance and wondered what it means for you and your business. This notice will help you understand a little more about it.

What is it?

The new insurance Act is effective from 12 August 2016, replacing some of the provisions of the Marine Insurance Act of 1906.

The new Act provides a more up-to-date framework for commercial insurance in the UK and will apply to all commercial policies taken out, renewed or amended from 12 August 2016.

The new Act focuses on fairness, transparency and certainty over the rules that govern contracts between commercial policyholders and insurers. Currently you're required to tell your insurer all the 'material facts or circumstances' they need to know about you and your business. The new Act still requires you to do this but now insurers must also seek clarification on anything you've told them which may be important to them where the information is unclear. The intention is to ensure all parties work more closely together to make sure that relevant and accurate information is gathered and given to insurers, and that consequently your policy works as you would expect it to if you have a claim.

What will the Insurance Act change?

While changes are wide-ranging, the main ones fall under three key areas:-

Fair presentation of risk

Before taking out insurance you will need to make a 'fair presentation of the risk' to the insurer. Broadly, this means giving to the insurer, in a clear and accessible manner, accurate details of matters that would affect their underwriting decision.

To do this, it's your responsibility to make a reasonable search of information available to you about your business. This will include a whole range of information about you and your senior management team, as well as information about your business, what it does and how it does it. Think of it as the insurer getting to know you and your business in the widest sense.

In many cases this wider background knowledge and understanding is just as important to the insurer as what you want to insure, why you want to insure it, and for how much. More than simply describing the type of buildings or car you wish to insure, this information will help draw out anything unique about you and your business that your insurer needs to know.

Take your time to work with us to help us understand who in your business holds the type of information that needs to be disclosed and how this information is retained for audit purposes. As a minimum this will include your senior management team, i.e. individuals who play significant roles in making decisions about how business activities are to be managed or organised. It could also include other people who hold information about your business relevant to the insurance you are arranging. For example, your fleet or transport manager when you are insuring your vehicles.

Once collected, you will need to provide the information in a clear and accessible manner. This would include adequate signposting of information as it is not allowable to just dump lots of data, leaving the Insurer to search through as important information could be missed.

If your insurer has any questions about your business they will ask you for more information. You don't need to tell them information that is considered common knowledge, for example, the performance of a type of car (unless it has in some way been modified).

Your Insurer will agree to provide cover based on the information that you give as well as the information they have gathered themselves. Don't forget to tell your insurer about any changes that happen during the year. And remember, if you want to make a change to your policy during the year, fair presentation of risk requirements will also apply to that change.

Proportionate Remedies

This change impacts how a policy works if you have a claim and, for whatever reason, a fair presentation of the risk has not been made.

In the past a policy might have been cancelled back to its start date, with all claims refused, if not all of the material information had been shared or some of it was incorrect, even when this was unintentional.

The Act will change this. It is still vital that you provide a fair presentation of risk. However, if you don't, and your failure was not deliberate or reckless, then a 'proportionate remedy' will apply, depending on what your insurer would have done had a fair presentation been made.

If, knowing all of the necessary information from the start, your insurer would not have offered you cover, they may cancel your policy entirely, refuse all claims and would return your premium.

However, if your insurer would have still offered you insurance based on that new information, then they must pay your claim based on the cover, premium and terms that they would have required had a fair presentation been made, with the payment of the claim being proportional to the cover you actually purchased.

For example, if the premium, based on the information you initially gave, was £500, but the insurer would have charged £1,000 had a "fair presentation" been made, that would mean only half of the claim would be paid. Furthermore, if the insurer would have applied different terms (e.g. a higher excess) then these will apply to the policy.

And, of course, any failure to give a fair presentation that is found to be deliberate or reckless means your insurer has the right to cancel your insurance back to its start date, refuse all claims and keep your premium.

How warranties work

Warranties are terms in your policy that require you to do something: e.g. setting your burglar alarm when your premises are closed is a typical warranty which you may find on theft insurance.

Previously if you had not strictly complied with a warranty then the law said your insurer was discharged from all liability. This meant that, even if you had set your burglar alarm on the day of the theft but didn't always do it, some insurers could have refused to pay your claim on the basis that you had not complied with the warranty.

The new Act is much fairer because in the same circumstances, so long as you can prove that your burglar alarm was set at the time of the theft, it is unlikely that your claim would be refused on this basis.

It is important you understand that if your insurer requires you to do or have certain things in order to benefit from your cover, these could be called warranties, conditions or obligations, you must ensure you have reviewed these, you understand what they are asking you to do and that you can comply. If in any doubt, talk to us and we will help you understand and, if necessary, adapt them to your circumstances.

What do you need to do to comply?

Making sure you get the cover you need relies on gathering all the relevant facts. You don't want to run the risk of a claim not being paid, either in part or in full.

- Factor in plenty of time to gather all the relevant information you need as you come up to the renewal date for your insurance. You will need to present the details in a clear, concise and accessible manner.
- Make sure senior management have contributed to the information gathering so that all necessary facts are captured and presented.
- Consult with anyone else in your business that has knowledge relevant to the insurance you are arranging. For example, if looking at cyber insurance you should speak to your IT manager.
- Be ready to answer any further questions from your insurer on your business and your insurance cover, if they need any further clarity. You are responsible for making sure that we and your insurer know everything about your business that is pertinent to your insurance cover.
- Ensure you understand and agree with everything we have passed to your insurer so any mistakes can be rectified. In the same way that you sign off your business accounts each year to confirm they are a true and accurate account of your financial situation, you will effectively need to do the same for your insurance, by confirming that we and your insurer have a true and accurate assessment of your business needs and risks.