



## Navigating the Insurance Act

### Major changes to insurance law in 2016

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The most significant changes to insurance law in 110 years come into effect in August 2016. The Insurance Act 2015 makes some fundamental changes to what businesses have to do to ensure that their insurance policies are effective and that their claims are paid in full.

The Act applies to all policies governed by the laws of England, Wales, Scotland and Northern Ireland and which are taken out, renewed or varied on or after 12 August 2016. However, as there are new rules about what businesses are required to do before their insurance policies are in place (or renewed or varied), businesses need to start planning and act now.

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#### What is changing?

##### New duty to make a fair presentation of the risk

Businesses need to understand the new duty to make a fair presentation of the risk, and what this means for them on a practical basis:

- there are new rules as to what material information needs to be disclosed to insurers, which will include information known by the "Senior Management" of the business, its insurance broker and possibly third parties such as outsourced service providers
- there is a new obligation to make a "reasonable search" for such material information
- it may be necessary to ensure that sufficient information is provided to put insurers on notice that they must make further enquiries for the purpose of revealing further information they would want to know

It may be possible to agree the parameters of a "reasonable search" with insurers if businesses act early enough.

##### New "proportionate" remedies

Failure to comply with the Duty of Fair Presentation may give the insurer grounds to avoid the policy (i.e. treat it as if it never existed) if the failure was deliberate/reckless.

If the failure was not deliberate/reckless the insurer may:

- still avoid the policy if they would not have written it had a fair presentation been made
- amend the terms of the policy to those it would have agreed had a fair presentation been made, and apply those terms to the claim
- pay only a proportion of the claim if it would have charged a higher premium had a fair presentation been made

## Navigating the minefield

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### Changes to how warranties work

Currently, breach of any warranty can permit insurers to refuse to pay a claim. The Act will transform warranties into "suspensory conditions". This means that the insurer will not be liable to pay any claims while the insured business is in breach of warranty, but if the business later remedies the breach (if that is possible) then the insurer is generally liable for subsequent claims.

The act will also prevent an insurer relying on a breach of warranty to deny a claim when that breach is not connected to the loss that has occurred (although there are exceptions to this new rule).

### Abolition of "Basis Clauses"

Any representation made by the business in connection with a proposed insurance policy is currently capable of being converted into a warranty as to its truth/accuracy by means of a clause known as a "basis clause". Such "basis clauses" will no longer be allowed.

#### What to do next

Seek advice on how the changes affect how your business purchases insurance, and how you can ensure that insurance provides effective protection in the event of a claim.

We are currently advising clients on all aspects of the new Act, and can help businesses understand what the changes will mean for them.

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