

# INSURANCE ACT 2015



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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. RSA 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). However, as the intention of the Act is to create a more balanced relationship between insurer and customer, RSA will immediately apply the benefits of the Act to affected Commercial customers as though the Act were already in effect. This applies to all Commercial insurances in force on or after 02nd July 2015 that are governed by the laws of the United Kingdom.

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, 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.

## **What is RSA doing in response to the Act?**

We are reviewing all our in scope policy wordings and associated documentation to ensure that these are fully compliant with the Act. Your insurance policy may already make reference to the Insurance Act 2015 and the specific issues affected by this. However, even if your policy does not refer to the Insurance Act we will apply the benefit of its terms to your policy. This includes:

- Working with brokers on fair presentation of risks.
- Interpreting all warranties on a suspensive basis.
- Applying the remedies outlined in the Act if non-disclosure applies.
- We won't rely on basis of contract clauses, even if these are included in the policy wording.
- Dealing with claims on the basis of the Act as if it were in force already.

We believe that the Insurance Act 2015 is a positive step forward and represents the good practice that RSA expects to deliver to its customers.

If you require further advice or assistance, please contact your usual insurance adviser.

Please retain a copy of this communication with your policy documentation.

