

The Insurance Act 2015 - A Handy Guide



On 12th August 2016, the new Act becomes law.
What does it mean for you and your business?
Our clear and simple guide will help you through



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On 12 August 2016, the law that governs commercial insurance arrangements is changing. From this date, the Insurance Act 2015 will apply to all commercial policies that are arranged, renewed or amended. The new legislation represents one of the most important changes to insurance contract law for more than a century. It applies to England, Scotland, Wales and Northern Ireland (a modification relating to road traffic legislation applies in Northern Ireland).



Why do we need the new law?

Insurance is complex, and benignly or otherwise, policyholders often provide incomplete or ambiguous information to their insurers. Many are also unclear about their cover details. The 2015 Act aims to establish a fairer, clearer balance between policyholder and insurer. Replacing the previous rigid code, the new law offers a flexible framework of principles which can apply to large corporates and small businesses alike.

As a commercial policyholder, you have until now been obliged to tell your insurer all the relevant 'material facts or circumstances' about you and your business. While you must continue to do this, the new Act requires insurers to seek clarification wherever necessary to ensure that the information they receive is clear and precise.

The goal of the new legislation is to enable all parties to work more closely together, so that:

- insurers receive full, relevant and accurate information
- your policy works exactly as you expect and need in the event of a claim.

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What's new about the Insurance Act 2015?

The Act makes wide-ranging changes which affect three key areas in particular:

- Fair Presentation of Risk,
- Proportionate Remedy and
- Warranties

Tell me about...
**Fair Presentation
Of Risk**

What is it?

The new Act replaces the 'duty of disclosure', ie the requirement for policyholders to disclose clearly and accurately all details necessary for an insurer to assess their risk. The 2015 Act clarifies what information an insurance purchaser must provide, which staff member must provide it and to whom it must be given. In other words, you must provide your insurer with a 'fair presentation of risk'.

From now, it's your responsibility to make a reasonable search of your business information whenever you purchase insurance. For example, you'll need to present details about you, your senior management team, your business, what it does and how it does it. With a clear, in-depth understanding of your people, premises and operations, your insurer can provide you with the cover that fits your needs perfectly.

What information will my insurer need?

To determine the right policies, your insurer needs to know about far more than the buildings or vehicles you want to protect. It's wise to invest some time in identifying for your broker or insurer all individuals in your business who hold the required information and how this material is retained for audit purposes.

At the very least, you'll need to list those who play significant roles in making decisions about the organisation and management of business activities, as well as others who hold information relevant to the particular insurance you're arranging. For example, your fleet or transport manager needs to be involved when organising your vehicle insurance.

Once you've collected the information, you'll need to present it clearly and appropriately, so that your insurer can easily access the particular details they need. If your insurer has any questions about your business, they will ask you for more information. You don't need to provide any facts that would be common knowledge, eg the performance of a particular car (unless it has been modified). Your insurer will provide cover based on the information you give as well as the information they have gathered themselves.

Finally, be sure to update your insurer about any changes that occur during the year. And remember that should you make a change to your policy, fair presentation of risk also applies to that change.

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Tell me about... Proportionate Remedy



What is it?

Before the new Act, an insurer could apply the all-or-nothing remedy of avoidance (in which an insurer refuses or cancels a policy from its start date and rejects all claims) when an insured party failed to provide a fair presentation of risk. Where an insured deliberately conceals relevant information, avoidance is still permissible in certain circumstances. However, such failures are not always malicious. The 2015 Act therefore offers a fairer 'proportionate remedy' that better reflects the intent of the insured.

How will it work?

When purchasing insurance on or after 12th August 2016, you must still provide a fair presentation of risk. If you don't, and your failure was neither deliberate nor reckless, a proportionate remedy will apply. The precise remedy will depend on what your insurer would have done had they known the true facts about your risk. If your insurer would not have offered you cover, they may cancel your policy entirely, refuse all claims and return only your premium. However, if (had they been given the new information) your insurer would in fact have offered you insurance, then they are bound to pay your claim based on the cover, premium and terms had a fair presentation been made. The claim would be paid proportional to the cover you actually purchased.

For example, let's say the premium was £500 (based on the incomplete information you gave), and that, had you made a fair presentation, the insurer would have charged £1,000. In this case, only half of the claim would be paid. Furthermore, any special terms (eg a higher excess) that the insurer would have required will now apply to the policy. And, of course, any further deliberate or reckless failure to give a fair presentation gives your insurer the right to cancel your insurance back to its start date, refuse all claims and keep your premium.

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Tell me about...

Warranties

Definition: Warranty

Where an insured or reassured promises that something will or will not be done during the period of cover or that a particular state of affairs exists or does not exist at the inception of cover. If the promise is untrue or is not kept then the insurer/reinsurer may disclaim all liability under the policy from the date of the breach, regardless as to whether the false declaration was material to the underwriting of the contract or causative of any loss.

What are they?

A 'warranty' (which may also be called a 'condition' or 'obligation') is a promise by an insured or reinsured to take - or not to take – a specific action during the period of cover. For example, theft insurance policies often require you to set your burglar alarm when your premises are unoccupied. The term also refers to a promise about a particular state of affairs that does or does not exist at the inception of cover. For instance, that same theft insurance policy may require your promise that your burglar alarm is professionally serviced at given intervals. If the promise is untrue or is not kept then the insurer or reinsurer may disclaim all liability under the policy from the date of the breach, whether or not the false declaration materially affected the underwriting of the contract or caused any loss.

How will it work?

Prior to the new Act, failure to comply with a warranty meant that your insurer was lawfully 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 use it, some insurers could have refused to pay your claim because you had not fully complied with the warranty.

The 2015 Act is much fairer. Given the same example above, your claim would be paid in full provided that your burglar alarm was set when the theft occurred. It's essential that you know about and fully understand any warranties in force and that you are able to comply with them.

If you're in any doubt, don't hesitate to talk to us: we'll help you understand your warranties and their implications - and, if necessary, we can adapt them to fit your circumstances.



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Your responsibilities: 6 top tips



Buying the cover you need depends on presenting your insurer with all the relevant facts. To avoid unpaid claims, here's a summary of what you need to do.

1. Don't wait until your insurance renewal date! Allow yourself plenty of time well before renewal to gather all the relevant information that your insurer or broker will need.
2. Involve all your senior managers in gathering information so that all the vital facts are captured.
3. Consult with anyone in your business who may have information relevant to the insurance you're arranging. For example, if you're buying cyber insurance you'll need to involve your IT manager.
4. Minimise queries and lost time by presenting the information to your broker or insurer as clearly, completely and concisely as you can.
5. Be ready to answer any questions that your insurer may ask about your business and insurance cover. They might request further details or explanation to ensure that they match your needs with the right policy.
6. Make certain that you understand and agree with everything that your broker has passed to your insurer, so that any mistakes can be rectified right away. Just as you sign off your business accounts each year as a true and accurate account of your financial status, you'll need to confirm that your broker and insurer have a true and accurate record of your business insurance needs and risks.

Got a question or concern?

Simply call the Ravenhall team on [0345 216 3000](tel:03452163000). We are here to help!

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Ravenhall: we're on your side!

There's no way around it: the Insurance Act 2015 is here to stay and complying with your obligations is a must. But at Ravenhall, we can lighten your load by easing you through the process.

We will:

- work with you to understand your business and insurance needs in detail so we can advise you how best to fulfil your obligations under the Act
- help you identify all the individuals in your business who should be consulted when collating information for your insurer
- advise you on the type of information that you must disclose to ensure that 'fair presentation' requirements are met
- explain how your insurer is dealing with the Act (including instances where they have decided to 'contract out') and what this means for your business.



Need more information? No problem!
Simply call the Ravenhall team on 0345 216 3000.
www.ravenhallgroup.co.uk



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