

South West Broking Ltd
Insurance Brokers

BULLETIN

The Insurance Act 2015

The Insurance Act 2015 is a new legal framework affecting every business insurance policy placed, renewed or amended after 12th August 2016.

The new legislation will modernise insurance law and aims to make recovery from insurers simpler and fairer in the event of a claim.

However, these benefits are dependent on the customer making a “**fair presentation of risk**”.

What does this mean for the customer?

Critical changes for customers centre on the new duty of “fair presentation”. The existing obligations of **good faith** and ensuring **accuracy of material information** both remain but the Act, however, also specifies what a customer must do for a presentation to count as fair and there are two key elements:

“Reasonable Search”

A new obligation which will vary based on business circumstances:

- The customer must make adequate enquiries within their business to identify and verify information relevant to the risk(s) concerned.
- These must include all relevant knowledge of the “Senior Management” of the business and those involved in buying the insurance (including the broker).
- Reasonable enquiries must also be made of any relevant third parties involved with the business, including external consultants, contractors and anyone insured by the policy.

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The Senior Management Team

The Senior Management Team includes anyone who plays a significant role in the making of decisions about how the business activities are to be managed or organised and this includes:

- A person for whom cover is provided by the insurance.
- Anyone who is responsible for the procurement of the insurance.

“Clear & Accessible”

Information should be presented in a manner which is clear and assessable. The intention is to prevent “data dumping” where excessive information is sent to the insurers with the expectation that they will pick out what information they need.

There is also an additional requirement to adequately highlight unusual activities and/or known areas of concern that could affect the risk.

What do business need to do differently?

From the 12th August 2016 business will be required to ensure that their underlying procedures for buying insurance are compliant with the Act.

Six key steps that can help achieve this goal

1. Ensure clear understanding, wherever possible, of the risk being insured (which determine what information is relevant).
2. Document the process of compiling and checking risk information, recording any concerns or shortcomings.
3. Develop draft answers to the key definitions in the Act to ensure search is broad enough:
 - Who counts as “Senior Management”?
 - Who is “responsible” for insurance in the business?
 - Who else has relevant information (whether internal or external)?
4. Clarify sign-off requirements and what is expected at each stage.
5. Engage with your brokers and insurers to understand requirements and whether any “contracting out” applies, involving other specialist advisers where required.
6. Start the process early enough to accommodate the additional checks required and to ensure that all information is presented clearly.

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Remedies

When a fair presentation has not been made then the insurer can apply a range of remedies from the single “all or nothing” principle of avoidance of the policy to a response that varies depending on whether or not the breach of fair presentation was deliberate or reckless.

1. Deliberate/reckless = Avoidance of policy, refusal of all claims and retention of customer’s premium.
2. Not deliberate/reckless = Proportionate remedy will apply.

What does proportionate mean?

- The insurer must consider what they would have done had they know the complete position.
- If the insurer would not have accepted the risk at all, then they may avoid the policy and refuse all claims but must return the premiums paid.
- If the insurer would have underwritten the policy but on different terms (for example, a higher excess), then those changed terms will apply retrospectively.
- In addition, if the insure would have charged a higher premium, then the claim settlement will be reduced proportionately, in much the same way as an “average” condition would work.

For example, if the premium based on the information given was £500 but the insurer would have charged £1,000 had a fair presentation been made, then the claim would be reduced by 50%.