



# What does the Insurance Act mean to Insureds?

## Modernising and Simplifying Insurance Contract Law

The Insurance Act 2015 received Royal Assent on 12<sup>th</sup> February 2015 and will apply to all policies governed by the laws of England and Wales, Scotland and Northern Ireland, that are placed after 12<sup>th</sup> August 2016 and will apply to both business and consumer insurances.

The Act makes important changes to the law regarding the insured’s precontractual duty to the insurer (duty of fair presentation), introduces proportionate remedies for a breach of that duty, makes adjustments as to how non-compliance with policy terms will operate and provides remedies for fraudulent claims.

It represents one of the most significant statutory changes to English insurance law, since the original Marine Insurance Act 1906 (MIA), and seeks to modernise and simplify insurance contract law.

.....  
**“There is still a significant risk that cover could be affected should the insured breach duty of fair presentation even though new remedies have been brought in”**  
.....

### What should insureds be thinking about ahead of August 2016?

There are two fundamental points that need to be emphasised and that insureds should remain aware of (and considered with their brokers) when planning for renewal under the new Act, these are:

- More time should be allocated for renewal, in particular for information gathering or insureds could be at risk of failing to comply with their statutory duties.
- There is still a significant risk that cover could be affected should the insured breach duty of fair presentation even though new remedies have been brought in.

With a number of significant implications coming into effect we have provided more detail about the changes overleaf:

## Remedies

One crucial change that the Act has introduced is an entirely new system of proportionate remedies when the duty to make fair presentation has been breached.

Under the new system, an insurer may avoid the contract and refuse all claims and retain all premiums paid, if a breach was deliberate or reckless. Although, if a breach was non-deliberate or non-reckless, an insurer must act based upon what they would have done had they known the true facts. It is the insurer who bears the burden of proving that the breach was deliberate or reckless.

## Warranties and Conditions

Another noteworthy reform is the reclassification of warranties. Under the previous law, a breach of warranty by an insured allows the insurer to automatically discharge from the contract from the date of the breach. This is no longer the case; the Insurance Act 2015 will only allow the insurer to suspend the contract from the date of the breach, until the breach can be remedied and then the insurance cover will be restored.

## Basis of Contract Clauses

Currently proposal forms can and often include 'basis of contract' clauses, which result in turning representations made by an insured into a warranty. So if any statement made on the proposal form is inaccurate, this would allow the insurer to avoid paying a claim on the basis of a breach of warranty. The new Act will prohibit 'basis of contract' clauses for business contracts.

## Fraudulent Claims

Currently, claims made before or after a fraudulent claim remain unaffected, however, the Act seeks to remedy the way a fraudulent claim is dealt with. Where an insured makes a fraudulent claim, the insurer will not be liable to pay the claim, and will also have the ability to recover from the insured any sums paid in respect of that claim. The insurer also has the right to treat the policy as terminated at the time of the fraudulent act and need not return any premiums paid.

## Contracting Out

For non-consumer insurance, the Act will be the default regime subject to English law, however, parties are still able to contract out of the Act. Nevertheless, the insurer is obliged to draw any less favourable term to the Insured's or broker's attention before the contract is entered into. The insurer must also ensure that the term is clear and unambiguous as to its effect.

## Next Steps

The Act will deliver a new framework for business insurance contracts and as for all new legislation, it will be for the Courts to interpret the new law.

It is likely that after implementation a level of uncertainty will ensue, however it does appear that the Act will contribute to addressing some of the disparity under the current law.

Although the Act does not come into effect until 12th August 2016, organisations will need to understand and start implementing procedures to ensure compliancy and that all relevant employees fully understand the changes.

For example, duty of fair presentation will require insureds to make sure that a reasonable search is undertaken to reveal material information and that it makes the disclosure in a manner that is reasonable and clear.

**We will continue to keep you updated with developments and provide you with more in-depth information on each change. If you have any questions in the meantime, please get in touch.**

For more information, please contact:

**Nathan Sewell**  
T: 44 (0)20 3763 5353  
E: [nathansewell@proteanrisk.com](mailto:nathansewell@proteanrisk.com)

[www.proteanrisk.com](http://www.proteanrisk.com)

## About Protean Risk

Protean Risk is a specialist insurance broker advising firms in the investment industry, financial services and technology sectors. Our clients range from start-ups to companies with revenues in excess of £100m and beyond. We advise clients across a full range of insurance products with a particular focus on professional and executive risks, specifically professional indemnity and directors' and officers' liability insurance.