

**On your side**  
in **championing**  
industry reforms



**By your side**  
to **explain how** they  
**affect you**

A guide to the Insurance Act 2015



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How we got here



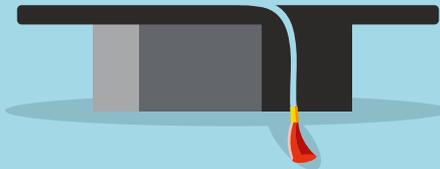
The Insurance Act



What's changed?



Fair presentation of risk



How we help



Key considerations



# On your side for support, by your side for guidance

This year sees extensive reforms in the insurance market as the Insurance Act 2015 comes into force from 12 August 2016. Aiming to introduce greater clarity around what information a client has to provide their insurer – and a fairer position should the client fail to provide that information – the Act will make sure all parties clearly understand what each needs to know and what will happen in the event of a claim.

## A little history

To understand the need for the fundamental reforms the Act will bring, it's worth considering that the existing law was based on the Marine Insurance Act 1906 and was, as you'd expect, no longer in line with modern day best practice. A Law Commission report in 2014 highlighted the failings in the existing laws which resulted in the 2015 Act being introduced to implement the Commission's recommendations of "ensuring a better balance of interests between policyholders and insurers".\*

While August 2016 will see the implementation of the Insurance Act 2015, the preparation for the Act started some time ago. Insurers have used the time since the Act was passed to develop their understanding of the reforms and make any necessary changes to their business processes and policy documents.

## The principles of a fairer, more balanced legal position

- Insurance is about the transfer of risk.
- This relies on 'strong disclosure' practices which include undertaking a 'reasonable search' of available information.
- If followed, it's more likely that cover will meet business needs and customer expectations.
- It's also more likely that the cover will operate in full, as intended.

\*Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment (Law Com No 353), paragraph 1.6.





## When changes are on the horizon, we can help you navigate them

The changes are likely to affect how insurers underwrite risk, approach disclosure and due diligence, negotiate, discuss settlement and more. They're designed to provide a more up-to-date framework for commercial insurance in the UK, with a focus on fairness, transparency and certainty over the rules that govern contracts between commercial policyholders and insurers.

Policyholders have always been required to tell their insurer all the 'material circumstances' the insurer may need to know about them and their business. The Act still requires this but now also demands that the insurer takes steps to seek clarification on important points where that information is unclear. The idea is that all parties work together to make sure the right information is gathered. This will ensure the cover is arranged on the correct terms and your client's policy performs as they would expect in the event of a claim.

### Fair presentation of risk and proportionate remedy

Brokers and intermediaries need to take the time to help their clients understand what needs to be disclosed when arranging cover. The Act calls this 'fair presentation of risk' and this will mean all parties clearly understand what each needs to know and what will happen in the event of a claim.

In the past a policy might have been avoided – with all claims refused – on the basis that material information was not shared or was incorrect. The Act will change this. Provided the information given by a client is not intentionally or recklessly incorrect, a 'proportionate remedy' will apply, depending on what the insurer would have done had a fair presentation been made. This means, for example, the claim settlement could be amended to reflect the missing information.

### When does the Act come into force?

- Applies to new and renewal business taken out on or after **12 August 2016**.
- Fair presentation and proportionate remedies also apply to amendments made on or after **12 August 2016** to policies taken out at any time.



# What changes will the Act introduce?

Key changes to current business practices impact policyholders, insurers and insurance brokers in the following areas:

1. Fair presentation of risk >

2. Remedies >

3. Warranties and conditions >

4. Fraudulent claims >

5. Contracting out >



## Fair presentation of risk

The Insurance Act 2015 brings much-needed clarity around what information a non-consumer purchaser of insurance has to provide to the insurer, in the form of the new 'duty of fair presentation'.

*“Before a contract of insurance is entered into, the insured must make to the insurer a fair presentation of the risk.”*

(Section 3 (1))

'Fair presentation' is a long established concept in EU and UK accounting rules, where it acts as a general override taking precedence over specific checklists or approaches. The way in which disclosure is approached has changed but the core concept – that an underwriter needs to know all material circumstances – remains. Understanding the distinctions between the old and new duty is critical to policyholders, brokers and insurers alike. The remedies available to the insurer where the requirements of fair presentation are not met have also changed.





## The three pillars of fair presentation

To support you with the duty of fair presentation we have developed these three pillars to help articulate what is required. Much of the information needed will already be covered in the checklist and fact-finds that you're used to. We've put together the model below to help you think about what additional information may be required and what procedures you'll need to have in place.

## The principles of a fairer, more balanced legal position

### 1: Accurate content

- The policyholder must include either all material information (as current law) or information sufficient to prompt insurer enquiries to get material information.
- Representations of fact must be substantially correct and representations of expectation/belief must be made in good faith.

### 2: Accessible format

- The policyholder's disclosure must be reasonably clear and reasonably accessible – information must be presented in a logical and clear fashion with important information appropriately highlighted, i.e. no 'data dumping'.

### 3: Reasonable search

- A 'reasonable search' for material information should be undertaken by the policyholder, as they will be taken to know anything that should reasonably have been revealed by a reasonable search of information available to them.
- The policyholder should make adequate enquiries of the business (and any information held by the broker) to ensure that risk-relevant information is captured and presented.

### Overall adequacy

The concept of making a fair presentation requires a step back from set-in-stone checklists, requiring the policyholder to ask:

- does this information create an accurate picture or could it mislead?
- is there anything else we should add to or explain?

If your customers don't have the right procedures for disclosure in place, they are at greater risk of not making a fair presentation. Our 'Guide to disclosure' document pulls together the types of questions you may want to consider in your customer discussions. It can help you demonstrate to your customers how to capture, share and ensure accuracy of knowledge about their business.



## Overall adequacy

The concept of making a fair presentation requires a step back from set-in-stone checklists, requiring the policyholder to ask: Does this information create an accurate picture or could it mislead? Is there anything else we should add to or explain?

### Accurate content

Material circumstances can't be 100% pre-defined, but the key is whether it would influence an insurer's underwriting decision.

Core or 'technical' information required can be identified in broker presentations and through forms and fact-finders.

However, there's a need to clarify other areas that should be investigated when providing information for a quote.

#### What could this mean for presentations?

- Are there any unusual aspects of the risk, such as where they operate differently or offer different products or services to their competitors?
- Are there any known areas of pre-existing concern to the insured or broker?
- Are there any business changes which might change the frequency, type or severity of loss, e.g. new activities?
- Are there any areas where the business might struggle to comply with its own internal policies?

### Accessible format

The legislation includes a new requirement for disclosure to be reasonably clear and accessible.

This affects how submissions are created and circulated.

It effectively stops 'data dumping' or overly summarised presentations.

#### What could this mean for presentations?

- Consistency of approach from insured to insured.
- Ordering risk information, particularly indexing and signposting what's included.
- Highlighting key points and their relevance.
- Explaining important changes or inconsistencies.

### Reasonable search

Clients are now required to undertake sufficient enquiries to ensure that all relevant material is included in their presentation.

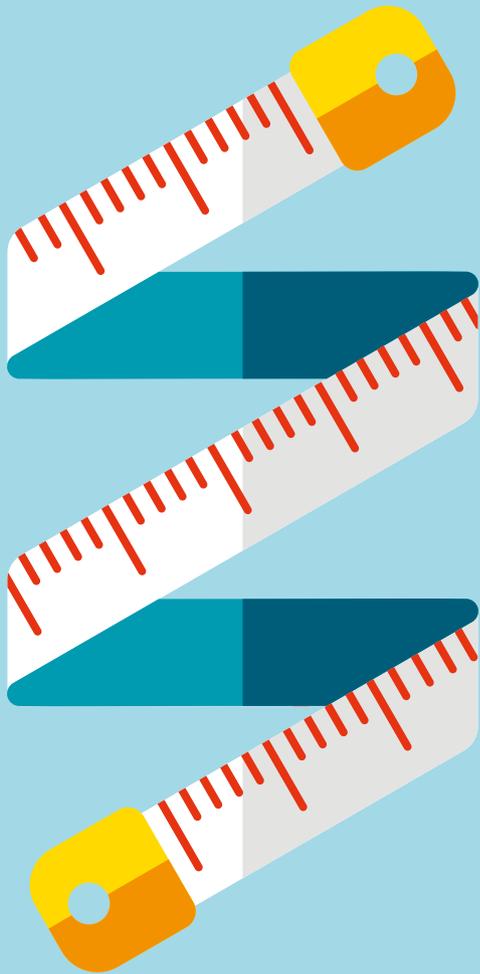
This should cover both information held internally and anything held by the broker.

This will vary hugely based on the size and complexity of the business and nature of relationship with the broker.

#### What could this mean for presentations?

- How is information requested and gathered from the business?
- Is there a consistent process to define what information should be disclosed?
- What is the process for review and sign-off of final information put forward?





## Remedies

Where a fair presentation has not been made then the remedy an insurer can apply changes 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 (just as now).
2. Not deliberate/reckless = Proportionate remedy will apply.

### What does proportionate mean?

- The insurer must consider what they would have done had they known 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 they would have underwritten the policy but on different terms (e.g. a higher excess), then those changed terms will apply retrospectively.
- In addition, if they 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%.



## Warranties and conditions

Under existing law, breach of a warranty in an insurance contract automatically discharges the insurer from liability from that point onwards, even if the breach is subsequently remedied or completely unrelated to the type of loss occurring.

Under the new Act, breaches of warranty can be remedied – cover is suspended for the period during which the warranty is not complied with. An insurer will again be liable for losses that take place once a breach of warranty has been remedied, unless the loss is attributable to something happening after the warranty was breached and before it was remedied.

It's important to note that some warranties cannot be remedied, for example a warranty on a building's insurance which says the property is built of brick when in fact it is not.

### Abolition of basis of contract clauses

- Basis of contract clauses turn information provided by the insured into warranties, so that any inaccuracy in that information could discharge the insurer from liability.
- The Act prohibits these clauses and it is not possible for insurers to contract out of this particular change.

To give more certainty to you and your clients, at Aviva we've been treating any such clauses within our policies as having no effect since the Act received its Royal Assent in February 2015. All our customer documentation has been updated to remove such clauses for business transacted from 12 August 2016.

### Terms not relevant to the loss

- Under existing law, an insurer could refuse a claim owing to breach of a policy term (whether a warranty or other condition), even if the term was irrelevant to the loss.
- The Act provides that an insurer may not rely on the insured's breach of a term to avoid paying a claim if the breach could not have increased the risk of the loss which actually occurred. (For example, an insurer could not refuse a flood claim because of breach of a term requiring an operational burglar alarm to be in place.)

Our wordings are already predominantly 'warranty free' and it has long been our approach not to decline a claim unless there is a link between the breach of a term and the loss.





## Fraudulent claims

The Act clarifies the remedies available to an insurer if a fraudulent claim is made.

The insurer:

- is not liable for the claim and may recover any payment made, and
- may cancel the policy with effect from the date of the fraudulent act and keep premiums, but
- remains 'on cover' for the period before the fraudulent act.

All our customer documentation has been updated to reflect these changes for business transacted from 12 August 2016.

## Contracting out

Other than in respect of the abolition of basis of contract clauses, insurers can choose to contract out of the new law for non-consumer policies and therefore apply more disadvantageous terms than those available under the Act. Where an insurer chooses to do this, they must do so prior to entering into the contract and must draw the client's attention to any disadvantageous terms.

As supporters of the Act, we have chosen to comply in full.



## How Aviva is helping

At Aviva we've championed these reforms from the start, working closely with the Law Commission and consultants such as Mactavish and RWA. We've also consulted with a number of our brokers to ensure that any changes we implement not only comply with the Act but also consider the needs of brokers and their customers.

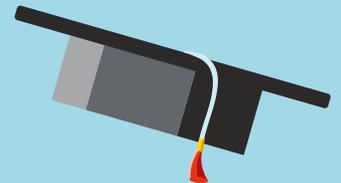
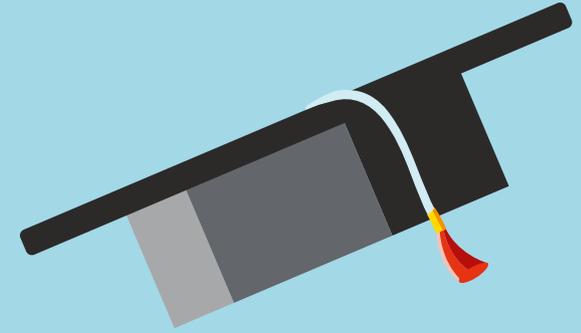
Work is already well advanced on changes to our products, systems and documentation and our first Insurance Act compliant policies are already available to small business customers. Other products will follow suit as we work towards August. We've reviewed our TOBAs and will not be changing them as a result of the Insurance Act.

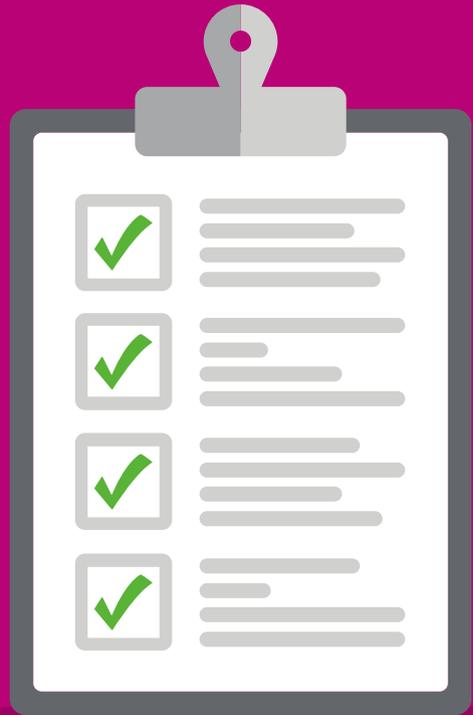
### Fair presentation of risk guarantee

We've introduced a 'fair presentation of risk guarantee' for small business placed through our Fast Trade or imarket online products. This means that we will waive our right to pursue non-disclosure or misrepresentation other than in circumstances where the answer to our questions or assumptions was incorrect or misrepresented. We believe this gives you and the customer peace of mind and allows us to make a more time-efficient and accurate assessment of your customer's risk.

### Education

Over the last few months we've held Insurance Act masterclasses and workshops across the country. In partnership with consultants RWA and Edwin Coe LLP, we're helping brokers to understand the various elements of the Act and how it could affect their way of working. This continued as a key theme at our Regional Broker Conferences which ran throughout the UK in the first half of the year.





## 10 key points to consider

### Working with Aviva

- 1 The Act applies to new and renewal business taken out on or after 12 August 2016 and fair presentation and proportionate remedies also apply to amendments made on or after 12 August 2016 to policies taken out at any time.
- 2 Our wordings are already predominantly 'warranty free' and it has long been our approach not to decline a claim unless there is a link between the breach of a term and the loss.
- 3 To give more certainty to you and your clients, we have been treating basis of contract clauses within our policies as having no effect since the Act received its Royal Assent in February 2015.
- 4 Aviva supports the Act and will not be contracting out, and all our customer documentation has been updated to reflect these changes for business transacted from 12 August 2016.
- 5 We've produced a customer guide to the Insurance Act which may help you explain the changes.

### Working with your customers

- 6 Ensure your customers understand the key changes in the law that impact them.
- 7 Ensure you allow sufficient additional time in your renewal timetable to let the customer prepare and perform a reasonable search for information.
- 8 Consider whether there is anything special or unusual about the risk compared to other similar businesses.
- 9 Review the templates and fact-finds you use to gather disclosure information.
- 10 Review the way you capture and store client information to ensure you are able to record the information you know about your customers – as this will fall under reasonable search.



## Schedule of Aviva's Insurance Act implementation

**12 February 2015**

Act received Royal Assent.



**Throughout 2015**

Migrating to new, clearer policy documents for mid-market customers.



**January 2016**

Confirmed no changes are required to our TOBA with brokers to comply with the Act.



**March – July 2016**

Insurance Act compliant policy wordings launched.



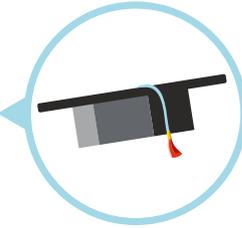
**March 2015**

Basis of Contract Clause had no effect in Aviva-issued policies.



**July – December 2015**

UK-wide masterclass events for brokers.



**January 2016**

Launched a fair presentation of risk guarantee for online packages.



**12 August 2016**

Insurance Act 2015 comes into force.



**If you have any questions we've not answered about how the Act will impact you, talk to your Aviva sales manager.**

| Retirement | Investments | Insurance | Health |

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This guide does not constitute legal or other professional advice. You should take specific legal or other professional advice before acting on any of the topics covered.

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