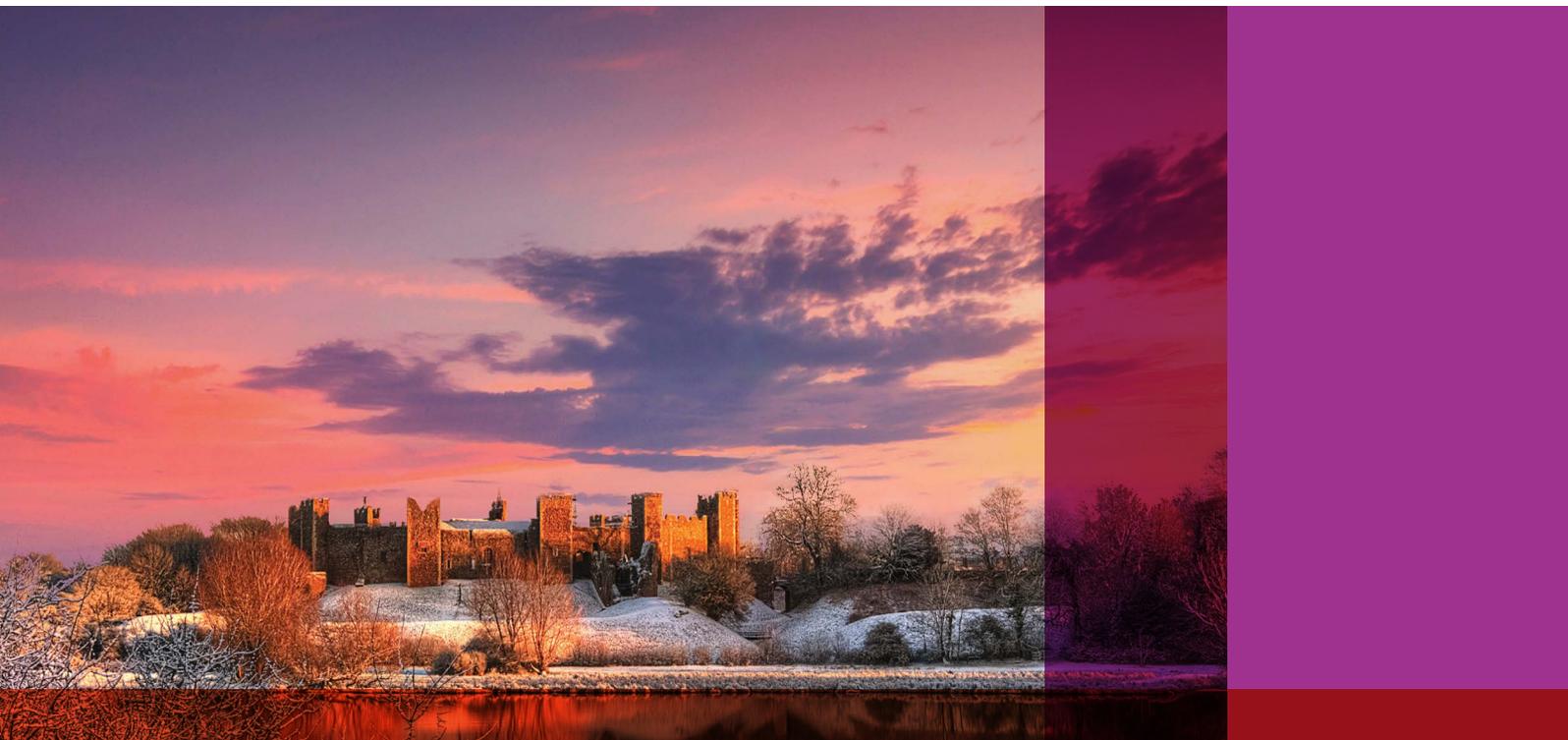




GLEMHAM
UNDERWRITING LIMITED



The Insurance Act 2015

A guide for brokers

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1. Introduction

The Insurance Act 2015, which came into force on 12 August 2016, introduced the most significant changes to UK insurance contract laws since the Marine Insurance Act of 1906. The new Act provides 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. The rules apply to all UK commercial policies taken out, renewed or amended from 12 August as well as variations to existing contracts entered into after that date.

Aiming to introduce greater clarity relating to the 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.

The main changes include:

- A new duty of fair presentation of risk which clarifies what a client must disclose to an insurer and what an insurer ought to know about its clients
- Remedies for breach of the duty of fair presentation
- Changes to warranties and terms not relevant to the loss, updating the law on what happens when clients are in breach of warranties
- Remedies where a fraudulent claim has been made
- New rules on contracting out

At Glemham, we fully support the Insurance Act and its principles of fairness, transparency and certainty over the rules governing commercial insurance contracts. We have spent the last few months updating all of our proposal forms to ensure that your policyholders are able to provide all the material information needed to make a fair presentation of risk that can be properly assessed by insurers. We have also worked with our insurers to review our wordings to ensure that they are clear and consistent with the terms of the Act. Our brokers can therefore rest assured that Glemham insurance policies are compliant with the Act and that you can continue to offer them to your clients with complete confidence.

Our insurance policies are backed by Arch, Argo, Aviva, Hiscox and XL Catlin. All of these insurers have taken a largely common approach to the provisions of the Act and this guide has been prepared to highlight these and any specific elements which you will need to be aware of when advising your policyholders on how best to fulfil their obligations.

2. The Insurance Act 2015

a. Fair presentation of risk

A "fair presentation" is one that clearly discloses to insurers all material circumstances a policyholder knows or ought to know and that gives sufficient information to provide insurers with an opportunity to ask more questions if necessary. A material circumstance is something that would influence an insurer's decision to offer insurance and on what terms. This requirement also applies to any changes made to a policy during the period of insurance. The information must be substantially correct, made in good faith and based upon a "reasonable search" by the policyholder of all relevant and material information held within their business or by their broker.

Our new proposal forms have been designed to capture this information and these, together with presentations and fact-finders provided by our brokers, should provide most of the information we need to underwrite a risk. However, there may be other areas which our brokers should consider when advising their policyholders on what additional information may be required to ensure the risk is presented accurately, does not mislead insurers and provides more detail where necessary. For example:

- 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 policyholder 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?

All information must be provided in a way that is reasonably clear and reasonably accessible with important information highlighted i.e. not a "data-dump" or overly summarised presentations.

Information does not need to be disclosed which:

- Diminishes the risk,
- The insurer knows, or ought to know or is presumed to know,
- The insurer has waived their right to.

b. Remedies for failure to make a fair presentation

Where a fair presentation has not been made, insurers can apply a range of remedies depending on the circumstances:

- Where the failure to make a fair presentation was deliberate or reckless Insurers will have the right to:
 - avoid the policy
 - refuse to pay any claims
 - retain any premium paid.
- Where the failure wasn't deliberate or reckless Insurers can apply a "proportionate" remedy:
 - 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%.

Note:

Apart from cases involving under-insurance and where the failure to present the risk is neither deliberate or reckless, if your insurer is **Hiscox**, they will pay the claim in full and will not ask the policyholder to pay the difference in premium that would have been charged.

c. Warranties and other terms

Warranties

Under previous law, any breach of a warranty in an insurance contract would automatically discharge the insurer from liability, even if the breach is subsequently remedied or completely unrelated to the type of loss occurring.

Now, under the new Act, breaches of warranty can be remedied – cover is suspended for the period during which the warranty is not complied with and until the breach has been remedied. Then, an insurer will again be liable for losses unless the loss is attributable to something happening after the warranty was breached and before it was remedied.

Note:

- 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.
- An insurer's liability may not be suspended if the policyholder can establish that their non-compliance with the warranty could not have increased the risk of the loss that 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.)

Abolition of basis of contract clauses

Basis of contract clauses turn information provided by the policyholder 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.

d. Fraudulent claims

The Act clarifies the remedies available to an insurer if a fraudulent claim is made. When this happens, the insurer:

- is not liable for the claim and may recover any payment made, and
- if notice is given, may cancel the policy with effect from the date of the fraudulent act and keep premiums, but
- Claims made before the fraudulent act will be unaffected.

e. Contracting out

Other than in respect of the abolition of basis of contract clauses (see 3. Above), 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.

All of our insurers - Arch, Argo, Aviva, Hiscox and XL Catlin – support the Act and will not be opting out.

3. Future legislation

The Enterprise Act, which comes into force on 4 May 2017, amends the Insurance Act by creating an implied term in all English law insurance policies that claims must be paid within a reasonable time. Regardless of any laws or regulations, Glemham always strives to work with our insurers and TPA claims providers to pay all claims as quickly as we can, allowing for a proper investigation of the claim. We are committed to enhancing this service further should the terms of future legislation require us to do so.

4. TOBAs

We've reviewed our TOBAs and can confirm there are no changes needed to meet the requirements of the Insurance Act

5. Helping your clients help us

The Insurance Act is designed to provide clarity and certainty to policyholders and for this to work as intended, there are a number of things you can do as our broker to help us assess the risks you present to us whilst adhering to the requirements of the Act:

- Ensure your customers understand the key changes in the law that impact them.
- Ensure you allow sufficient additional time in your renewal timetable to let the customer prepare and perform a reasonable search for information.
- Consider whether there is anything special or unusual about the risk compared to other similar businesses.
- Review the templates and fact-finds you use to gather disclosure information.
- 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 the term "reasonable search".

For further information or if you have any questions about the Insurance Act and how it might affect the policies you place with Glemham please contact us.

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