

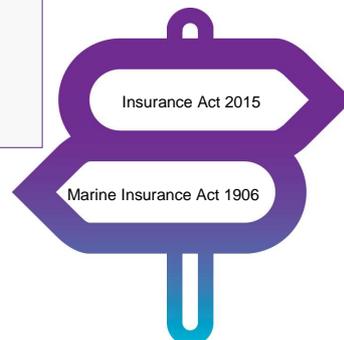
# INSURANCE ACT 2015

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Luton CII 22<sup>nd</sup> October 2015

## Insurance Act 2015

- Main changes
  - Disclosure
  - Warranties and other contractual terms
  - Remedies for fraudulent claims
- Summary
  - Challenges for insurers
  - Challenges for brokers
  - RSA response



## Insurance Act 2015 - Background

### Key dates

- Royal Assent was given on 12 February 2015
- Changes will come fully into force on 12 August 2016



The Act changes the Marine Insurance Act 1906 amending a number of areas making them more straightforward and practical

The Act applies mainly to non-consumer insurance contracts

The Insurance Act 2015 will introduce changes to the laws governing:

- Pre-contractual disclosure;
- Warranties and other contractual terms; and
- Insurers' remedies for fraudulent claims

## MAIN CHANGES

- **Disclosure**
  - Warranties and other contractual terms
  - Remedies for fraudulent claims

## Disclosure – duty of fair presentation – what is changing

### Marine Insurance Act 1906

- Insureds must disclose every material fact that an insurer needs to know
- How does a customer / broker know everything an insurer needs to know or considers to be material?

### Insurance Act 2015

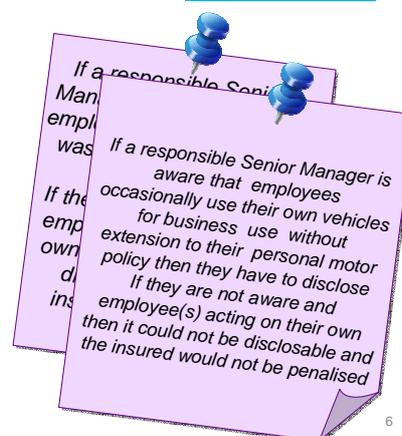
- Clearer duty of fair presentation
- Encourages active rather than passive engagement by insurer, broker and customer
- Clarifies matters known or presumed to be known by each party – what does or does not need to be disclosed
- Includes the manner in which the disclosure must be presented e.g. to avoid 'data dumps' on insurers

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## Disclosure – duty of fair presentation - INSURED

Insured parties will be considered to have known, or ought to have known:

- matters that could be expected to be revealed by a reasonable search of information available to the insured – e.g. information held within the organisation or by their broker; or
- the insured organisation will be deemed to have the knowledge of anyone who is a part of their senior management, or who is responsible for their insurance or risk management

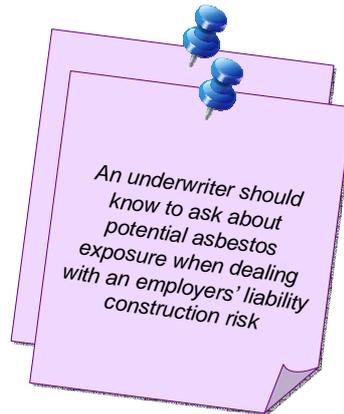


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## Disclosure – duty of fair presentation - INSURER

Insurers will be deemed to know or ought to have known:

- matters known to individuals who participate on behalf of the insurer in deciding whether to take the risk and on what terms – e.g. underwriting teams;
- knowledge held by the insurer and readily available to the person deciding whether to take the risk; and
- matters known by an employee or agent of the insurer and which should reasonably have been passed on to the person deciding whether to take the risk



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## Insurer remedies for failure to make a “fair presentation of the risk” – what is changing

### Marine Insurance Act 1906

- An insurer can refuse all claims under an insurance contract if the pre-contractual disclosure duty was breached by the insured
- This applies even if the breach was committed by the broker when acting as agent of the insured

### Insurance Act 2015

If the policyholder fails to make a “fair presentation of the risk”, there is a new system of proportionate remedies for the insurer based on what the insurer would have done had the failure not occurred:

- deliberate or reckless breach: the insurer can avoid the contract and keep any premiums;
- breach is neither deliberate nor reckless (i.e. ‘innocent’) and the insurer would not have entered into the contract: the insurer can avoid the contract but must return any premiums;
- breach is neither deliberate nor reckless (i.e. ‘innocent’) and the insurer would have entered into the contract on different terms, other than terms relating to premium: the insurer will be able to treat the contract as if those different terms apply – e.g. any additional exclusions that would have been imposed;
- breach is neither deliberate nor reckless (i.e. ‘innocent’) and the insurer would have entered into the contract for a higher premium: the insurer can reduce the cover to which the insured is entitled on a proportionate basis

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## MAIN CHANGES

- Disclosure
- **Warranties and other contractual terms**
- Remedies for fraudulent claims

### Warranties – what is changing

#### Marine Insurance Act 1906

- Allows “basis of contract” clauses i.e. clauses that convert all representations, even if immaterial, into warranties

#### Insurance Act 2015

- Abolishes “*basis of contract*” clauses

## Warranties – what is changing

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#### BASIS OF CONTRACT EXAMPLE:

When the proposal or statement of fact is incorporated as the basis of contract and therefore acts as a warranty



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## Warranties – what is changing

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- Breach of a warranty discharges the insurer from liability completely from that point onwards, even if the breach was remedied

### Insurance Act 2015

- Abolishes “*basis of contract*” clauses
- Breaches of warranty will be suspensive – i.e. Insurer is back on cover once the breach is rectified

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## Warranties – what is changing

### Marine Insurance Act 1906

#### SUSPENSIVE BREACH OF WARRANTY EXAMPLE:

Warranty that a sprinkler system must be in operation. Sprinkler system is off-line for 2 weeks. Cover is suspended during that 2-week period. Two-weeks later the sprinkler system is fixed and goes back on-line. Cover restarts as the suspension is lifted.

from liability completely from that point onwards, even if the breach was remedied

### Insurance Act 2015

•Breaches of warranty will be suspensive – i.e. Insurer is back on cover once the breach is rectified



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## Warranties – what is changing

### Marine Insurance Act 1906

- Allows “basis of contract” clauses i.e. clauses that convert all representations, even if immaterial, into warranties
- Breach of a warranty discharges the insurer from liability completely from that point onwards, even if the breach was remedied
- Allows insurers to avoid the claim for breach of warranty regardless of whether the breach was material to the loss

### Insurance Act 2015

- Abolishes “*basis of contract*” clauses
- Breaches of warranty will be suspensive – i.e. Insurer is back on cover once the breach is rectified
- For insurer to avoid the claim for breach of warranty, the breach has to be material to the loss

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## Warranties – what is changing

Marine Insurance Act 1906

Insurance Act 2015



### BREACH OF WARRANTY MATERIAL TO THE LOSS EXAMPLES:

Insured suffers a theft and submits a claim

Insurer investigation uncovers that the sprinkler system was not operational (breach of warranty)

Insurer currently has the right to void the policy

Insurance Act 2015 provides insurer with the right to avoid a fire claim but not a theft claim as the breach is not material to the loss

Exactly the same in reverse, if there is an electrical fire but the insured was not compliant with their security alarm warranty then that breach wouldn't be material to the loss.

was material to the loss

•For insurer to avoid the claim for breach of warranty, the breach has to be material to the loss

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## MAIN CHANGES

- Disclosure
- Warranties and other contractual terms
- Proportional remedies
- **Remedies for fraudulent claims**

## Remedies for fraudulent claims – what is changing

### Marine Insurance Act 1906

- In the event of fraud, an insured party forfeits the whole claim and insurers can avoid the whole contract and keep all premiums

### Insurance Act 2015

- Insurers:
  - will not be liable to pay the fraudulent claim;
  - may recover any sums paid to the insured in respect of the fraudulent claim; and
  - may, by notice, treat the policy as terminated with effect from the fraudulent act and retain all premiums paid. Previous valid claims are unaffected

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## SUMMARY

- **Challenges for Insurers**

- Challenges for Brokers
- RSA Response

## Challenges for Insurers



- Insurers will need to be able to demonstrate how they would have acted if they had been provided with a fair presentation of the risk
- Review of how surveys work and whether they in fact act as a basis of contract
- Insurers will need to consider whether they should ask questions about particular aspects of the risk to be insured
  - Underwriters and their teams are deemed to know information that is relevant to the line of business or trade that they are authorised to underwrite
  - Not appropriate to ask lots of unnecessary questions
- Onus is on the Insurer to demonstrate that any breach of warranty is relevant / material to the loss

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## SUMMARY

- Challenges for Insurers
- **Challenges for Brokers**
- RSA Response

## Challenges for Brokers



- Duty of broker to customer does not change
  - Still agent of the customer
- Any act, error or omission of the broker is deemed to be an act, error or omission on the part of the customer
- Schemes and facilities. Given the bespoke nature of these and how when authority is delegate the broker may be wearing “both hats”, it is worth early conversations with Insurers to ensure compliance by August 2016
- The broker has a duty that they, and their customer, make a fair presentation of risk
  - Data dumping will not be considered to be a fair presentation so much like the Act works to stop Insurers relying on “catch-all” wordings, it also works to stop “catch-all “ presentations and instead relies on fair presentation of risk
  - Worth reviewing any pro-formas to ensure that they represent fair presentation, especially if any pro forma in conjunction with proposal form and/or statement of fact potentially act as a basis of contract.

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## SUMMARY

- Challenges for Insurers
- Challenges for Brokers
- **RSA Response**

## RSA Response to date



- Review of all our underwriting guidance and instructions in order to evidence RSA's underwriting stance
- Project to remove "basis of contract" clauses from standard policy wordings by August 2016
  - Commercial Combined recently refreshed and new wording is compliant with the Insurance Act 2015 . No standard warranties, no statement of fact or proposal
- Bespoke schemes resource to talk to our schemes brokers about compliance for individual schemes, facilities and deals.
- With immediate effect, interpret all warranties on a suspensive basis
- Work with brokers on fair presentation of risks
  - Where appropriate, ensure we ask you good quality and relevant questions for risks
- With immediate effect, seek remedies outlined in the Act if non-disclosure applies
- It is possible to contract out of some parts of the Insurance Act 2015
  - RSA will NOT be taking this stance



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ANY QUESTIONS?