

Insurance Act 2015 Reforms

This document explains Allianz Commercial's response to the key elements of the reforms enacted by the Insurance Act 2015, and details how these changes will impact you and your customers.

Introduction

Since 2006 the Law Commission and Scottish Law Commission have been conducting a joint review to reform insurance contract law for consumer, marine and non-consumer insurance.

The review has been phased with the first stage culminating in the Consumer Insurance (Disclosure and Representations) Act 2012. This covers one discrete area of consumer insurance law and applies to policies issued or renewed on or after 6th April 2013. The 2012 Act replaced the consumer's duty to volunteer information with a duty to answer the insurer's questions honestly and reasonably.

On 12th February 2015, Parliament passed the second piece of legislation, the Insurance Act 2015. This Act reforms post contractual issues for consumer and non-consumer insurance contracts alike and pre-contractual obligations on commercial policyholders to make a fair presentation of the risk. These latest reforms represent the largest overhaul to insurance contract law in England, Scotland and Wales in over a century. They are intended to bring the market into the twenty first century by rebalancing rights and remedies when things go wrong.

Insurers have the option to opt out of these changes or embrace them by August 2016. As we always have the customer at the forefront of what we do, we have gone above and beyond the actions required and intend to adopt the reforms with immediate effect.

The key provisions relate to disclosure, warranties, conditions and fraud, as follows:

Duty of Disclosure and Representation

The duty of disclosure is retained for business insurance, as part of a wider 'duty to make a fair presentation of the risk'. The duty is satisfied if either all material circumstances are disclosed by the business, or sufficient information is provided to put the insurer on notice to make further enquiries.

Remedy for Failing to Make a Fair Presentation of the Risk

If a business fails to make such disclosure, the insurer's remedies must be proportionate (other than where non-disclosure is fraudulent or reckless), based on what the insurer would have done if it had received a fair presentation of the risk.

Basis of Contract clauses (Warranties)

Basis of contract clauses are abolished for all classes of insurance. These are clauses which incorporate all statements made in the proposal form as warranties in to the insurance policy.

Remedy for breach of Warranty

All warranties are made remediable. If a business breaches a warranty, the insurer's liability is suspended for the duration of the breach. If the breach is remedied before a loss occurs, the insurer has to pay the claim.

Remedy for breach of terms designed to reduce particular types or risk

Where an insured breaches a term of an insurance policy (whether it is a warranty, condition or similar) which is intended to reduce the risk of particular types of loss, the insurer cannot refuse to pay a claim if the insured shows that the breach did not increase the risk of the loss.

Remedy for fraud

The option of avoidance – treating the policy as if it had never existed – has been removed. This means that the insurer is still on risk for claims made before the fraudulent act occurred. The insurer has the option to terminate the policy with effect from the date of the fraudulent act.

Also introduced into the Act are amendments to the Third Parties (Rights against Insurers) Act 2010 so that this latter piece of legislation can finally be brought into force. This will allow third parties to bring actions directly against the insurer without first establishing the liability of the insured.

How we are embracing the Insurance Act

Fair Presentation of Risk

Whilst the Act reminds customers of the continued need to disclose material facts, the focus is on making customers and insurers aware of the different remedies available in the event of an innocent, deliberate or reckless failure to make a fair presentation of the risk. We will fully adopt these changes.

In the event of an innocent failure to make a fair presentation, where we would have issued a policy albeit at a different premium, we will proportionately reduce the amount payable for a claim's settlement by comparing the premium that would have been charged with that actually charged. If we would have applied different terms, these will apply at settlement of the claim.

In the event that a policy would not have been issued at all, we may avoid the policy but will return the premium.

Only in the event of a reckless or deliberate failure to make a fair presentation, would we have the option of avoiding the policy and not returning the premium.

Warranties

The Act requires that warranties become suspensive conditions. We have decided it is in the customers' best interest to go further and remove warranties from our policies.

Going forward, our policies will be warranty free. In the interim, if a policy contains a warranty it will now be treated as a condition precedent whilst we update our policy documentation.

Conditions Precedent

The 2015 Act still envisages the need to use conditions precedent to properly reduce the risk of a loss occurring for insurer and insured alike.

Whilst the Act only requires a breach of a condition precedent to increase the risk of loss before an insurer can refuse to meet a claim, we have gone beyond this requirement and will not repudiate claims where the customer can, on balance, show the breach did not actually cause or contribute to the loss.

Basis of Insurance

Basis clauses have been abolished by the Act and we are removing them from our contracts. We will not apply them in the interim.

Fraud Condition

The Act sets out the remedies available to the insurer in the event of fraud.

If the customer exaggerates, makes a fraudulent claim, or uses fraudulent documentation, we may refuse to pay the claim. We may also have the option to terminate the policy and retain the premium from the date of the fraudulent act.

How our customers benefit from these changes now

All customers* will benefit from the following changes with immediate effect:

- Warranty free policies
- Conditions precedent will only be invoked if a breach has contributed to the loss
- Basis clause removed from policies

We have distinguished between innocent, deliberate or reckless non-disclosure and clearly describe to our customers how we will deal with this.

Beyond the requirements of the Act, our customers will now benefit from warranty free policies.

We will ignore conditions precedent where our customer can, on balance, show the breach did not cause or contribute to the loss.

We are now starting to change our policy documentation. Whilst the Act does not come into force until August 2016, we intend to handle claims as if the Act applies to our existing policies. Our customers will therefore benefit from these changes immediately and we will start to issue updated policy documentation. In the meantime, the clauses we will use to apply these changes for Commercial Insurance products will shortly be made available on www.allianzbroker.co.uk.

* Where we participate in a co-insurance arrangement, Financial Lines (Professional Indemnity or Directors & Officers cover) or underwrite using a non-Allianz branded policy we will seek to apply the spirit of the Act, until policy documentation can be amended.