

Aon Risk Solutions  
Affinity



# The Insurance Act

What you need to know

# The Insurance Act 2015 (“the Act”)

The Act comes into effect on 12 August 2016 and aims to rebalance the position between the buyers of insurance and Insurers. Whilst it puts you (the Insured) in a better position than currently, it does impose a new duty: the ‘duty of fair presentation’. This will require you to change how information is provided to Insurers, and is explicit regarding who needs to be consulted when gathering such information.

The Act applies to policies that incept or renew on or after 12th August 2016; however, the new ‘duty of fair presentation’ applies to variations made to existing policies on or after 12 August 2016. Examples of such variations include: change in type of work undertaken; significant acquisitions; substantial work to property or change in its use; and other matters that materially increase the risk of loss, damage or injury that may give rise to a claim under the policy. (Please note: these are examples only and not an exhaustive list).

This document gives an overview of the most significant changes, with practical guidance on how to prepare for the new rules. The suggestions included here are intended as a helpful guide, to assist you as you prepare for the new duty. For further information, including more detailed guidance, please contact your usual adviser, or visit <https://insurance.aon.co.uk/insurance-act-2015>

## Key points to consider are

- Data gathering and renewal preparations may take you longer
- You may need to devise new processes for data collection and submission, which are likely to involve more people
- Senior managers will need to be involved and need to be aware that they may not have cover if they do not get involved
- You may need to consult other parties outside your organisation, e.g. consultants, agents, suppliers or those performing outsourced functions, to collect any material information that they may hold
- Keep a record of all information that is disclosed to Insurers and the process you took in order to meet your reasonable search requirement



## Contact

If you wish to discuss any of the information in this bulletin in further detail please contact your usual Aon contact.

## The new “duty of fair presentation”

This requires a slightly different approach to renewal. Importantly, a “reasonable search” must be undertaken, senior managers and the (internal and external) insurance team must be involved in the information sweep.

Full disclosure of every material circumstance that you know or ought to know must be made.

## What is material?

The type of information that needs to be disclosed is not changing: A circumstance which would have an effect on the mind of the prudent Insurer when assessing the risk. It includes specific or unusual facts relating to the risk to be insured and any particular concerns that led you to seek insurance cover for the risk.

## Whose knowledge is relevant?

Material circumstances known by your organisation's 'senior management': individuals who play a significant role in the decision making about how your activities are to be managed or organised.

Material circumstances known by anyone involved in the process of procuring your insurance on your behalf (both employees and agents). Including all those who participate in the insurance buying process, collate information about the risk, and negotiate with Insurer, whether as your employee or as an agent.

Material circumstance that would be revealed by a reasonable search of information known by others within your organisation, and held by others externally. This will vary based on the size and type of your business. It is intended to include information held by persons or entities who are covered by the insurance plus others who may hold information.

e.g. outside advisers and consultants, suppliers/service providers, and outsourced service partners.

It will be important to maintain a clear audit trail.

## How disclosure is made?

Must be presented in a clear, accessible and structured manner to the Insurer. It must not be too brief or cryptic. 'Data-dumping' is not allowed i.e. the provision of large amounts of undigested information.

In practice you must submit all information in clear and organised documents.

## Failure to meet the new duty of fair presentation?

Under current law Insurers have only one remedy where the duty to disclose material information is not met, namely, full avoidance of the insurance policy. This is changing so that the consequences will vary depending on the reasons for failing to meet the duty of fair presentation, and depending on what the Insurer would have done differently had the duty been met at the outset.

For further information on the potential consequences for failing to meet the 'duty of fair presentation', and other important changes to the Act, visit

<https://insurance.aon.co.uk/insurance-act-2015>

## Practical tips

### General

- Review your existing data collection and disclosure strategy and consider how this will need to be modified
- The process of data collection, validation and submission is likely to take longer, so you may need to start your renewal process earlier

- Note: A proposal form does not negate the new duty to make fair presentation. A proposal form focuses on the typical, basic, material circumstances relevant to the type of insurance sought, but will normally also require you to declare any other material circumstances that is known or ought to be known by you
- Consider how details of new or changing material circumstances will be reported during the year. (Most policies have an ongoing disclosure requirement)
- Be prepared to spend longer discussing the details of your organisation with us
- Consider how information will be documented and stored. An audit trail will be vital to evidence that a client has met its duty to make a fair presentation of risk

Do not point Insurers to company web-sites without direction. Where particular information is provided on web-pages, consider how to accurately keep a record of its content for future reference. This may be required at a later date to evidence what information was provided to Insurers.

## The information sweep

Take early action to identify and document 'senior management' and 'those involved in the insurance procurement process'. This ought to be by office or role, rather than individual name. Consider what action is required to ensure the listings are maintained to reflect subsequent appointments and departures.

Raise awareness now to ensure senior management and insurance personnel know what is expected of them and ensure they are aware of the importance to meet the new duty of fair presentation and the potential consequences of not doing so.

Identify the types of operating areas or specialist functions that may be an in-house source of material circumstances.

Decide what process will be adopted to collect information from within your organisation, with due consideration to any inherent reporting issues.

Review policy wordings to identify the scope of insured parties and additional beneficiaries. For example co-insureds, subsidiaries, additional insured's, beneficiaries etc. or current and former directors under a directors and officers (D&O) liability policy.

Consider who else, outside your organisation, might hold details of material circumstances e.g. outsourced functions, suppliers, partners, financiers etc. Take steps to ensure all such parties can in fact be identified and contacted.

Decide how you will make a search for information held outside your organisation.

For more information on Insurance Act visit

<https://insurance.aon.co.uk/insurance-act-2015>