

The Insurance Act

Are you ready for it?

Did you know you are now facing tighter restrictions when you take out a business insurance policy? No? Then you need to read what Jackie Hyde has to say about the new Insurance Act



What is the Insurance Act 2015 and how will it affect me? you might ask. The short answer is: a lot. It has made significant changes to the law in relation to business insurance and applies to all policies entered into from 12 August 2016. In fact, it is the biggest change within the insurance industry for 100 years, and it is vital that all businesses understand their obligations.

Why has it been brought into force?

The aim of the Act is to modernise insurance law and make recovering costs from an insurer when you make a claim simpler and fairer. The benefits of having the Act in place, however, are completely dependent on the customer or policyholder making a 'fair presentation of the risk' before confirming the policy.

How will this affect my nursery?

A 'fair presentation' is one that discloses, in a way that is reasonably clear and accessible, every 'material circumstance' that your senior management or those responsible for arranging insurance know or ought to know, before carrying out a reasonable search.

I see, but what does each of the key components mean?

Let's start with 'material circumstance'. This is anything that influences the insurer's decision on

whether or not to take on the risk and on what terms. This includes factors such as financial history, convictions of key personnel and business activities.

'Know or ought to know': this means if the information is readily available to you, but you fail to disclose it because you haven't conducted a search or have turned a blind eye, you will have breached your duty.

'Senior management' includes anyone who has a key role in making decisions on behalf of the business.

To conduct a 'reasonable search', you should take into account the nature of the insurance you want to take out and think hard about who in your organisation is best placed to assemble the necessary information.

'Reasonably clear and accessible' information is information that is presented in an unambiguous way. The new rules also prevent policyholders from concealing key facts amongst large volumes of less relevant or immaterial information.

What happens if I do not fairly present the risk?

If you deliberately or recklessly fail to present the risk fairly, for example by deliberately withholding key information or failing to take enough care when presenting it, the insurer is entitled to 'avoid' the policy and retain all premiums. In other words, the insurer can treat the policy as if

it never existed, which would result in no claims being paid. You could also be required to repay any claims payments that have already been made.

If your failure is not deliberate or reckless, insurers may still avoid the policy if they can demonstrate that the policy would not have been agreed if you had disclosed full details. There are other options available to the insurers but these are the most significant concerns.

So, the changes set out in the Act are significant, and it is vitally important that businesses do not ignore these changes and fully understand what is required from them when they arrange their insurance.

Unfortunately, it is not possible to cover all aspects in this article. So, if you would like a more detailed document, ring the dot2dot team on 01204 570390. ■

- Jackie Hyde is director of insurance broker, dot2dot, a specialist nursery insurance provider, which has now broken the £2m mark in premiums
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