

Update

Insurance Act 2015 set to be passed shortly

We reported in July 2014 that the Insurance Bill had been presented to Parliament, with two of the most controversial aspects (damages for late payment and terms designed to reduce the risk of a particular loss) having been omitted.

We report below on the changes which have been made to the Bill since July and which will now be included in the Act (please refer to our earlier updates for details of the other provisions included in the Act).

1) Terms not relevant to the actual loss

An amended version of the clause originally proposed by the Law Commissions has been re-inserted into the Bill. It applies to any term (not just a warranty) designed to reduce the risk of a particular type of loss, or of loss at a particular time or in a particular place. It will not apply to terms which define the risk as a whole (eg a requirement that a property will not be used commercially).

Where there is non-compliance with such a term, insurers will not be able to rely on that non-compliance as a defence where such non-compliance could not potentially have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

So, for example, where there is a requirement to install a burglar alarm, and that is not done, insurers will not be able to refuse an indemnity on that ground where there has been a flood.

However, where the non-compliance could potentially have had some bearing on the risk of the loss which actually occurred, there may be no need to establish that any non-compliance did directly cause the loss in question. So, for example, a failure to install a burglar alarm is likely to afford insurers a defence to a theft claim, even where the theft in fact resulted from an “inside job”. However, there are likely to be many grey areas.

Accordingly, in order to limit the scope for dispute, it would be advisable for insurers to specify in their policies what requirements they wish to impose, what risk of loss that requirement is intended to address and what consequence non-compliance will have.

2) Knowledge of the Insured

The Bill now expands on the previous provision that an insured’s knowledge does not include confidential information acquired by the insured’s agent (eg broker) through a business relationship with someone other than the insured. That has now been altered to encompass information obtained by the agent through a business relationship “with a person who is not connected with the contract of insurance”. Persons are “connected with a contract of insurance” (and hence the insured will be deemed to know information which the broker has from them) if cover is provided for them or (in the case of reinsurance) they are connected with the underlying policy.

Further information

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Accordingly, an insured will be deemed to know confidential information acquired by the broker from those who will be beneficiaries/co-insureds under the policy being placed.

The Act still provides that, in the case of a company, an insured's knowledge will be that of its senior management and those responsible for its insurance. The Explanatory Notes to the Act expand further on the meaning of "senior management". This term captures individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised. It is therefore likely to extend beyond the board of directors, especially for larger companies. It is advised that the category of "senior management" should be construed relatively narrowly but flexibly.

In any event, an insured will be deemed to know what "should reasonably have been revealed by a reasonable search", and so information held by non-senior management (but by those who, say, perform a managerial role) may still be imputed to the insured. Information held by any other person with relevant information (even those outside the company, such as the company's agents) will also be imputed to the insured if a reasonable search should have revealed that information.

3) Group insurance contracts

The Act as presented to Parliament provided that, in the case of a group insurance policy, where a fraudulent claim is made by one of the beneficiaries to the policy (who is not a party to the policy), the insurer may only treat cover for the fraudulent beneficiary as having been terminated at the time of the fraudulent act (and cover will remain in place for the other "innocent" beneficiaries).

This provision remains but the Explanatory Notes explain that this clause applies not just to eg employment group policies, but potentially also to insurance arranged by one company for a group of companies (if that is how the policy is structured). In a non-consumer context, the Act also now makes it clear that, if an insurer wants to contract out of this provision, it must comply with the transparency requirements to bring that to the attention of the eg group company beneficiary.