

The Insurance Bill

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The present position

The Insurance Bill (“the Bill”) was introduced into the House of Lords and is currently at the third reading stage prior to passing to the House of Commons. The Bill looks likely to be enacted in 2015, possibly even this side of the general election, and subject to any change in Government is likely to come into force 18 months following enactment. The Bill continues the reforms which began with the Consumer Insurance (Disclosure and Representation) Act (2012) (“the Act”).

The Bill

The Bill mainly applies to non consumer contracts and is broken into parts. A basic overview of those parts appears below:

- Part 2** **The duty of “fair presentation”.** The duty and concept of “utmost good faith” is gone. The new disclosure requirement is a “duty of fair presentation” by the insured. This duty still requires disclosure of material information and circumstances known to the insured, or the disclosure of sufficient information to put the insurer on notice that will reveal material circumstances. This Part will address the way in which a “fair presentation” impacts on both the insured and the insurer, and the remedies arising from deliberate/reckless non-disclosure in contrast with non-deliberate/non-reckless failure to make a fair presentation.
- Part 3** **Warranties.** Pre-contract representations by the insured can no longer be “converted” into warranties in the policy. The present law which entitles an insurer to cancel a policy for breach of warranty is to be abolished. In its place, an insurer will remain liable for claims prior to any breach, but will not be liable for any claims arising from a breach of the warranty, from the date of the breach to the time when the breach is remedied – i.e. there will be a suspensory effect on the policy while the warranty is in breach.
- Part 4** **Fraudulent claims.** Addresses the remedies available to an insurer in respect of fraudulent claims and proposes how those remedies will apply to group insurance.
- Part 5** **“Good faith” and contracting out.** This part focuses upon the removal of the duty of “utmost good faith” and limits the basis on which an insurer can contract out of the provisions of this Bill in both consumer and non-consumer matters.
- Parts 6 & 7** These sections make amendments to other acts to ensure compatibility with this bill and clears the way for the Third Parties (Rights Against Insurers) Act 2010 to be brought into force.

What does this mean for insurers?

Whilst it may be some time before the Bill comes into force, insurers may wish to start preparing now in the following ways:

- Underwriting** Reviewing their policy wordings, certificates, notices to policyholders, advertising material, underwriting criteria, and question sets to ensure that they comply with the Bill and to ensure that the commercial insured is targeted with the appropriate questions on those areas which materially affect risks. Insurers will be required to underwrite at inception/variation stage and not at claims stage.
- Fraud** The burden to prove a deliberate/reckless (and fraudulent) presentation will rest with the insurer. Fraud processes and investigation procedures need to be looked at to ensure any fraud risks are mitigated.
- Claims** Handling guidelines and standard letters will need to be updated to remove references to insurance being a contract of utmost good faith. Claims will need to be dealt with pursuant to the Insurance Bill once enacted and care will need to be taken to apply the new provisions.
- Complaints** Complaints processes will need to be amended to take into account the provisions of the bill having regard to the Financial Ombudsman Service, their jurisdiction, and their likely interpretation of the bill.
- Brokers** Training and assistance will be needed for all brokers, partners, and key suppliers to ensure that they will be ready for the Bill as their failure will be deemed to be the insurer's failure.
- Training** Training material will require amendment to reflect the Bill and its provisions.

What next?

Weightmans' Market Affairs Team will be issuing regular updates as the Bill passes through Parliament. In our next update, we will look in more detail at Part 2, The Duty of Fair Presentation and provide you with practical guidance on how you could prepare your organisation for the arrival of the Bill. In the meantime, should you wish to discuss the Bill and its effects in any more detail, please don't hesitate to get in touch.

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