

Legal & Regulatory updates

The Insurance Act 2015

The Insurance Act 2015 came into force in respect of all non-consumer (commercial) insurance policies placed or varied after 12th August 2016. The Act applies to all policies governed by the laws of England and Wales, Scotland and Northern Ireland and is the most significant change to insurance law in over a century. It is intended that these legislative changes create a new and fairer balance between policyholder and insurer, and clarify their duties and obligations. As with all new legislation, there may be areas of ambiguity which will not be resolved until tested in the Courts, so definitive guidance is not possible at this time.

It is vital that you are aware of the introduction by the Act of The Duty of Fair Representation. This is a new obligation on Policyholders replacing the existing duty of disclosure. A policyholder must now provide a fair representation of the risk to the insurer, giving clear and accessible disclosure of information, without material misrepresentation of any material circumstance known by - or which ought to be known by - the Policyholder. It is not necessary to disclose information to an insurer which is common knowledge or which they could reasonably be expected to know, however it would be our recommendation that any Policyholder taking such a position have a strong basis to substantiate it before relying upon it.

Equally, it is not acceptable for an insurer to be provided with an excess of information to hinder the identification of items which may be material to their consideration of a risk.

Where there may be uncertainty as to whether the Duty of Fair Representation has been met, an insurer should be provided with sufficient information as to put a prudent insurer on notice that it may need to make further enquiries to ensure that it has awareness of all material circumstances. This is an ongoing obligation which applies throughout the duration of a policy.

You should be aware that the Act makes provisions for sanctions to be applied in the event that the Duty is breached.

- (i) If a breach can be shown by the insurer to be deliberate or reckless, a policy can be declared void from inception and the insurer can retain the premium.
- (ii) Where the breach was not deliberate or reckless the insurer can retrospectively apply terms as they would have done if the information had been made known to them as it should. This could range from voiding the policy from inception and returning the premium, reducing any claim settlement in proportion to what higher premium the insurer would have charged, or applying new or different terms, limits, exclusions or conditions to the cover.

Circle can assist and offer guidance to you on this Duty, and it is something which will be a focus of attention. We cannot of course disclose information to your insurer where this has not been made known to us. These changes may require Circle reviewing long held risk information with you again, and looking at certain aspects of your risks as if they were new to us in an effort to help you, and us on your behalf, meet these new obligations.



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Insurance Premium Tax increase

Insurance Premium Tax is the tax levied by HM Government on most general insurance premiums. There are some exemptions, mostly relating to shipping, aircraft and the international transit of goods, and some consumer contracts, such as travel and warranties, that attract a higher rate.

With effect from the 1st June 2017 the standard rate became 12%, following a series of increases in recent Budgets. There have been suggestions that the Chancellor will continue to increase the rate until it falls in line with the Value Added Tax (VAT) rate.

Ogden Tables

The Ogden Tables will be almost unheard of outside of the realms of the legal industry, insurance profession and related areas. They are a set of statistical tables and other information for use by the UK Courts to calculate future losses in personal injury and fatal accident cases.

The Tables are used to determine the lump sum awarded from which rest of life care is paid to a claimant, and this includes an assumed rate of investment return the monies awarded will yield. The Lord Chancellor announced in March 2017 that the rate used must be reduced from positive 2.5% to negative 0.75% reflecting the poor long-term investment returns in recent years, and for the foreseeable future.

Consequently, compensation being awarded or reserved for long term losses will now increase substantially. This is amplified significantly where an injured person is of young age. This change means that the reserves insurance companies hold to pay compensation for expected losses have had to be recalculated using the revised Tables. In a published example from a major insurer, the increased estimated cost on a claim for the injury of a 30-year male earning £25,000 requiring rest of life care would increase from £3,534,000 to £6,325,000.

This will impact all policies which include cover for liability for personal injury including Motor Insurance, Employers' Liability Insurance and Public & Products Liability Insurance. Insurers across the market have warned that they must increase the rates used to calculate premiums in order to ensure they have both sufficient reserves to meet the revisions to current claims and those of future losses, and to comply with the requirements of their own regulatory framework.

There are no indications currently that insurers will be considering this as a *one-off* increase, and it may be a continuing process over coming years as they seek to correct their reserves.

Please speak to us about any of the issues raised and we will be happy to provide further advice and guide you in making the right decision

