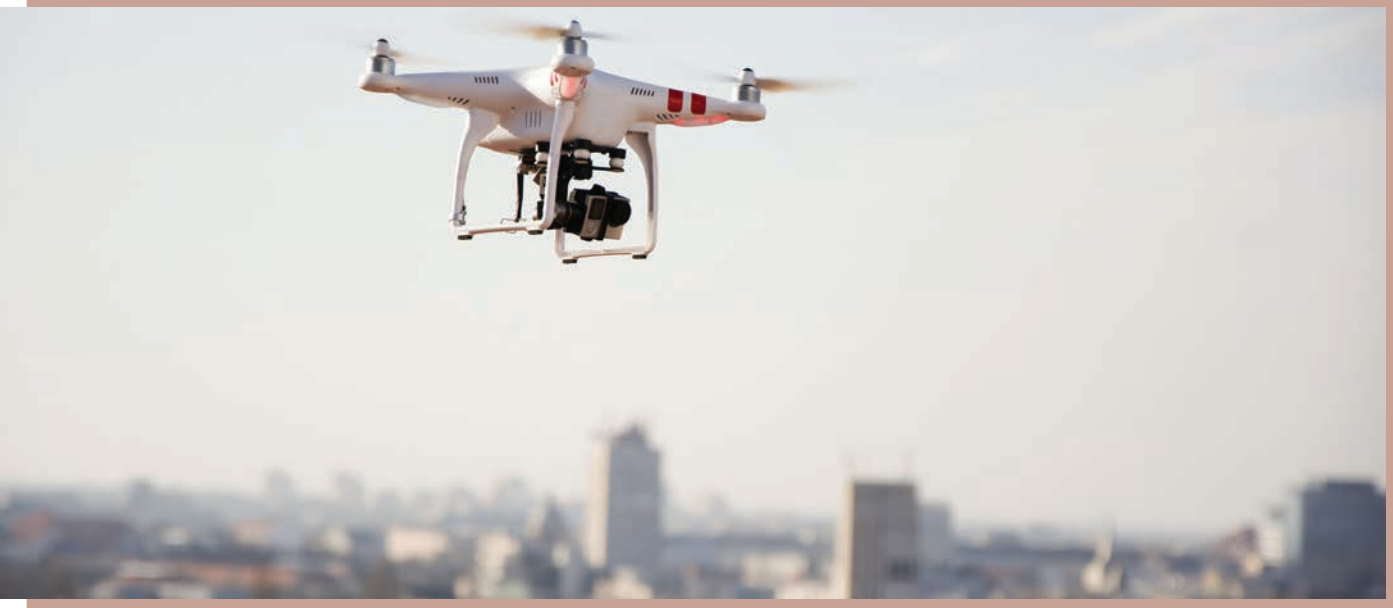
AUTUMN 2015

# COVERNOTES



## UNMANNED AIRCRAFT FLYING ABOVE

**Unmanned aircraft may sound like they belong in a scene from some science fiction movie set, but they are already out there enabling jobs to be done more safely and at lower cost, ranging from agricultural monitoring, to wildfire surveillance and infrastructure maintenance.**

In the UK, a House of Lords committee has recommended that a register of these unmanned aircraft, widely known as "drones" be created, which will initially target commercial operations. Other recommendations include whether or not to allow the use of geo-fencing (flight based upon GPS coordinates), clearer guidance for law enforcement and guidance on what levels of insurance users should purchase.

Insurers are also looking at the use of drones for their own purposes. In the US, insurers State Farm and AIG have received clearance from the Federal Aviation Administration to use drones for underwriting and claims application purposes.

The use of flying robotics is predicted to significantly increase over the next 10 years. By 2020 the use of drones could become common practice for almost 40% of businesses, according to corporate risk managers surveyed earlier this year by Munich Re.*
A multitude of liability issues will need to be addressed as a result. The risk managers surveyed by Munich Re highlighted various concerns, including invasion of privacy (69%), inadequate insurance (12%), personal injury (11%) and property damage (8%).

To address the needs of this expanding industry, several insurers have developed coverage solutions specifically designed for the exposure faced by remotely piloted, semi-autonomous, and fully autonomous aircraft.

Coverage can include either ongoing usage or can be tailored to individual coverage for specific events. Typical coverage often includes similar elements as can be seen in a traditional aviation policy, such as:

- Contractual liability
- Personal and bodily injury to operators and third parties

CONTINUED FROM FRONT PAGE

- Property damage
- Third party property damage

Additional, more bespoke cover, can include:

- Cover for operating at high risk locations such as over water and indoors
- Loss or damage to the drone and associated equipment
- Cover for war and allied perils risks
- Cover for operators still in training

Before considering using drones for your business it is also important to remember the guidelines for businesses from the Commercial Aviation Authority. You must request official permission from the authority if you plan to:

- Fly the drone on a commercial basis
- Fly a camera fitted drone within congested areas or close to people or properties that are not under your control

As drones become more popular, even if you are not planning on using them in your business it is also important to reassess any business interruption insurance cover that your business may hold. Flights into Manchester Airport were recently suspended when a drone was spotted in the area. As drone technology is still relatively new, it is important to check your cover is up to date and that you will be covered should a rogue drone cause trouble for your business.

Sources:
"Drone use could soon become common practice for 40% of businesses, according to corporate risk managers surveyed by Munich Re" press release 13th May 2015*
http://www.munichre.com/site/mram-mobile/get/documents_E976364882/mram/assetpool.mr_america/PDFs/5_Press_News/Press/2015%20Drones%20Survey/05-13-2015_drone_survey%20(2).pdf
http://www.insurancejournal.com/news/national/2015/06/05/370708.htm
http://www.nola.com/homegarden/index.ssf/2015/06/drones_to_be_used_for_property.html
http://www.manchestereveningnews.co.uk/whats-on/whats-on-news/drone-cameras-what-rules-taking-9437300

# WHAT YOU NEED TO KNOW ABOUT THE INSURANCE ACT

**Insurance governance specialist Mactavish have warned that commercial insurance customers in the UK need to be aware that their current risk analysis standards may "fall substantially short" of the compliance implications associated with the incoming 2015 Insurance Act.**

The Act aims to clarify how companies provide information to insurers and what information is to be provided to them. Under the Act, commercial policyholders must in future demonstrate a comprehensive understanding of their insurance risk as they will have what is called a duty of "fair presentation" to the insurer. It will come into force on 12th August 2016.

According to the British Insurance Brokers Association (BIBA), for commercial insurance buyers the Act distinguishes between facts known to the buyers of the insurance and what is known elsewhere in the business, but ought to be accessible by the insurance buyer should a reasonable search be conducted.

Under the Act, information provided to insurers must be clear and accessible, material facts known to senior management must be revealed and businesses must conduct reasonable searches for additional potential risks. According to BIBA, this is designed to prevent overly brief submissions but also to combat the reverse scenario where hundreds of potentially relevant files are provided to insurers as a 'data dump' without any clear indication of what is a material fact or not.

The Chartered Insurance Institute notes that what constitutes a "fair presentation" will be determined by case law "in the fullness of time."

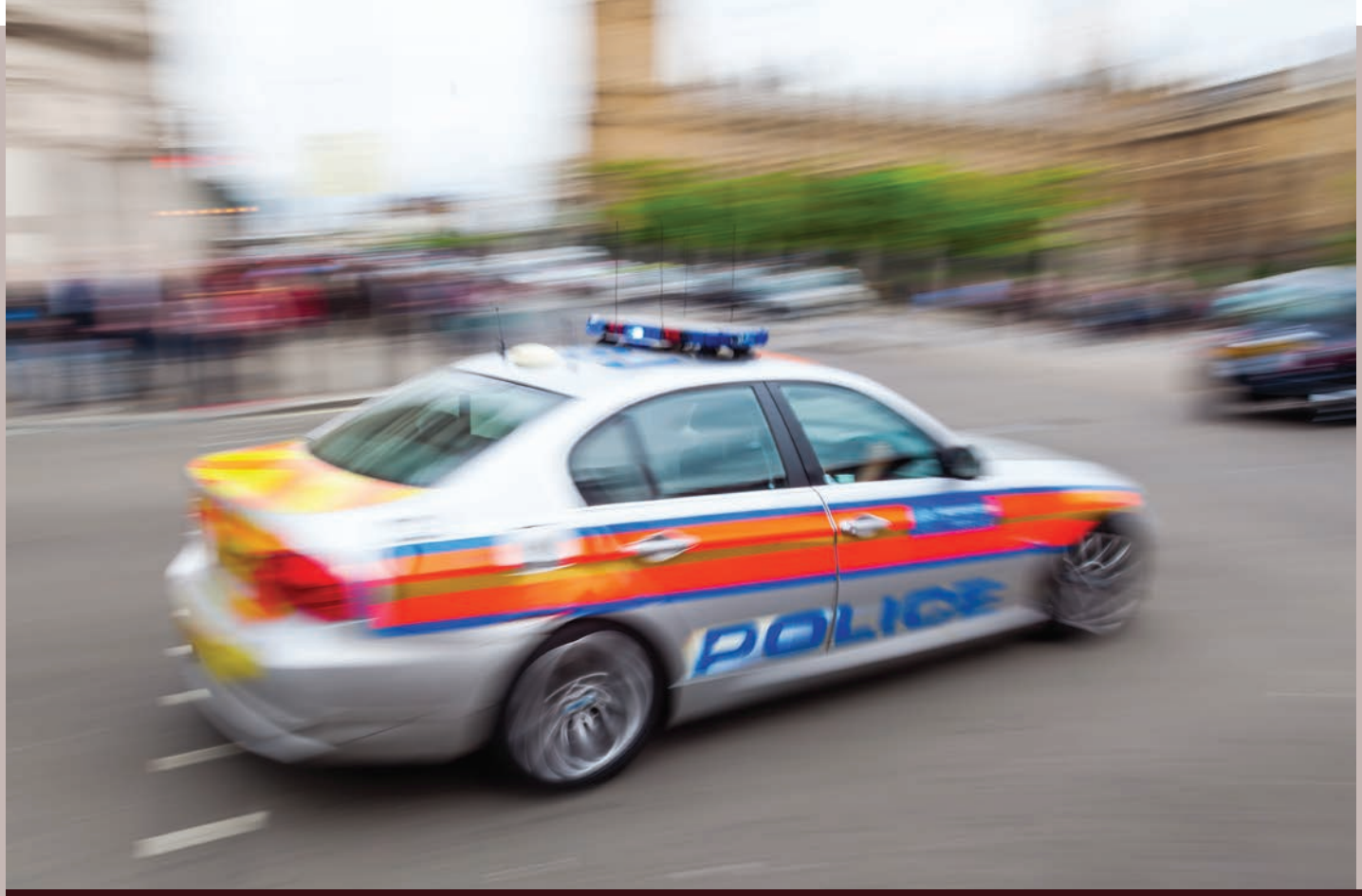
At the moment non-disclosure of a material fact means that a policy can be voided and no claims paid, as if the policy had never existed. However, under the new Act, if material information is not provided by the commercial customer to the insurer, then a subsequent claim will not be automatically refused in full – unless it is fraudulent, deliberate or reckless. However, the insurer can still refuse to pay some or all of a claim if they prove that the information not previously disclosed would have cost extra premium, or that they would have applied extra terms to the policy as a result of knowing that information.

The legislation also intends to prevent insurers from rejecting commercial customer claims when the policyholder breaches a condition of the policy which has nothing to do with the claim. For instance if a condition says all trade waste must be swept up at the end of each business day, and it isn't, then the insurer cannot refuse to pay a claim for flood damage or a theft claim, which they can currently. Taking this further, under the new Act, policy cover can be suspended if you do not comply with a condition, but once you do the cover returns. At present, if you do not comply with certain conditions then no claims will be paid from that date, irrespective of the type of claim.

As a result of the Act, all insurance buyers should leave more time for renewal (particularly data gathering) or they could risk failing to comply with their new statutory duties, as well as missing the opportunity to benefit from the additional defences that the new law will provide.

**If you have any concerns about your existing responsibilities regarding material facts and disclosure, or wish to understand more about how the new Act will affect your policy covers then please contact us.**

Sources:
BIBA Guide to Insurance Act 2015. Post Online.




# DRUGS AND DRIVING REGULATIONS

**New regulations aimed at cracking down on drug drivers came into force in England and Wales this March, so far resulting in over 400 arrests a month.**

According to statistics from the Institute of Advanced Motorists and the Daily Mail, the new roadside drug testing kits have seen around 50% of motorists stopped for suspected driving under the influence, testing positive. The kits allow police officers to instantly test for 16 legal and illegal drugs if they suspect a motorist is driving under the influence.

This brings drug driving legislation in line with drink driving laws.

Scotland and Ireland have their own drug driving laws. These remain unchanged.

Whilst drug driving has always been illegal in England and Wales, the new law sets limits at much lower levels. These levels now border on zero tolerance for drugs such as cannabis, cocaine, ecstasy and ketamine.

The law also includes eight prescription drugs covering conditions such as anxiety, insomnia, severe pain and epilepsy. The limits set for these drugs exceed normal prescribed doses.

Those found to be drug driving will be banned from driving for at least a year. They can also be fined up to £5,000, spend up to a year in prison and receive a criminal record.

Under the new law, police no longer need to prove that a motorist is unfit to drive. They now only have to prove that the motorist has an illegal level of drugs in their system whilst driving.

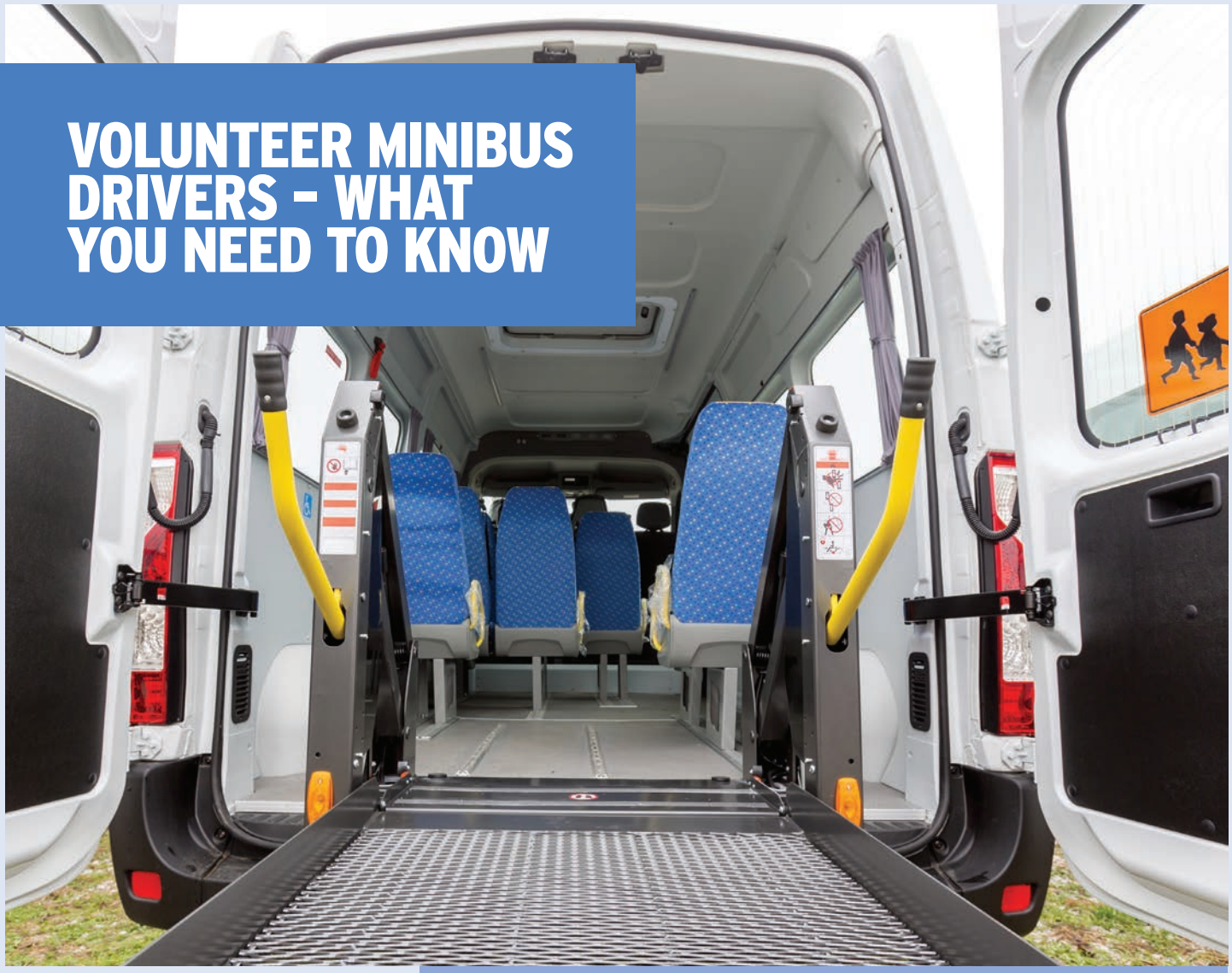
Employers need to be aware of these changes, especially surrounding prescription medicines. Employees need to know it is their responsibility to ask their doctor if any prescribed medication may affect their ability to drive. Those who take prescription medication should also be encouraged to carry proof which they can produce to police if necessary. Procedures need to be in place allowing employers to deal with any employees who fall foul of the drug driving law. They need to consider if they might want to dismiss an employee if a drug driving ban affects their ability to work.

Employers also need to consider the potential insurance problems they may face due to an employee's previous conviction for drug driving.

It is important that employees are made aware of the implications of the law and the potential consequences of its violation.

Sources:
http://www.qbeeurope.com/news/blog/permalink.asp?id=217
http://www.dailymail.co.uk/news/article-3120803/More-400-month-arrested-drug-driving-new-laws-introduced-50-motorists-stopped-testing-positive.html

# VOLUNTEER MINIBUS DRIVERS – WHAT YOU NEED TO KNOW



**Many non-commercial bodies (such as schools, voluntary bodies and charities) rely on the goodwill of volunteers to drive minibuses. However, it is important to understand the rules around who can and who can't get behind the wheel in such circumstances.**

Assuming they are not paid to do so, the DVLA and DVA's (for Northern Ireland) rules state that anyone with a licence held before 1st January 1997 can drive a minibus carrying up to 16 passengers.

**For drivers who passed their test after this date, there are additional rules that need to be adhered to:**

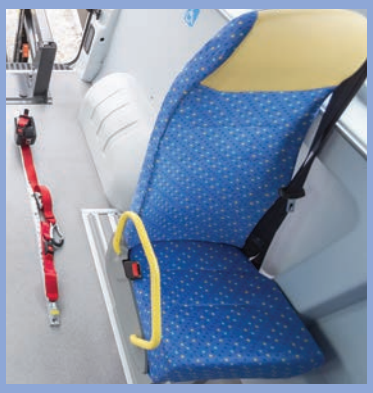
- The driver must be at least 21
- They must have held their licence for over two years
- The minibus must weigh less than 3.5 tonnes and not be towing a trailer
- The minibus can only be used for social purposes, not for commercial ones

If an organisation is deemed to be operating on a hire and reward basis it would need a full Public Service Vehicle operator's licence or private hire vehicle licence. Drivers may also need a passenger carrying vehicle entitlement on their own driving licence.

A minibus permit could provide a solution for some organisations. It is available to organisations that provide transport on a not-for-profit basis and gives exemption to the rules around hire and reward.

However, to gain one of these permits an organisation needs to be able to show that their minibus service is being driven for a voluntary organisation that benefits the community. This could be difficult for some organisations to prove. They will need to be able to show that any charges are to cover running costs and are not for profit.

In addition, any organisation consenting to the use of their vehicle in this manner will also need to consider the insurance implications of such use of their minibuses.



Organisations need to make sure that both they and the driver have the correct licences in place and are adequately covered by insurance in the event of an accident.

For more information on minibus insurance please contact us.

Sources
http://www.qbeeurope.com/news/blog/permalink.asp?id=212
https://www.gov.uk/driving-a-minibus

# MYTHS AROUND CYBER LIABILITY COVER

**Cyber insurance is becoming increasingly popular. However, there are still a lot of misconceptions surrounding it.**

Many SMEs believe that cyber insurance is just for companies who sell products over the internet. Not only e-commerce companies and those undertaking transactions over the internet face cyber risks. Risks are faced by any and all companies that collect and store personal and corporate sensitive data, or are reliant on computer and telephone networks and/or data for their daily operations.

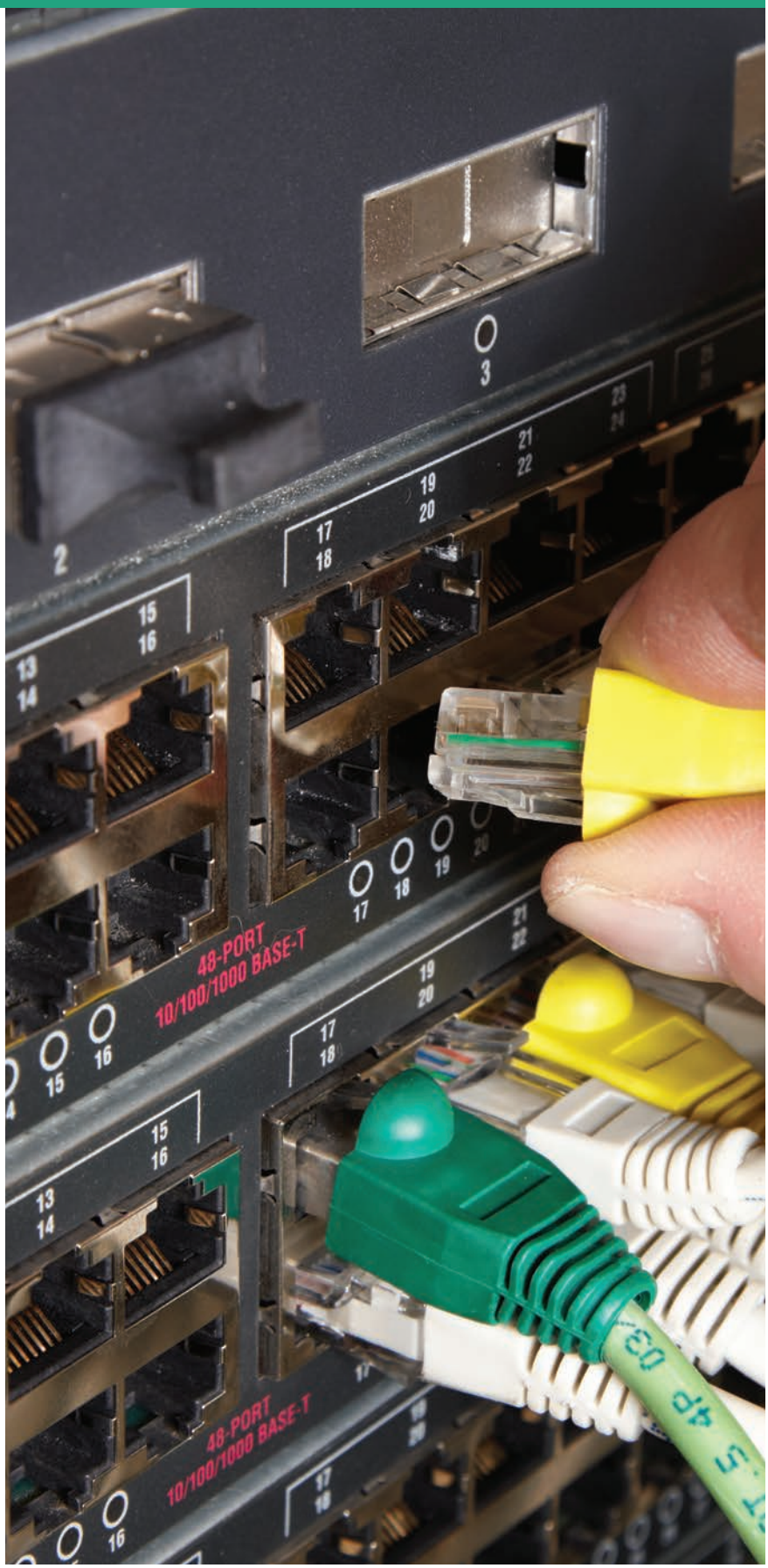
Whilst not all SMEs operate in sectors where notifications of a data breach are reported on an obligatory basis, this does not mean that cyber insurance is not needed. Even if legally you do not need to notify victims of a data breach, it is recommended by many privacy regulators to do so as part of best practice processes. In addition notifying victims can avoid or mitigate any reputational harm.

Some companies believe that if they spend vast amounts of money on IT security, then they are not at risk. Both financially and ideologically motivated hackers can be very persistent in penetrating a computer network and no system is 100% secure. Computer networks are only able to complete the functions which they are programmed to do; it is often the humans who prove to be the weakest link.

Computer networks are the heart of almost all companies. Any kind of failure of these systems could halt day-to-day operations and cost companies a significant amount in lost revenue. System interruption can not only result from computer attacks/virus transmission, but also from operational and administrative errors.

Information required by underwriters, for cyber insurance, is usually limited to a simple proposal form. In some cases a telephone call may be necessary to expand on complex cases.

To fully protect a business and its data, cyber insurance should be viewed as an integral part of any company's risk management toolkit. Please contact us for further information.




Sources:
Willis Cyber Brochure 02/15

# REINSTATEMENT, DOES IT ALWAYS MAKE SENSE?

**Many property insurance policies are underwritten on a reinstatement basis. Reinstatement means repairing (or replacing) a building to the exact specifications as before it was damaged.**

In most situations this would be perfectly suitable, but if there is a better way of reconstructing or repairing the building at no extra cost, then should this be considered? Is it appropriate for insurers to insist on like-for-like replacement, especially where there is an opportunity to reduce future risk?

Some insurers adopt a common sense approach offering the best possible outcomes for real estate customers; making sensible changes at very little additional expense. For example, placing electrical sockets higher up the wall so flooding won't damage the electrical system a second time, improving fire systems in older buildings e.g. better sprinkler systems, and using different materials suited for the Energy Act 2013.

Commercial insurance policies may include adaptation clauses i.e. a clause in the policy that allows changes to the building to be made during reconstruction. These clauses provide cover above normal minimum regulatory levels, giving extra flexibility that clients may need in order to achieve greener buildings, more efficient working conditions or to protect themselves from future incidents.

A major loss can be devastating, but reinstatement can present opportunities. With new methods and materials constantly emerging these can significantly reduce the risks associated with flooding and fire especially.

New building methods can also enhance sustainability and energy efficiency. In recent years there has been a variety of legislation introduced to address these topics. Some local authorities can insist that clients install expensive sustainability elements, such as solar panels, in a reconstruction project where nothing existed previously.

Brokers and customers can therefore be rest assured that, in the event of a major loss, their insurer will not only strive to repair any damage caused, but, where possible, put customers in the best possible position for the future.

Sources:
Zurich Insider 'Is like for-like reinstatement always the answer?' article



FP1909/07/15