



# ***PII Review Project Consultation***

## **STATUS**

1. This report and the appendices are confidential as it relates to developing policy considerations.

## **EXECUTIVE SUMMARY**

2. A project was initiated by the IRB in June 2022 to review whether [ICAEW's PII Regulations](#) are fit for purpose and ensure protection of the public at a sustainable cost to the profession. Responsibility for this project was assigned to the PII Committee, and PSD staff have given project updates to the IRB at its last two meetings.
3. Having carried out a Call for Evidence exercise, comprising a firm-wide survey and targeted interviews, the PII Committee has now completed its review of the PII Regulations. A number of proposed changes have been developed for consultation with key stakeholders, and these are set out in the attached draft consultation document. Some of the proposed changes were flagged in the paper before the IRB in July.
4. In some cases, the PII Committee's proposals will improve the consumer's position by, for example, requiring increased cover or a longer period of mandatory of run-off cover when a firm ceases. However, these proposals could have an adverse impact on the price a firm pays for PII and/or could be unpalatable to insurers. While the IRB can take a view on price increases, revisions may need to be made after consultation if there is a sense from their responses that too many of the current participating insurers will not participate in our insurance arrangements due to one or more of the changes.
5. The PII Committee Chair and senior PSD staff involved in the project will be attending the IRB meeting in person on 20 September 2023 to discuss the work to-date and answer any questions from the Board.
6. The proposed public consultation must take place in October-December 2023 in order to bring in the new changes for insurance year 2024/2025 and the current proposed launch date is 16 October 2023. A more detailed timeline is set out at the end of this paper.

## **RECOMMENDATIONS**

7. The IRB is asked to:
  8. approve the draft consultation document attached in Appendix A which sets out the proposed changes to the PII Regulations that will then be subject to an 8-week public consultation.
  - Authorise the PSD Chief Officer to approve any further non-substantive edits to the consultation document that may come from the PII Committee's final read-through at its meeting on 26 September 2023.
  - Confirm the classification of this paper as confidential.

## PROGRESS SINCE JULY 2023 IRB MEETING

9. At the IRB meeting on 20 July 2023, a number of matters were still being reviewed by the PII Committee. Following further consideration, these have been developed as follows:

### Large firms

10. Currently, for firms with 50 or more principals, the PII Regulations provide that they are not required to hold qualifying insurance (because 50 x the permitted £30k per-principal excess equates to the current minimum limit of indemnity for qualifying insurance) but that those firms are still required to 'take reasonable steps to meet claims arising from being in public practice' (Regulation 3.1(a)). During its discussions the PII Committee has been keen to ensure firms that are not required to hold qualifying insurance are subject to a periodic 'qualitative assessment' over the adequacy of the firms' arrangements to meet claims.
11. PSD staff met with the FRC on 10 August 2023 and discussed the approach taken by FRC to assessing the adequacy of PIE audit firms' PII and claims management arrangements. The FRC's current approach is aimed to provide insight into the resilience of the market as a whole, and this is achieved by considering only the largest firms [REDACTED].
12. [REDACTED] Following the meeting, the FRC highlighted that the Companies Act 2006 requires an RSB to have adequate rules or arrangements in place requiring audit firms to take steps to ensure they are able to meet claims relating to audit work<sup>i</sup>, and the FRC's PIE Auditor Registration Regulations refer the PIE audit firm back to their RSB's PII Regulations for the purposes of the minimum requirements. The FRC confirmed that no separate or additional requirements have or are intended to be set by the FRC.
13. The FRC is, however, willing to provide an annual letter to the PII Committee confirming those firms reviewed that year, and whether any concerns were raised. [REDACTED].
14. The nature and scope of the 'qualitative assessment' exercise will need to be developed by PSD staff and the PII Committee.

### Period for mandatory run-off cover

15. Under the existing PII Regulations, where a firm ceases, the members in practice in the firm must ensure that compliant cover is in place for at least two years, and thereafter they must use their best endeavours to maintain compliant run-off cover for a further four years (Regulation 2.8). If a member is ceasing to practise (rather than the entire firm) then the member is required to use their best endeavours to ensure they are covered by arrangements which comply with ICAEW's regulations. Cover should be in place for at least two years after they cease (Regulation 2.7).
16. Having considered the approach taken by other regulators, and the responses to the Call for Evidence interviews, the PII Committee is keen to bring ICAEW's requirements in line with other regulators that typically have a six-year run-off requirement. The PII Committee therefore proposes that the PII Regulations are amended so that six years' run-off cover is mandatory for ICAEW firms that are ceasing to trade. A similar requirement is not proposed for individual members who leave a firm (eg, on their retirement) but the guidance will be enhanced to set out the run-off expectations on members who cease to practise.
17. The PII Committee also considers that the requirement to provide six years' run-off cover should be non-cancellable in the event of non-payment of the premium. Additionally, the formula to calculate the premium for run-off should be incorporated into the insurance

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<sup>i</sup> [Schedule 10, Part 2 of the Companies Act 2006](#)

contract allowing firms to prepare early for the cost of run-off cover as they approach cessation.

18. While these proposals will provide additional protection for consumers, it is likely to come at a cost and may even be unpalatable to insurers. However, the PII Committee is keen to hear how the market would react to these changes given the clear benefit to consumers that would result from a longer mandatory run-off period [REDACTED].

#### **‘Compound firms’ definition and guidance**

19. The existing PII Regulations permit a group of separate firms to be treated as a single entity (referred to as a ‘compound firm’) with one entity in the group appointed to arrange insurance under one policy.
20. The term ‘group’ is not defined, which could cause inconsistencies when dealing with dispensations involving certain more complex ownership and network structures. The PII Committee has agreed that it should retain the discretion to permit compound firm arrangements but to provide further guidance about how this should be defined, based on the ‘network firm’ definition in the Code of Ethics.
21. The PII Committee is also proposing to enhance the guidance to make it clearer that groups taking advantage of a single policy must ensure there is adequate cover for each entity in the group, and to consider the appropriateness of aggregating the excess.

#### **Dispensation application process, guidance and application fee**

22. Having considered the overall package of proposals, the PII Committee’s view is that the changes to the overall arrangements should address some of its previous concerns relating to firms applying for dispensation. As such, it is not proposing to make any substantial changes to the dispensation process or grounds for dispensation set out in Regulation 5.3. However, the Call for Evidence did highlight a need to improve or expand on the guidance set out in Appendix B of the PII Regulations to ensure the application process is clear, transparent and accessible.
23. Given the time involved in assessing dispensations, and to bring this in line with other similar processes carried out within PSD, the PII Committee also proposes that an application fee should be charged to any firm wishing to apply for a dispensation to reflect the amount of time which is spent by specialist staff in reviewing and advising on these applications and the time taken up in committee work.

## **NEXT STEPS**

The outline timetable for the project is as follows:

Time	Action
April- June 2023	ICAEW conducts Call for Evidence
20 July 2023	IRB meeting – update given on proposals being formulated by PII Committee.
July/August	PII Sub-Committee finalises recommendations and ICAEW prepares consultation document.
August 2023	ICAEW provides update to ICAS and CAI on general proposals being developed and requests feedback.
6/7 September 2023	PII Sub-Committee finalises outstanding matters and provides feedback on consultation document.

7-12 September 2023	PII Sub-Committee and ICAEW finalise consultation document.
20 September 2023	IRB meeting – to approve final consultation document.
2 October 2023	Deadline to provide consultation document to PSD comms team
16 October – 8 December 2023	Issue public consultation on proposed changes to ICAEW's PII Regulations Consultation to be open for 8 weeks.
16 November 2023	Joint Advisory Panel meeting – ICAEW to obtain oral feedback from lead insurers.
December 2023 / January 2024	Review responses to consultation and reflect on feedback received. Liaise with ICAS and CAI as necessary.
December 2023	PII Sub-Committee meeting to consider consultation responses.
December 2023 / January 2024	Instruct external legal advisors to provide input on redraft of the PII regulations and guidance
January 2024	Report to PII Committee and IRB with update following consultation
February 2024	Finalise proposals following input from consultation
March 2024	IRB sign-off final proposals
April 2024	Apply to relevant oversight regulators and boards for approval of amended regulations.
June 2024	Renewal packs including new arrangements issued to insurers.
1 September 2024	Revised PII Regulations come into force.

## APPENDICES

	Appendix Name	For consideration or for reference	No of pages
<b>Appendix A</b>	<b>Draft consultation document</b>	<b>Consideration</b>	<b>21</b>

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