



ICAEW PROFESSIONAL INDEMNITY INSURANCE REGULATIONS

EFFECTIVE FROM 1 SEPTEMBER 2024

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| ICAEW PROFESSIONAL INDEMNITY INSURANCE REGULATIONS | 0 |
| Introduction | 1 |
| Members and others who need to comply with the regulations | 1 |
| Responsibility of members | 1 |
| Qualifying Insurance | 1 |
| How much insurance should you have? | 2 |
| Inability to obtain insurance | 2 |
| Annual return | 2 |
| Further Information | 2 |
| Non-practising members | 2 |
| 1 General | 3 |
| Authority and commencement | 3 |
| Interpretation | 3 |
| Notice | 3 |
| Definition of terms | 4 |
| 2 Scope and monitoring | 7 |
| Scope | 7 |
| Monitoring | 8 |
| Run-off cover and cessation of practice | 9 |
| 3 Terms of cover | 10 |
| Ability to meet claims | 10 |
| Qualifying insurance | 10 |
| Minimum limit of indemnity | 11 |
| Gross Fee Income and Policy Excess | 13 |
| Large Firms | 14 |
| Group Arrangements | 15 |
| 4 Inability to obtain cover | 16 |
| Reasons for entering the Assigned Risks Pool | 16 |
| Procedure for entering the assigned risks pool | 17 |
| Leaving the assigned risks pool | 18 |
| The committees | 20 |
| Professional Indemnity Insurance Committee | 20 |
| Composition | 20 |
| Responsibilities | 20 |
| Dispensations | 20 |
| Review | 21 |
| Other powers | 22 |
| Provision of information to the Committee | 22 |
| Joint Advisory Panel | 22 |
| 6 Additional guidance | 24 |
| Monitoring compliance | 24 |
| Claims handling | 24 |
| Cost of cover | 25 |
| Level of cover | 25 |
| Practice mergers etc | 25 |
| Recommended level of insurance cover (limit of indemnity) | 25 |
| Large Firms and Groups | 25 |
| Risk assessment | 26 |
| Retroactive cover | 27 |
| Run-off cover | 27 |

| | |
|--|----|
| Terms used in policy documents..... | 28 |
| Appendix A – Participating insurers | 28 |
| Appendix B – Guidance relating to dispensation powers contained in regulation 5.3..... | 30 |

PROFESSIONAL INDEMNITY INSURANCE REGULATIONS AND GUIDANCE

Effective from 1 September 2024.

A table is available listing all the amendments that have been made to the Professional Indemnity Insurance (PII) Regulations since they were originally issued in 1998.

INTRODUCTION

Guidance is included with the regulations, and additional guidance is in section 6. The regulations are in **bold** type to distinguish them from the guidance. Where defined terms are used in the regulations they are in ***bold italics***. The guidance is shown in plain type throughout. Within the limits of regulations which have a legal standing, the wording is in plain English.

Members and others who need to comply with the regulations

PII is compulsory for all members of ICAEW who have a practising certificate and are engaged in public practice, regardless of the amount of practice income.

The ICAEW statement on engaging in public practice is at icaew.com/pc. This sets out a definition of public practice. If a member remains in doubt as to whether their activities amount to engaging in public practice, they should contact the Technical Advice Line on +44 (0)1908 248 250 to discuss their circumstances.

The regulations for all regulated and licensed areas require those firms and individuals so regulated to meet the requirements of the PII Regulations.

Responsibility of members

The PII Regulations apply to individual members, however, PII insurance usually covers the practising entity – for example the firm or a member’s sole practice. If ICAEW members are principals in a mixed practice (i.e. a practice whose principals include both ICAEW and non-ICAEW members), the PII Regulations apply to the entire practice and we expect compliant insurance to cover the whole practice, not just the ICAEW principal(s).

Even if your firm’s insurance is arranged by someone else, it remains your responsibility to ensure that the insurance cover complies with the requirements of these regulations.

Qualifying Insurance

The PII Regulations require you to hold a specific type of PII insurance that specifies a minimum level of cover and allowable excess. Additionally, the PII insurance must be held with a participating insurer, and the policy terms must be in accordance with the approved minimum wording. You should consider the requirements of the regulations, including but not limited to:

- The minimum level of indemnity required
- The amount of the self-insured excess
- Who can provide the insurance
- Any appropriate run-off cover

Appendix A provides further information about participating insurers and a list is available on our website that is updated annually. A copy of the **approved minimum wording** is also available on our website.

How much insurance should you have?

Section 3 details the requirements for the minimum level of cover you must obtain. This is only the minimum amount, and you should always consider if this is adequate for your firm.

We recommend that you seek the help of an insurance broker who will be able to assist you in determining the appropriate level of insurance and excess considering your individual circumstances, including your areas of work, client base, fee income, claims history, financial resources and borrowing capacity.

Inability to obtain insurance

If you cannot obtain cover which satisfies the PII Regulations you should **contact ICAEW** as soon as possible. Emergency cover may be available via the assigned risks pool for a period of time until compliant cover is obtained in the open market. You must avoid having a gap in insurance cover, so it is important that you take action before your current policy expires. **Section 4** provides further details of the steps to take if you are unable to find compliant insurance

Annual return

Those covered by these regulations are asked to provide details of their insurance arrangements and confirm their compliance with these regulations, as part of their firm's ICAEW annual return. ICAEW may check with brokers or insurers that the information is correct.

Further Information

All firms are required to take reasonable steps to be able to meet claims arising from being in public practice. Therefore, it is possible that the minimum level of cover will not be high enough to ensure that all claims made against you will be covered. You must carefully consider the level of cover that is right for you or your firm. **Section 6** includes answers to the queries which are most often raised by members and some general guidance notes which you may find helpful.

Your broker will be able to help you if you have any further queries.

If you would like to talk to someone at ICAEW please use the **live chat function** or contact the Technical Advice Line +44 (0)1908 248 250

Non-practising members

If you hold a practising certificate but are not engaged in public practice, there is generally no requirement for you to have professional indemnity insurance unless your firm continues to be regulated or licensed. However, you should ensure that appropriate run-off cover is in place for your historic work- see **section 6**.

Non-practising members are required to confirm annually that they are still not practising. If any practice activity is contemplated, then such members should obtain compliant insurance before the work commences. The Members' Registrar should also be informed that practice has commenced, together with the name of the firm that the member intends to practise under.

The special situation of employees who hold practising certificates under the Audit Regulations and Guidance or the Insolvency Licensing Regulations is dealt with at regulation **5.3**.

If you are unsure as to whether you require a practising certificate, please contact the Technical Advice Line to obtain further information.

1 GENERAL

Authority and commencement

- 1.1. These *regulations* were originally issued by the authority of the *ICAEW Council* on 1 November 1998. These *regulations* were last amended on 1 September 2024 by the *ICAEW Regulatory Board* in accordance with clause 16 of the *Supplemental Charter of 1948* and *Principal Bye-law 49*.
- 1.2. These *regulations* come into force on 1 September 2024.
- 1.3. *Regulations 3.1b, 3.2, 3.3, 3.5 and 3.7* will not apply to *firms* whose existing policy of *qualifying insurance* either incepted or renewed during the twelve months prior to 1 September 2024 until the earlier of either: (a) the date such existing policy of *qualifying insurance* ends; or (b) 1 September 2025
- 1.4. *Regulations 3.1b, 3.2, 3.3, 3.5 and 3.7* will not apply to *firms* who were granted a waiver, relaxation or exemption under *regulation 5.3* during the twelve months prior to 1 September 2024.

ICAEW recognises that some firms will have renewed or obtained a new policy of qualifying insurance (in accordance with the previous edition of these regulations commencing on 1 June 2023), during the twelve months prior to the introduction of these regulations on 1 September 2024. In those circumstances and so that firms are not obliged to amend the terms of their qualifying insurance within twelve months in order to comply with these regulations, transitional arrangements apply as set out in regulations 1.3-1.4. The effect of these arrangements is to provide a grace period during which firms are exempted from complying with the provisions of regulations 3.1b, 3.2, 3.3, 3.5 and 3.7 of these regulations which relate to the mandatory limits of indemnity and aggregate excesses. However, these regulations will apply in full to firms from the date at which their existing policy of qualifying insurance or dispensation ends or by 1 September 2025, whichever is earlier. However, during the grace period, firms must still maintain their existing policy of qualifying insurance obtained in accordance with the previous edition of these regulations commencing on 1 June 2023.

Interpretation

- 1.4. Words and expressions have the meaning given by the *Interpretation Act 1978* unless defined in these *regulations*. The definitions in these *regulations* take precedence.
- 1.5. In these *regulations* words importing the singular number include the plural number and vice versa. Words importing the neuter gender include both the masculine and feminine. Headings do not affect the interpretation of these *regulations*. The *regulations* will be governed by, and interpreted according to, English law.
- 1.6. Any reference to legislation, *bye-laws*, regulations, schemes or other documents will apply to any re-enactment, re-issue or amendment.

Notice

- 1.7 A notice or other document required to be served under these *regulations* may be served in person or sent:
 - a) by pre-paid post addressed to the *Head of Committees and Tribunals, ICAEW, Professional Standards Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ*; or

- b) by electronic mail to an address at which the *Head of Committees and Tribunals* has agreed to receive notices and documents under these *regulations*.

1.8 Service of a document under these *regulations* shall be deemed to have been effected:

- a) where served in person, the date of service.
- b) where sent by first class, pre-paid post, on the second *business day* after posting.
- c) where sent by electronic mail on or before 16:00, on the day it is sent, and if sent after 16:00 on the next *business day*.

Definition of terms

1.9. In these *regulations* the following words have the following meanings.

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| accredited legal services firm | a sole practitioner, a partnership or a body corporate accredited to conduct legal services work under <i>ICAEW's</i> Legal Services Regulations. |
| affected party | A person or <i>firm</i> who is affected by a decision of the <i>Committee</i> made in accordance with <i>regulation</i> 5.3. |
| assigned risks pool | The arrangements by which <i>firms</i> who are otherwise unable to obtain professional indemnity insurance may do so for a limited period and to which all <i>participating insurers</i> subscribe. |
| assigned risks pool manager | The broking firm which advises <i>ICAEW</i> and which manages the <i>assigned risks pool</i> . |
| authorised firm | A sole practitioner, a partnership or a body corporate authorised under <i>ICAEW's</i> Investment Business Regulations. |
| authorised insurer | An insurer: authorised by the Prudential Regulation Authority or the Central Bank of Ireland to carry on general insurance business in the <i>United Kingdom</i> or the Republic of Ireland, respectively; authorised by a regulatory body equivalent to the Prudential Regulation Authority or the Central Bank of Ireland in an <i>EEA</i> member state (other than the Republic of Ireland and, where appropriate, the <i>United Kingdom</i>), which is entitled to carry on general insurance business in the <u><i>United Kingdom</i></u> or the Republic of Ireland; or in respect only of risks resulting from professional business carried out by <i>firms</i> in an <i>EEA</i> member state (other than the Republic of Ireland and, where appropriate, the <i>United Kingdom</i>), authorised by a regulatory body equivalent to the Prudential Regulation Authority or Central Bank of Ireland in an <i>EEA</i> member state (other than the Republic of Ireland and, where appropriate, the <i>United Kingdom</i>) to |

carry on general insurance business in that *EEA* member state, where such insurer is an affiliate or subsidiary of an authorised insurer in the *United Kingdom* or Republic of Ireland.

aggregate excess the total value of excess payments required to be paid in a particular policy year

aggregate policy limit the total amount of indemnity required under these *regulations* in a particular policy year

business day Monday to Friday, excluding public holidays in England.

bye-laws means all the bye-laws of ICAEW in force at the relevant time

Committee The Professional Indemnity Insurance Committee of *ICAEW*.

EEA European Economic Area

FCA The Financial Conduct Authority (or any relevant successor body)

firm

- a. a *member* engaged in public practice as a sole practitioner or with others in a partnership or a body corporate;
- b. an *authorised firm*;
- c. a *licensed firm*;
- d. a *registered auditor*;
- e. a *local auditor*;
- f. an *insolvency practitioner*;
- g. an *insolvency affiliate*;
- h. an *accredited legal services firm*; or
- i. a *licensed practice*.

gross fee income All income in respect of work carried on by a *firm* engaged in public practice, including:

- a. income for personal appointments in respect of work covered by professional indemnity insurance;
- b. income from third parties as commissions or brokerage (whether or not offset against charges to a client) and;
- c. income received in respect of work sub-contracted to others.

It does not include:

- a. the recovery of disbursements and expenses which do not form part of the chargeable fee for professional services rendered;
- b. value added tax.

Guidance: Gross fee income must include the income in respect of work which the firm has subcontracted to others. This is unless the work is clearly shown as a disbursement in the invoice issued for the relevant work and the

client knows that the firm is not taking professional responsibility for the work.

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| Head of Committees and Tribunals | means the person within <i>ICAEW's</i> Professional Standards Department who manages the Committees and Tribunals team. |
| insolvency affiliate | An individual granted affiliate status under <i>ICAEW's</i> Insolvency Licensing Regulations. |
| insolvency practitioner | An individual licensed under <i>ICAEW's</i> Insolvency Licensing Regulations. |
| ICAEW | The Institute of Chartered Accountants in England and Wales. |
| Institutes | <i>ICAEW</i> , the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland. |
| Investigation and Discipline Scheme | The scheme, or any predecessor or successor scheme, established under clause 1b(vii A) or clause 1b(viii A) of the Supplemental Royal Charter of 21 December 1948. |
| Joint Advisory Panel | The Joint Advisory Panel appointed under <i>regulation 5.15</i> . |
| licensed firm | a sole practitioner, a partnership or a body corporate licensed under <i>ICAEW's</i> Designated Professional Body arrangements. |
| licensed practice | A sole practitioner, a partnership or a body corporate licensed under <i>ICAEW's</i> Licensed Practice Handbook. |
| local auditor | A sole practitioner, a partnership or a body corporate registered under <i>ICAEW's</i> Local Audit Regulations. |
| member | A member of <i>ICAEW</i> . |
| minimum limit of indemnity | The amount of insurance required each year under these <i>regulations</i> . |
| participating insurer | An <i>authorised insurer</i> who has agreed to the terms and conditions described in appendix A of these <i>regulations</i> . |
| principal | A sole practitioner, partner, director or member (of a limited liability partnership) of a <i>firm</i> . |
| practising certificate | The certificate issued to a <i>member</i> by <i>ICAEW</i> authorising the member to engage in public practice. |
| qualifying insurance | Insurance which: <ol style="list-style-type: none">is underwritten by <i>participating insurers</i> (see appendix A);includes retroactive cover for liabilities arising from work carried out in the previous six years, except for claims or potential claims known about at the time the insurance was first taken out; andis underwritten in terms of the minimum wording approved by <i>ICAEW</i>. |

Guidance: A policy which does not use the exact approved minimum wording must contain a difference in conditions endorsement in a form

approved by ICAEW. The required cover may be provided by more than one insurance policy. Retroactive cover may be for a shorter period than six years if the member has only just started in practice. The guidance notes in section 6 explain this further.

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| registered auditor | A sole practitioner, a partnership or a body corporate registered under ICAEW's Audit Regulations. |
| regulations | These regulations as modified or amended. |
| Review Committee | The committee appointed by the Regulatory and Conduct Appointments Committee with responsibility for reviewing decisions made by the <i>Committee</i> in accordance with <i>regulation 5.3</i>. |
| Regulatory Review and Appeal Regulations | means the Regulatory Review and Appeal Regulations of ICAEW in force at the relevant time. |
| secretariat | The people employed by ICAEW to carry out its functions. |
| United Kingdom | Includes the Channel Islands and the Isle of Man. |

2 SCOPE AND MONITORING

This section explains who needs to take out professional indemnity insurance and how this is monitored.

Scope

2.1. These *regulations* apply to:

- a. **a *member* holding a *practising certificate* and resident in the *United Kingdom*;**
- b. **a *member*, wherever resident, in public practice in the *United Kingdom*;**
- c. **an *authorised firm*;**
- d. **a *licensed firm*;**
- e. **a *registered auditor*;**
- f. **a *local auditor*;**
- g. **an *insolvency practitioner*;**
- h. **an *insolvency affiliate*;**
- i. **an *accredited legal services firm*; and**
- j. **a *licensed practice*.**

Members who hold a practising certificate must meet the requirements of the PII Regulations regardless of the form of practice (sole practitioner, principal in a partnership or body corporate).

Members or firms that are authorised or licensed under ICAEW's audit, local audit, investment business, legal services, licensed practice or insolvency regulations must comply with the requirements of the PII Regulations. This is the case even if the firm is dormant/non-trading or if they are located outside the United Kingdom.

Members who hold a practising certificate and who are resident in the United Kingdom or are engaged in public practice in the United Kingdom must meet the requirements of these PII Regulations.

If members hold a practising certificate but are resident elsewhere (and are not engaged in public practice in the United Kingdom), then they do not need insurance that meets the requirements of these regulations. If a member is in practice in another country, then a form of insurance is recommended, but this is not mandatory unless required under the laws of the relevant jurisdiction. You should speak to the Technical Advice Line to discuss your situation if you are unsure whether you need qualifying insurance.

Members who hold a practising certificate, but who do not engage in public practice, do not need to have professional indemnity insurance subject to the further provisions below and in particular when a member ceases practising in the United Kingdom.

2.2. These *regulations* also apply to a *member* for a period of two years after ceasing to engage in public practice and/or hold a *practising certificate*.

2.3. Those *members* who do not make their own professional indemnity insurance arrangements should ensure that the arrangements of their *firm* comply with these *regulations*.

All members with practising certificates should satisfy themselves that they or their firm have suitable arrangements in place to comply with these regulations.

2.4. In deciding whether these *regulations* have been complied with the *Committee* will take into account any guidance issued from time-to-time, by or on behalf of the *ICAEW* Regulatory Board. In the event of any actual or apparent conflict between these *regulations* and such guidance, the wording of these *regulations* will apply.

Monitoring

2.5. Every *firm* is required to complete a return to *ICAEW* each year confirming its compliance with these *regulations*. In order to monitor compliance with these *regulations*, if the *Committee* so decides, a *firm* must submit, at its own expense, to an investigation by the *Committee* or its appointed agent and a deposit for the costs of any investigation may be required at the *Committee's* discretion.

2.6. The *Committee* can require such further information and evidence as it may reasonably need from *members*, *firms* and *participating insurers*.

Firms are required to provide details of their insurance arrangements to ICAEW each year as part of the ICAEW annual return. Individual principals in a firm will not be asked to complete a separate return unless they are also a principal in another firm on their own account.

The Committee is responsible for monitoring compliance with these regulations. For the avoidance of any doubt, 2.5 and 2.6 above also include those firms and members involved in Group Arrangements or Large Firms and the Committee will monitor whether firms meet the required criteria under 3.8 and 3.9.

Members who hold a practising certificate but who are not engaged in public practice will not receive an ICAEW annual return.

If a firm fails to complete its ICAEW annual return then this could lead to serious consequences, including disciplinary action and the withdrawal of any regulatory licences that are held. If you have any problems completing the return, you should contact the Annual Returns team on +44 (0) 1908 546 372.

Run-off cover and cessation of practice

- 2.7. A member who ceases to be engaged in public practice in the *United Kingdom* must take all reasonable steps to ensure they are covered by arrangements which satisfy these *regulations* for at least two years from the date they ceased to be in public practice.**
- 2.8. When a *firm* ceases to be engaged in public practice, the *members* in practice in that *firm* at the date of cessation shall ensure that there is in place appropriate cover to meet the requirements of these *regulations* for at least two years following the cessation of the practice. Thereafter the former *members* in practice in that *firm* shall take all reasonable steps to ensure that cover is in place to meet the requirements of these *regulations* for a further four years.**

Securing run-off cover after a firm ceases to practise is a mandatory requirement of these regulations. This is to ensure that insurance cover is available for claims relating to work done while in practice but the claims are made after the firm has ceased. Run-off cover is a mandatory requirement for all firms and your previous claims history or predicted future exposure does not alleviate the requirement for run-off cover.

If the firm has ceased, it should maintain run-off cover for at least two years and at the end of that period should take all reasonable steps to put in place compliant run-off cover for a further four years. ICAEW recommends that firms should also consider whether any additional cover is necessary.

In respect of regulation 2.7, when a member ceases to be engaged in practice (compared to sole practitioners who would be required to meet the requirements of regulation 2.8), you are required to take all reasonable steps to ensure that you are covered by arrangements which satisfy the PII Regulations for at least two years. ICAEW recommends that you consider whether additional cover is required beyond two years.

A member who keeps a practising certificate after ceasing to engage in public practice is required by these regulations to have run-off cover in accordance with regulation 2.7.

There is further guidance in section 6 about what to do in the case of other practice changes.

The terms and extent of any run-off cover will be dictated by the firm's circumstances. Usually, this would require cover to be equivalent to that provided by the firm's previous qualifying insurance. However, as a minimum, run-off cover needs to comply with the minimum limits of indemnity required by regulations 3.2 – 3.5. ICAEW recommends that you discuss your specific run-off requirements with your broker.

For those firms or members who are unable to obtain run-off cover from a participating insurer, cover may be available via the assigned risks pool as set out in regulation 4 below.

There is not a prescribed list of the steps you are required to take to ensure you are covered by arrangements which satisfy these regulations, as this will vary depending on the individual circumstances of the firm or member. However, you are expected to seek assistance from an insurance broker to source insurance cover from participating insurers.

Participating insurers are required to notify ICAEW if a firm does not take out its offer of run-off cover. You will be expected to explain what arrangements you have in place for run-off cover. The Committee considers failure to take out run off cover to be a serious matter and in these circumstances this breach of the PII Regulations may result in a referral to ICAEW's Conduct Department.

3 TERMS OF COVER

This section explains ICAEW's insurance requirements including the level of cover you should have in place.

Professional indemnity insurance works on a claims made basis. This means that the insurance will provide cover for claims first made or circumstances arising and notified to the insurers during the term of the current policy. This is irrespective of when the work concerned was carried out (subject to any retroactive date in the policy).

It is vital that insurance remains in force continuously to provide protection against any claims which may arise now or in the future for work done in the past.

It is most important that you carefully check the wording of your policy. This is so you understand:

- exactly how the insurance works;
- what is covered by the policy and what is excluded;
- your obligations as to what you have tell your insurer and when,
- the date your policy expires;
- any other relevant terms and conditions of the policy.

Remember that the terms of any additional policies that you take out for levels of cover over and above the minimum required by these regulations (often called 'excess layer insurance') may not necessarily be the same as the terms of the qualifying insurance offered by participating insurers. If you are unsure about any aspect of your policy, you should discuss this with your broker.

Ability to meet claims

3.1. A firm must:

- take all reasonable steps to meet claims arising from being in public practice; and**
- Unless regulation 3.8 applies, arrange *qualifying insurance* which meets the limits in *regulations 3.2 to 3.5*.**

Regulation 2.1 details who is subject to these regulations. All firms must take all reasonable steps to meet any claims that arise from being in public practice. Therefore, a priority is to limit the risk of claims against you. The guidance in section 6 gives some examples of the matters you should consider.

Qualifying insurance

Qualifying insurance is a special type of insurance for those in public practice or subject to the audit, local audit, legal services, investment business, licensed practice and/or insolvency regulations. This insurance can only be obtained from certain insurers who are known as 'participating insurers' for the purpose of these regulations. Further details of these insurers are in appendix. A.

All participating insurers have agreed to provide cover under terms which match those of ICAEW's approved minimum wording. The participating insurer should provide the member/firm with a policy that meets the minimum requirements of these regulations.

The terms of individual policies offered by different insurers may be amended to include extensions of cover beyond the minimum requirements of the approved minimum wording.

As an extra safeguard, ICAEW has asked those participating insurers which use a different wording to include a 'difference in conditions' endorsement. In the event of a dispute between a policy holder and their insurer, the difference in conditions endorsement will ensure that ICAEW's minimum wording overrides that of the insurer where the insurer's wording is less favourable.

Professional indemnity insurance works on a claims made basis. Therefore, a current policy will primarily provide cover for past acts, whether or not cover was in place at the time of the act.

Sometimes insurers may put a 'retroactive date' on the policy, which limits the period of cover for past acts so that an indemnity would not be available for acts occurring prior to the retroactive date. For a policy of qualifying insurance, the retroactive date must be at least six years before the date of the current policy or when the practice started, if sooner.

The list of participating insurers, the current text of the minimum policy wording and the format of the difference in conditions endorsement may be obtained from ICAEW at [icaew.com/pii](https://www.icaew.com/pii).

Minimum limit of indemnity

3.2. Except where *regulations 3.3, 3.4, 3.5 or 3.8* apply, the *minimum limit of indemnity* in each policy year must be at least £2 million for a single claim and in the aggregate.

This means that the insurance must be for at least £2 million for any single claim or a number of claims totalling £2 million across the annual policy period.

Therefore, a firm could purchase cover for £2million in total which would have to cover all relevant claims falling under the policy for a particular year. Or a firm could purchase annual cover of £2million on an each and every claim basis which could provide more cover in total if multiple claims are made during the policy year and valued in excess of £2million combined.

ICAEW recommends that you consider which type of policy is appropriate for your firm's circumstances in order to meet the requirements of regulation 3.1a.

You must take out a policy of qualifying insurance up to the minimum limit of indemnity of £2million with a participating insurer on an aggregate or each and every claim basis. Above that limit, cover does not have to be with a participating insurer, nor does it need to comply with the approved minimum wording.

Firms that are authorised to conduct insurance distribution activities and legal services work may need to obtain additional cover as set out in regulations 3.4 and 3.5.

Licensed Practices should also consider the PII requirements relating to the liability cap as set out in the Licensed Practice Handbook.

3.3. Subject to *regulations 3.4 and 3.5*, if the *gross fee income* of a firm is less than £800,000, the *minimum limit of indemnity* in each policy year for any single claim and in the aggregate, must be equal to two and a half times its *gross fee income*, with a minimum of £250,000.

Firms with a gross fee income of less than £800,000 are not required to hold cover at the level prescribed in regulation 3.2 but should have a minimum limit of indemnity of at least equal to two and a half times its gross fee income (subject to a minimum of £250,000).

Nevertheless, these firms should always consider if cover below £2 million is sufficient for their situation or whether a higher limit or cover on an any one claim basis is more appropriate.

Regulation 3.6 sets out further information regarding a firm's gross fee income.

Firms that are authorised to conduct insurance distribution activities and legal services may need to obtain additional cover as set out in regulations 3.4 and 3.5. Licensed Practices should also consider the PII requirements relating to the liability cap as set out in the Licensed Practice Handbook.

3.4. If a firm is a licensed firm or a firm authorised by the FCA (or any relevant successor body) to conduct insurance distribution activities, the minimum limit of indemnity required for those activities must be in accordance with whatever limits are prescribed by the FCA. This may form part of, or be in addition to, the minimum limit of indemnity required for the firm's other activities under regulations 3.2 or 3.3.

Firms:

- licensed by ICAEW under the Designated Professional Body arrangements; or
- authorised by the FCA .

must comply with the relevant up to date UK insurance requirements which either adopt or replace the provisions in the EU's Insurance Distribution Directive (IDD). The FCA provides relevant information and guidance on its website.

Such firms must hold a minimum level of PII as set out in regulation 3.4. This may exceed the amounts otherwise required by these regulations. Firms must check they have sufficient minimum cover.

Some licensed firms will already have PII in excess of the IDD limits. They need take no further action. Other licensed firms may need to increase the sum insured. They can do this by increasing the total sum insured to the IDD limits for all the firm's activities.

Alternatively, it may be possible to get an extension of cover. The licensed firm may have, for example, a policy with a limit of indemnity of £500,000. In this scenario, the firm can choose to increase the sum insured to the IDD limits to cover only claims relating to the insurance distribution activities covered by the IDD.

Licensed firms should discuss with their broker or insurer the need for any changes to the sum insured. The amounts in regulation 3.4 are minimum levels and licensed firms should always consider whether the minimum amount is sufficient for the regulated activities it undertakes.

As licensed firms are unlikely to be able to obtain PII denominated in euros, they need only consider whether the sum insured is the equivalent in sterling to the IDD limits when they renew their cover. There's no need to anticipate future exchange rates and forecast the amount in sterling necessary to exceed the IDD limits throughout the period of the PII policy.

Licensed firms that start negotiations well before the policy renewal date should consider what the exchange rate may be by the renewal date. The exchange rate used in the calculation will be acceptable provided it was current during the one-month period before the renewal date.

Licensed firms should keep a record of their calculations and the source of the exchange rate used.

3.5 If a firm is an accredited legal services firm, the minimum limit of indemnity required for authorised work (i.e., probate and estate administration) is £500,000 for any one claim. This may form part of, or be in addition to, the minimum limit of indemnity required for the firm's other activities under regulations 3.2 or 3.3.

Firms that are accredited to conduct legal services work under ICAEW's Legal Services Regulations must hold, as a minimum, the level of PII set out in regulation 3.5. This may exceed the amounts required by these regulations in other circumstances. For example, the minimum limit of indemnity required by regulation 3.2 may be an aggregate amount (i.e. not per claim) and the amount required by regulation 3.3 may be less than £500,000 (and also not per claim).

Some accredited legal services firms may already have professional indemnity insurance that exceeds the limits set out in regulation 3.5. If they do, and if this insurance is on an 'any one claim' basis, this will suffice for the purposes of these regulations.

Other accredited legal services firms may need to increase the sum insured. They may do this by increasing the total sum insured for all the firm's activities to meet the requirements of regulation 3.5 or by obtaining an extension of cover. For example, if a firm has a policy with a limit of indemnity above £500,000, but this cover is in the aggregate, the policy will either need to be amended to increase cover to an 'each and every claim' basis, or, alternatively, it may be possible to get an extension of cover. The accredited legal services firm may be insured, for example, for an aggregate amount in respect of its other (non-legal services) activities. In this scenario, the firm can increase the sum insured to the limits in regulation 3.5 to cover only claims relating to authorised work (i.e. probate and estate administration) as set out in ICAEW's Legal Services Regulations.

Accredited legal services firms should discuss the need for any changes to the sum insured with their broker or insurer to ensure compliance with the requirements of these regulations.

The amounts in regulation 3.5 are minimum levels and accredited legal services firms should always consider whether the minimum amount is sufficient for the activities they undertake.

Gross Fee Income and Policy Excess

3.6. *Gross fee income* should be based, where possible, on the completed accounting year of the *firm* which immediately precedes the start of the policy.

The definition of gross fee income is set out in the definition section of these regulations.

Gross fee income must include the income in respect of work which the firm has subcontracted to others. This is unless the work is clearly shown as a disbursement in the invoice issued for the relevant work and the client knows that the firm is not taking professional responsibility for the work.

The figure of gross fee income should, where possible, be based on the most recently completed accounting year.

If this is not possible, for example, in a firm's first year of trading, it should use an estimate of its anticipated gross fee income for the first year. It is recommended that where an estimate has been used that this is kept under review and that consideration is given as to whether the limit of indemnity or excess should be amended at the policy renewal date if it transpires that the estimate was too low. If the firm's completed accounts are available at the policy renewal, then this figure should be used instead.

Firms should also consider whether the amount of insurance is sufficient when the firm's last completed accounts is used to calculate the minimum limit of indemnity required by regulations 3.2 and 3.3. For example, if a firm's accounting period is longer or shorter than twelve months or there has been a change in circumstances between completion of accounts and the policy renewal date (for example a significant increase in fees). Firms should keep in mind their obligation in regulation 3.1a (that they must take reasonable steps to meet claims arising from being in public practice).

It is advisable not to decrease the amount of cover from that previously held until a completed set of accounts shows a decrease in gross fee income. This is because claims do arise from previous years and if turnover was greater in the past, the possibility of claims may be higher. ICAEW recommends that before reducing the amount of cover, you discuss this with your broker and that you understand the risks associated with under insurance.

If you have any questions regarding the calculation of gross fee income you should contact the Technical Advice Line.

3.7. A policy of *qualifying insurance* may include an *aggregate excess*, provided that the maximum *aggregate excess* does not exceed the higher of either £3,000, or 3% of a firm's gross fee income.

Regulation 3.7 sets out the maximum permitted aggregate excess which will be paid by the firm across a single policy year, this is calculated by reference to the firm's gross fee income.

Generally, the maximum aggregate excess should be no more than 3% of a firm's gross fee income. However, firms with fee income of less than £100,000 are permitted to have an aggregate excess of no more than £3,000.

If it is not possible or not appropriate to use a firm's completed set of accounts, then an estimate for the firm's gross fee income should be used, as set out in regulation 3.6.

An insurance policy will usually have a "per claim" or "any one claim" excess (i.e. the firm has to pay the first part of any claim). Regulation 3.7 permits the approved minimum wording of a qualifying insurance policy to have a maximum aggregate excess. Where a firm has paid out an excess on one or more claims, once the total amount of those per claim excess payments has reached the maximum amount permitted by regulation 3.7, the firm does not have to pay any further amounts by way of an excess in that policy period.

To comply with the requirements of the approved minimum wording, the policy excess must not apply to the payment of defence costs unless the claim arises from work which required authorisation by the Financial Conduct Authority or any relevant successor body.

Large Firms

3.8. If a firm's gross fee income is in excess of £50million then it is not required to put in place a policy of *qualifying insurance* but should have appropriate arrangements in place to ensure it is able to comply with *regulation 3.1a* .

If a firm (or a group of firms within the scope of regulation 3.9) has gross fee income in excess of £50million, it is not required to have a policy of qualifying insurance and is permitted to make its own insurance arrangements. However, it must have appropriate arrangements in place to ensure it is able to comply with regulation 3.1a.

Compliance with this regulation will be monitored and firms should record what provisions they have put in place to comply with regulation 3.1a.

Firms should also monitor each year whether they continue to fall within the scope of this regulation and that their gross fee income remains in excess of £50million. Firms should seek guidance from their insurance broker and ICAEW if it is not clear whether they fall within regulation 3.8.

Group Arrangements

3.9. Firms within the scope of these regulations can be treated as a single entity for the purposes of these regulations provided all the firms within the structure:

- a) demonstrate common ownership, control or management; and**
- b) can demonstrate that they are aimed at co-operation, and**
- c) meet at least one or more of the following criteria:**
 - i. The firms within the structure are clearly aimed at profit or cost sharing;**
 - ii. The firms within the structure share common quality control policies and procedures;**
 - iii. The firms within the structure share a common business strategy;**
 - iv. The firms within the structure share the use of a common brand-name;**
 - v. The firms within the structure share a significant part of professional resources.**

A 'group' of separate firms which individually fall within the scope of these regulations may be treated as a single firm or entity for the purpose of complying with these regulations.

Regulation 3.9 sets out the mandatory criteria required. Firstly, that the firms within the structure, demonstrate common ownership, control or management; and secondly, that they can demonstrate that they are aimed at co-operation. However, the firms also need to meet at least one of the criteria at regulation 3.9 c) (i) to (v).

If the firms' combined gross fees are less than £50million, the minimum requirements set out in regulations 3.2 and 3.3 may not be appropriate for multiple firms insured under a single policy. The firms should ensure that there is adequate insurance cover available for each entity within the structure and should also consider the appropriateness of aggregating the excess in circumstances where an individual firm may not be liable for the payment. The firms within the structure will likely need to agree between them and with their insurers a mechanism by which any excess payments are apportioned between the firms as well as any relevant premium payable. It will be essential for firms using this type of arrangement to take appropriate advice from an experienced insurance broker.

Firms that wish to be treated as a single entity for the purposes of regulation 3.9 are permitted to combine each individual firm's fees to calculate the total gross fee income for the structure or group. This can be used to determine the minimum limit of indemnity and maximum permitted excess for the structure or group's policy for the purposes of these regulations. Note that intercompany/group transfers should not be counted for the purposes of this calculation.

If the combined fee income of the firms exceeds £50million then regulation 3.8 applies. However, the firms insured under a single policy should ensure that there is an appropriate level of cover for each individual entity within the group/structure.

Each firm within the structure should keep a record of their assessment of the adequacy of their insurance cover and be prepared to provide this to ICAEW during its regulatory visits.

If firms are unsure whether they meet the requirements of regulation 3.9 they should seek advice from their insurance broker and the Technical Advice Line. In any event, group arrangements should be carefully considered before the start or renewal of each policy year by each firm within the structure.

4 INABILITY TO OBTAIN COVER

This section explains the provisions which will help you and what you need to do if you are refused cover in the insurance market with a participating insurer.

Firstly, the approved minimum wording provides an 'extended policy period'. This is an extension of 30 days and is available if you have not secured qualifying insurance which incepts following the expiry of the existing insurance. This will provide some additional time to speak with your broker and ensure that all options have been explored in the open market.

If you obtain an offer of insurance that does not fully comply with the PII Regulations, then you may be able to apply for dispensation from the PII Committee. You should discuss this with the Technical Advice Line and be aware that dispensations are granted at the absolute discretion of the Committee and are only granted in exceptional circumstances. The cost of insurance is not usually a relevant consideration other than in the circumstances referred to in regulation 4.1. Regulation 5.3 and Appendix B provide additional details about dispensations.

If you are still unable to find compliant insurance, emergency cover is available in the assigned risks pool (for an initial period of 30 days), and subsequent cover is available for a further two years. Premium levels are considerably higher than those charged in the open market.

The assigned risks pool is effectively an insurer of last resort and was set up to ensure that members are almost always able to comply with these regulations, whatever their circumstances.

Every participating insurer has agreed to subscribe to the assigned risks pool. The assigned risks pool manager acts as coordinator between firms, participating insurers and ICAEW. If you wish to apply to enter the assigned risks pool you should contact the assigned risks pool manager (details available at [icaew.com/pii](https://www.icaew.com/pii)).

If you establish to the satisfaction of the Joint Advisory Panel (regulation 4.1) that you cannot obtain the professional indemnity insurance cover required by these regulations then you are eligible for admission to the assigned risks pool.

Reasons for entering the Assigned Risks Pool

4.1. The *Joint Advisory Panel* will permit an applicant to be insured in the *assigned risks pool* if:

- a. the applicant has evidence of declinature from *participating insurers* in a form satisfactory to the *Joint Advisory Panel*;**
- b. the applicant is unable to obtain a quotation from any *participating insurer* other than a quotation which (in the opinion of the *Joint Advisory Panel*) amounts to constructive declinature. Prima facie evidence of constructive declinature will be:
 - i. the quotation of a premium which the applicant is unable to pay within six months from the commencement of the policy; or**
 - ii. the quotation of a premium which has such an effect on the applicant's financial security that it jeopardises its ability to carry on its business; or****
- c. cover following cessation of public practice (see *regulations 2.7* and *2.8*) is not available from any *participating insurer*.**

A declinature means that you have been refused cover by an insurer. Constructive declinature means that you have been offered cover but only at a premium which you cannot pay or which, if you did pay it, would put your practice at risk financially. If you wish to plead constructive declinature you must satisfy the Joint Advisory Panel, producing such evidence as the Panel requires that the premium quoted meets one or more of the conditions of regulation 4.1b.

Procedure for entering the assigned risks pool

- 4.2. Application for admission into the *assigned risks pool* must be made to the *assigned risks pool manager*. Any application must include:**
- a. evidence of declinature satisfactory to the *Joint Advisory Panel*, or**
 - b. a declaration by the applicant of the circumstances it considers to be evidence of constructive declinature. The *assigned risks pool manager* will refer the matter to the *Joint Advisory Panel*, which will decide whether particular cases constitute constructive declinature and whether the *firm* can enter the *assigned risks pool*.**
- 4.3. An applicant will be given a short-term admission to the *assigned risks pool* provided the applicant has signed the contract for entry, while other *participating insurers* are approached or while the *Joint Advisory Panel* decides whether there has been a constructive declinature.**

The Joint Advisory Panel has delegated the authority to approve evidence of declinature to the assigned risks pool manager.

It is possible to enter the assigned risks pool on a short-term basis if your current insurers have declined to provide renewal terms and have not agreed to an extension of cover (beyond the extended policy period). Temporary cover for up to thirty days may be granted in the assigned risks pool and should provide sufficient time for participating insurers to be approached.

The assigned risks pool manager will explain that anyone attempting to gain entry to the assigned risks pool first must approach other participating insurers to seek insurance. For details of participating insurers and how they should be approached you should refer to the assigned risks pool manager.

- 4.4. Before admission to the *assigned risks pool* the applicant must:**
- a. supply the *assigned risks pool manager* with any information it may reasonably require;**
 - b. pay to the *assigned risks pool manager* any required deposit and agree to pay the balance of any further premium, as eventually assessed, in accordance with the timescales set out in the contract for entry;**
 - c. agree to submit, at the applicant's own expense, to investigations as required by *regulation 4.5*; and**
 - d. consent to the *assigned risks pool manager* notifying the *Committee* of the application for admission to the *assigned risks pool* and whether or not it was granted.**

The cover provided in the assigned risks pool will not include claims made or circumstances reported or known to you before you entered the assigned risks pool. Before entry into the assigned risks pool it is therefore essential to notify existing insurers, before the existing policy expires, of all known claims or circumstances which might give rise to a claim. We recommend that you should discuss this further with your broker.

- 4.5. Once in the *assigned risks pool*, if the *Committee* so decides, the person, *member* or *firm* must submit, at its own expense, to an initial investigation by the *Committee* or its appointed agent. The *Committee* may also request a further investigation at a later date. A deposit for the costs of any investigation may be required at the *Committee's* discretion. The aim of the investigation is to:
- a. determine the reasons why cover could not be obtained; and
 - b. ascertain what steps, if any, should be taken to enable cover to be obtained outside the *assigned risks pool*;
 - c. any other reasonable reason as determined by the *Committee*.
- 4.6. The *Committee* will notify the person, *member* or *firm* of any action it should take following the investigation. If, as part of the investigation, the *Committee* considers that the interests of any clients of the person, *member* or *firm*, or of the public, may be adversely affected, the *Committee* will refer the matter to any regulatory, disciplinary or other committee of *ICAEW* for that committee to take appropriate action.

Before you can enter the assigned risks pool you must sign a contract which requires you to pay the premium determined by the Joint Advisory Panel and agree to have a review of your practice if required.

A significant premium deposit is payable immediately. A final adjustment will be made once your position has been reviewed. You must also pay the cost of the investigation and any follow-up investigation which is necessary.

If requested by the Committee, ICAEW will arrange for an investigation of your firm. This report will be used in deciding whether you are in a position to be able to leave the assigned risks pool and, if not, what steps should be taken by you to satisfy insurers. It is also to enable the committee to assess whether it should report any matters for possible regulatory or disciplinary action or take any alternative steps as requested by the Committee.

Firms who have ceased practising in the assigned risks pool may be entitled to extended run-off cover. In such circumstances, the firm should seek guidance from the assigned risks pool manager.

Leaving the assigned risks pool

- 4.7. The written approval of the *Joint Advisory Panel* is required before a person, *member* or *firm* can remain in the *assigned risks pool* for more than two years.
- 4.8. Applications for extensions of time in the *assigned risks pool* must be made, through the *assigned risks pool manager*, to the *Joint Advisory Panel* which has absolute discretion to grant the application for continuation in the *assigned risks pool*. The decision of the *Joint Advisory Panel* in respect of the continuation will be final. Any such extension may be granted subject to the requirements of *regulation 4.4*.
- 4.9. The written approval of the *Joint Advisory Panel* for a person, *member* or *firm* to remain in the *assigned risks pool* must be submitted to the *Committee*. If the *Committee* considers that the interests of any clients of the person, *member* or *firm*, or of the public, may be adversely affected by the person, *member* or *firm* remaining in the *assigned risks pool*, the *Committee* will refer the matter to any regulatory, disciplinary or other committee of *ICAEW* for that committee to take appropriate action.

You can leave the assigned risks pool at any time if you obtain cover in the general insurance market. You must normally leave the assigned risks pool after two years and, if it is not possible to obtain cover at the end of those two years you should not continue to practice. It may be possible to

obtain an extension of time within the assigned risks pool but this is at the discretion of the Joint Advisory Panel.

It is essential to advise the assigned risks pool manager of any claim or circumstance which might give rise to a claim before you leave the assigned risks pool. It is also essential, when seeking cover outside the assigned risks pool, to make any potential insurer aware of your time in the assigned risks pool, otherwise this could jeopardise your cover.

5 THE COMMITTEES

Professional Indemnity Insurance Committee

Composition

5.1. The *Committee* consists of at least four members and its quorum is three.

Responsibilities

5.2. The *Committee* is responsible for:

- a. reviewing the *qualifying insurance* criteria;
- b. monitoring compliance with these *regulations* and reporting non-compliance to any regulatory, disciplinary or other committee of *ICAEW*;
- c. deciding the content of the annual return to monitor compliance with these *regulations* (*regulation 2.5*);
- d. approving the form and content of the contract for entry into the *assigned risks pool*;
- e. ensuring the commissioning of investigations into *firms* applying to be admitted to the *assigned risks pool* (*regulation 4.5*);
- f. making a referral to any regulatory, disciplinary or other committee of *ICAEW* for that committee to take appropriate action following an investigation under *regulation 4.5*;
- g. designating *insurers as participating insurers*; and
- h. granting, at its absolute discretion, an exemption under *regulation 5.3*.

Dispensations

5.3. The *Committee* may, at its absolute discretion, and in such terms and impose such conditions as it decides:

- a. grant an exemption from the requirements of these *regulations* to a *member* who is a *principal* in a practice which is regulated by another professional body and has in place the professional indemnity insurance required by that body;
- b. waive or relax the requirements of *regulation 3.7* (level of excess);
- c. allow a *firm* subject to these *regulations* to combine with others to comply with these *regulations*;
- d. waive or relax the requirement of these *regulations* to hold *qualifying insurance*;
- e. grant an exemption from the requirements of these *regulations* to a *member* who is an employee in a *firm* and who is holding a *practising certificate* only to meet the requirement of the audit or insolvency regulations and who is not engaged in public practice in another *firm* or on their own account;
- f. grant an exemption from the requirements of these *regulations* to a *member* who holds a *practising certificate* but who is not engaged in public practice;
- g. grant an exemption from the requirements of *regulation 3.1b* (arranging *qualifying insurance*) to an entity or individual if that entity is owned or the individual is employed by an entity that is not subject to these *regulations*

provided that other entity (the owner/employer) has, and agrees to maintain, other appropriate professional indemnity insurance; and

- h. grant an exemption from the requirements of *regulation 3.1b* (arranging *qualifying insurance*) to an entity or individual if that entity or individual is resident in a country outside the *United Kingdom* provided that the entity or individual is primarily in practice outside the *United Kingdom* and has other appropriate professional indemnity insurance that covers work undertaken in the *United Kingdom*.
- i. require a *firm* applying for dispensation to pay such fees on application as may be determined from time to time by the *ICAEW* Regulatory board.

5.4. The *Committee* may consider the guidance contained in Appendix B of these regulations when considering dispensation under regulation 5.3.

Regulation 5.3 allows the Committee to exempt members and firms from the requirements of particular regulations. These are the only exemptions allowed.

In all cases, any relaxation of the regulations is at the absolute discretion of the Committee which may attach conditions to the grant of the dispensation. Guidance on the criteria that the Committee may use in considering whether to grant a dispensation from the requirements of the regulations, as well as further information for firms making an application under regulation 5.3 is set out in Appendix B.

- 5.5. A decision under *regulation 5.3* will come into effect as soon as notice of it is served on the applicant individual or *firm*, or such later time as the *Committee* specifies, save that if the individual or *firm* has applied for a review of the decision in accordance with *regulation 5.6*, the effect of the *Committee's* decision will be suspended pending a decision on the review. Alternatively, the *Committee's* decision will stand if the request for a review is withdrawn and become effective on the date on which notice of such withdrawal is served.**

Review

- 5.6. An *affected party* may apply for a review of the *Committee's* decision to refuse to grant a dispensation, or to grant a dispensation subject to conditions, in accordance with *regulation 5.3*.**
- 5.7. An application for review must be made in writing to the *Head of Committees and Tribunals* within ten *business days* of service on the *affected party* of the decision made under *regulation 5.3*. Any application made for a review must be made in accordance with the *ICAEW Regulatory Review and Appeal Regulations*.**
- 5.8. A meeting of the *Review Committee* will be arranged in accordance with the *ICAEW Regulatory Review and Appeal Regulations*. The *Review Committee* will consider the matter afresh and will consider any new information/and or evidence put forward by the *affected party* in support of the application or by *ICAEW*. The *Review Committee* may make any decision which the *Committee* could have made in accordance with *regulation 5.3*.**

If a person or firm is dissatisfied with a decision of the Committee to either refuse to grant a dispensation, or to grant a dispensation subject to conditions, they may apply for a review of the decision by *ICAEW's* Review Committee.

An application for review must be submitted in writing to ICAEW's Head of Committees and Tribunals within ten business days of the Committee's decision being served (for the deemed timing of service see regulation 1.6). Further details regarding the content of the application can be found in the ICAEW Regulatory Review and Appeal Regulations.

The Review Committee will consider the matter afresh and will have the same powers as the Committee to determine the application in accordance with regulation 5.3. It may make the same or a different decision.

- 5.9. The *Review Committee* may, in its absolute discretion, order an *affected party* to pay some or all of the costs of the review.**

Other powers

- 5.10. The *Committee* may publish its decisions or advice as and where it considers appropriate.**

- 5.11. The *Committee* may delegate its duties to sub-committees or to the *secretariat*.**

Provision of information to the Committee

- 5.12. In carrying out its functions under these *regulations*, the *Committee* has the power to require a person, *member* or *firm* subject to these *regulations* to provide any information (including books, papers and records) about it or its clients. This power can also be exercised by any of the *Committee's* sub-committees, the *secretariat*, or any duly appointed agent.**

- 5.13. Information provided to the *Committee* under these *regulations* will be treated as confidential but may be disclosed if the *Committee* considers it appropriate in the following circumstances:**

- a. in connection with the procedures set out in these *regulations*;**
- b. in connection with disciplinary proceedings by *ICAEW* or the *Investigation and Discipline Scheme*;**
- c. in connection with the discharge by *ICAEW* of its function as a regulatory body; or**
- d. as required by law or regulations.**

- 5.14. A person, *member* or *firm* which was subject to these *regulations* will nevertheless continue to be subject to *regulation* 5.12 in so far as the enquiries or information required relate to any period up to and including the date when compliance with these *regulations* was no longer required.**

It is important that confidentiality is maintained so as to avoid prejudicing the terms of members' insurance cover. Except for the circumstances described in regulation 5.13 neither the committee, nor any member of ICAEW or secretariat, may disclose the insurance details of any member to any person other than that member without the consent of the member.

Joint Advisory Panel

5.15. The *Joint Advisory Panel* will:

- a. consist of two representatives from each of the *Institutes*, one of whom shall be nominated Chair by joint agreement of the Presidents of the *Institutes*, and four representatives from the *participating insurers*;**
- b. have a quorum for meetings of four members, two of whom must be representatives of the *Institutes* and two of the *participating insurers*; and**
- c. meet as required and at least twice a year.**

5.16. The *participating insurers*' membership of the *Joint Advisory Panel* will be reviewed every three years by the *assigned risks pool manager* for recommendation to the *Institutes* based primarily on the *participating insurers*' level of participation in the *assigned risks pool* and such other criteria as may be determined by the *Institutes* from time to time.

5.17. The *Joint Advisory Panel* is responsible for:

- a. reviewing the progress, effectiveness and viability of the *participating insurers* scheme including the *assigned risks pool*;**
- b. reviewing insurance matters referred to *ICAEW* ;**
- c. determining applications for admission to the *assigned risks pool*;**
- d. determining applications for extensions in particular cases to the maximum of two years in the *assigned risks pool*; and**
- e. dealing with any other matters referred to the *Joint Advisory Panel*.**

The Joint Advisory Panel ensures that there is a regular exchange of information between the Institutes and participating insurers and that the regulations are suitable to meet current market conditions. The Joint Advisory Panel also provides technical expertise and, in particular, monitors firms in the assigned risks pool. While the Joint Advisory Panel comprises of four insurer representatives on a standing basis, additional insurer representatives may attend meetings from time to time in an advisory (and non-voting) capacity.

6 ADDITIONAL GUIDANCE

- 6.1. This section provides additional guidance only relating to your insurance and risk arrangements. It is not intended to be prescriptive nor to replace specialist guidance from an insurance broker where appropriate. If you are unable to find the answer here, you should contact your broker, or the professional indemnity insurance section of Professional Standards at ICAEW.
- 6.2. This section, together with the guidance included with the regulations, also provides further guidance on the 'reasonable steps' that regulation 3.1 requires firms to take.

Monitoring compliance

- 6.3. Members and firms are required to confirm annually to ICAEW their compliance with the regulations as part of the Practice Assurance annual return.
- 6.4. Individual principals in a firm will not receive separate returns unless they are also in another firm on their own account. Members who hold a practising certificate but who are not engaged in public practice will not receive a return.

Claims handling

- 6.5. All principals, together with their employees, should be made aware of the importance of notifying insurers promptly of claims or circumstances which may give rise to a claim. Everyone in the firm should know that failure to comply with underwriters' requirements in this regard could seriously prejudice the firm's rights and entitlement to indemnity under the policy.
- 6.6. Usually, one person at the level of principal, should be given the task of recording and coordinating information about claims or circumstances and of notifying brokers/underwriters accordingly. That person should regard the prompt notification to brokers/underwriters as a first priority and should not wait until there have been developments or until a detailed report of the matter has been prepared.
- 6.7. All staff should be encouraged to report promptly to the individual designated in the above paragraph any matters of which they become aware.
- 6.8. Claims or circumstances should be regarded objectively. If there are circumstances which might reasonably give rise to a claim then insurers should be notified immediately. This is regardless of the fact that currently allegations may be vague or not specified and regardless of whether the member personally thinks liability is unlikely. In this latter regard the question of liability is a legal one which, ultimately, the courts are competent to decide. Staff should be advised of the requirement to notify circumstances.
- 6.9. There should be a regular item on the agenda of principals' meetings to discuss any matter that might lead to a claim and also to monitor any claims that have been made.
- 6.10. Prior to renewal and the completion of the proposal form, a circular should be sent to all principals requiring confirmation that they are not aware (after enquiry of staff who report to them if applicable) of any claim or circumstance which may give rise to a claim. The circular should remind principals and staff of the importance of the declaration and that

failure could prejudice the firm's rights under the policy. In addition, it should make clear that the period between the completion of the proposal form and renewal is a critical one and that any matter or circumstance arising in that period must be notified as a matter of great urgency.

Cost of cover

- 6.11. The premium charged for insurance is a matter between you and your insurer. ICAEW will not become involved in these discussions. If you are offered a quotation which you are unable to pay within six months from the commencement of the policy, or which has such an effect on your financial security that it jeopardises your ability to carry on your business (regulation 4.1) then you should contact the Technical Advice Line to discuss your situation.

Level of cover

- 6.12. Having carried out your risk assessment procedures (see paragraphs 6.17 to 6.24) you should decide the level of cover required, considering:
- the minimum level required by these regulations;
 - the likely level of exposure of the firm to claims;
 - whether current cover is consistent with that of similar firms, using available resources such as interfirm comparison, information held by your broker, and information held jointly with other firms in a mutual arrangement;
 - the advice from experts on what cover is available and its cost. Your broker will be able to assist you;
 - the level of the firm's own resources to meet claims. This includes the availability of both firm and personal assets and reserves held to meet known claims.
 - You should also consider alternative types of insurance that may be available, for example cyber cover, or directors' and officers' insurance. Your broker will be able to explain the protection offered by these types of policy which may not be available from a policy of qualifying insurance.

Practice mergers etc

- 6.13. You must plan in advance if your firm's structure changes. For example, if you are about to merge with another firm, you and your fellow principals must ensure that the new firm has sufficient qualifying insurance that will offer cover for your existing firm to enable you to comply with the regulations. If your firm is dividing, each new firm must have sufficient qualifying insurance in its own right as well as ensuring there is cover in place for the original firm's historic work. Further guidance is in paragraph 6.27 onwards.

Recommended level of insurance cover (limit of indemnity)

- 6.14. The minimum required level is set out in section 3. Generally, the regulations do not require firms to have more than £2 million insurance cover. For many firms this limit may not be adequate. All firms are required to take reasonable steps to be able to meet claims arising from professional business and you should consider carefully whether the minimum limits of indemnity set out in section 3 are adequate.

Large Firms and Groups

- 6.15 Firms (or a group of firms within the scope of regulation 3.9) with a gross fee income over £50million fall within the scope of regulation 3.8 so are not required to have a policy of qualifying insurance and are therefore permitted to make their own insurance arrangements. Large firms must have appropriate arrangements in place in order to comply with regulation 3.1a. Firms should have appropriate records outlining what provisions they have put in place to ensure they are able to meet claims arising from being in public practice.
- 6.16 Firms relying on regulation 3.9 should also assess the appropriateness of the level of their insurance cover. The minimum level set out in section 3 may not be sufficient.

Risk assessment

- 6.17 Your first priority is to limit the risk of claims against your firm.
- 6.18. ICAEW produces a helpsheet **Managing Professional Liability Risk**, which sets out in detail the steps you should take to limit the risk of claims and what you should consider before accepting new clients, or new work from existing clients.
- 6.19. A firm should carry out a risk assessment and take any appropriate action. This would normally be at least annually, in the context of an impending renewal of PII cover, and at any other time when the composition of the firm or its client base changes significantly. The assessment should give consideration to the possibility of being sued should anything go wrong and the possible amount of such a claim:
- client by client, having regard to whether the work is ongoing or one-off;
 - client by client, having regard to the maximum potential exposure of those interested in the client, for example shareholders and creditors.
- 6.20. External information such as the general economic climate and the types of business experiencing difficulties should also be considered as part of the assessment.
- 6.21. As part of the assessment of each client (and new clients before they are taken on) the following should be considered:
- instructions received, and nature of work to be carried out and the resources necessary in time and staff to complete tasks in a timely and accurate manner;
 - credibility of management;
 - quality of accounting, financial and management controls;
 - type of business;
 - continued viability of the company;
 - the effect of the fee on the quality of the work.
- 6.22. If you decide that work done for any client creates a potentially higher than average risk, whether or not you are charging a fee, you should:
- evaluate your ability to mitigate the risk in terms of procedures;
 - initiate safety procedures, for example a review by another principal;

- reconsider your quality control and assurance procedures;
- decide whether to retain the client.

6.23. Remember the need to cover:

- all of your firm's current staff, including sub-contractors and consultants;
- all of your firm's activities including, for example, joint audit appointments;
- past and new principals and predecessors in business.

6.24. After taking any limiting action you must then assess the remaining risk before deciding upon the level of professional indemnity insurance. Bear in mind the firm's claims history and the need for regular analysis of prime causes of any failures experienced by the firm.

Retroactive cover

6.25. Qualifying insurance must provide retroactive cover for liabilities arising from work carried out in the previous six years (unless it relates to a claim or circumstance known about at the time the insurance was taken out).

6.26. Insurance is on a "claims made basis", which means the policy on risk at the time a claim is made may respond to the claim, rather than when the work was done. However, insurers may apply a retroactive date on the policy which means that the insurers will not accept a claim if the original work was done before the retroactive period started. This cannot be less than six years and may well be much longer as many insurers will not apply a retroactive date to the policy.

Practice Changes

6.27. The obligation falls on individual members to have 'qualifying insurance'. When a practitioner changes practice, either by moving between firms or leaving a partnership to become a sole practitioner, it is very important that insurance cover is in place for the practitioner's historic work. This can be achieved in a number of ways as set out below:

- Cover may be available for former principals in the old practice;
- as a separate standalone policy;
- in some circumstances the new firm's insurance may provide cover for work done at the previous firm
- as a last resort, in the assigned risks pool (see section 4).

6.28. It is the member's responsibility to ensure that this element of the cover is in place. If the cover is provided by the insurance policy of a practice the member has just left, then the provision of such insurance, and confirmation of its continued existence, should form part of any 'leaving' agreement.

6.29. Similar consideration applies when practices merge or break-up into smaller firms. Each member should ensure that cover for historic work is in place. It may be necessary to take advice from a specialist insurance broker. As with all such matters, advance planning is essential.

Run-off cover

6.30. When a practitioner or firm ceases in public practice then 'run-off cover' should be arranged. This is insurance cover for claims made against the firm after it has stopped doing business.

- 6.31. Members are required to take all reasonable steps to ensure they are covered by arrangements which comply with ICAEW's regulations for at least two years after they cease to practise. Run-off cover may be provided under the policy of a continuing practice or you may need to take out an individual policy. If your former practice has undertaken to include run-off cover for you in its current cover, you must remember to check that it continues to cover you for at least two years. At the end of that time you should consider whether you need continued cover. It is recommended that you consider maintaining run-off cover for six years after you cease to practise.
- 6.32. Where firms cease, the members in practice in the firm must ensure that compliant cover is in place for at least two years, and thereafter they must take all reasonable steps to maintain compliant run-off cover for a further four years.
- 6.33. It is recommended that firms consider the appropriate level of cover for their circumstances and risk profile. The terms and extent of any cover should usually be equivalent to any previous qualifying insurance. It is to cover the practitioner for claims received after ceasing in practice for work done while in practice.

Terms used in policy documents

Aggregate

- 6.34. The total amount of indemnity available in a particular policy year.

Claims made basis

- 6.35. This means that the insurance will provide cover for claims first made or circumstances arising and notified to the insurers during the term of the current policy only. This is irrespective of when the work concerned was carried out, but see 'retroactive cover'. It is therefore important that insurance remains in force to provide protection against any claims which may arise in the future for work done in the past.

'Each and every' claim or 'anyone' claim

- 6.36. The limit of indemnity specified in the policy schedule which is available to meet 'each and every' claim. This may also be written as 'any one claim'. In this case there is no overall limit to the number of claims and multiple claims, each up to the limit, could be made.

Limit of indemnity

- 6.37. The maximum amount that an insurer is obliged to pay out, either in aggregate or each and every claim, to meet valid claims against the firm while the insurance is in force.

Aggregate Excess

- 6.38. The total value of excess payments required to be paid in a particular policy year.

APPENDIX A – PARTICIPATING INSURERS

Any authorised insurer prepared to agree to the conditions of ICAEW's scheme may apply to the assigned risk pool manager to be designated as a participating insurer.

To be a participating insurer, an authorised insurer has to agree to:

- provide insurance in accordance with these regulations;
- subscribe to the assigned risks pool, as described in section 4;
- supply ICAEW or its appointed agent such information as it may reasonably require;
- refer to arbitration all disputes with insured firms involving disagreement about:
 - which of two or more participating insurers should indemnify a firm; or
 - how two or more participating insurers should indemnify a firm.

ICAEW has a list of participating insurers which is updated each year and is available at icaew.com/pii.

Many insurers underwrite in groups (facilities) with a lead underwriter and several following underwriters. The list of participating insurers sets out which insurer can be approached directly and which insurers must be approached through a broker.

APPENDIX B – GUIDANCE RELATING TO DISPENSATION POWERS CONTAINED IN REGULATION 5.3

In accordance with regulation 5.3, the Committee has an absolute discretion in deciding whether to grant an application for dispensation, or to grant an application subject to conditions. The decision on whether to grant a dispensation will be based on the specific circumstances of the applicant individual or firm.

In considering the application, the Committee shall have regard primarily to the need to ensure that appropriate insurance or other arrangements are in place for the purposes of client protection. The Committee's decision will take effect as soon as it is served on the applicant individual or firm.

Applications for dispensation in accordance with regulation 5.3

Regulation 5.3 (a)-You may be in a firm which is regulated and insured under the requirements of another professional body. ICAEW can advise you if your cover meets the requirements of these regulations and whether you may apply to the Committee for an exemption from them.

Regulation 5.3 (b)- The minimum requirements may include a self-insured element so long as it does not exceed the limits in these regulations. The limits are set out in full in regulation 3.7. The Committee can vary these in specific situations although the general rule is that the self-insured element should be no more than the higher of £3,000 or 3% of a firm's gross fee income.

Regulation 5.3 (c)- Regulation 3.9 details how firms can arrange insurance required by these regulations on a joint basis. The Committee also retains its discretion to permit multiple firms to structure its insurance in this way in cases where the firm is unable to satisfy the criteria contained in the guidance to regulation 3.9 or in cases where the firms are unclear on whether they do so.

Regulation 5.3 (d)- In exceptional cases the Committee can relax the requirement to hold qualifying insurance (i.e. insurance with a participating insurer, which complies with the approved minimum wording and provides six years' retroactive cover).

Regulation 5.3 (e)- The Audit Regulations and Guidance allow an employee to be designated as a responsible individual and the Insolvency Regulations allow an employee to hold an insolvency licence. Both sets of regulations require such an employee to hold a practising certificate. However, there is no need for such an employee to have his or her own professional indemnity insurance.

Regulation 5.3 (f)- Members that hold a practising certificate but are not engaged in public practice are generally not required to have ongoing professional indemnity insurance. However, members should ensure they have in place appropriate run-off cover in accordance with regulation 2.7 when they cease to hold a practising certificate.

If the member is engaged in public practice in another firm or otherwise on his or her own account, insurance must be obtained to meet the requirements of these regulations.

Regulation 5.3 (g)-Members or firms may be subject to these regulations but employed or owned by another entity which is not. In this case the Committee may exempt them from having 'qualifying insurance' but only if the other entity has other appropriate professional indemnity insurance arrangements in place.

Regulation 5.3 (h)-You may also be subject to these regulations but your practice is primarily based outside the United Kingdom. In this case the Committee may exempt you from having 'qualifying insurance' but only if you have other appropriate professional indemnity insurance arrangements in place for your clients in the United Kingdom.

Guidance on the exercise of dispensation powers

Generally, in considering applications for dispensation, the Committee will have regard to the extent to which the proposed policy will depart from the minimum requirements set down in the PII Regulations and approved minimum wording.

The following is a non-exhaustive list of factors which the Committee may consider in determining such applications having regard to the primary purpose of ensuring that appropriate client protection arrangements are in place:

- the adequacy of the overall level of cover, having regard to the minimum limit of indemnity required by the regulations;
- the level of excess on the policy compared with the maximum level of aggregate excess permitted under regulation 3.7;
- whether the policy includes at least six years retroactive cover;
- whether the excess is payable in respect of defence costs;
- whether defence costs are payable in addition to the limit of indemnity;
- whether the limit of indemnity includes cover for claimants' costs, expenses and disbursements;
- whether any territorial or jurisdiction restrictions operate on the policy to restrict coverage;
- whether the policy contains exclusions which significantly restrict the scope of cover compared with the approved minimum wording;
- whether the insurance has been, or will be, issued by a participating insurer (see appendix A);
- the applicant's regulatory and claims history;
- any assistance the applicant has received in sourcing cover;
- the availability or otherwise of alternative cover in the market and efforts taken by the applicant to secure compliant cover; and
- The firm's activities and risk profile.

If the policy is not compliant because it restricts or excludes cover completely for certain business activities ("the Excluded Activities"), the Committee may, if it considers appropriate, grant a dispensation for that policy. In determining whether it is appropriate to grant a dispensation, the Committee may consider:

- whether the availability of cover has been verified by a broker
- whether the firm has ceased any involvement in the Excluded Activities;
- when the Excluded Activities took place;
- the availability and cost of cover in the commercial market and the affordability of the premium that is likely to be charged in the assigned risks pool;
- how many clients could be impacted by the exclusion, the likely losses which could be suffered, whether any claims may fall outside of the relevant limitation periods and whether liability may be restricted by terms of engagement letters and any legal advice disclosed to it by the firm in respect of the likelihood of claims arising;
- whether the firm is likely to be able to meet any higher excess in the proposed policy for all claims falling due;

- Whether there is a self-insurance fund that can be used to meet claims or excess payments arising from the Excluded Activities; and
- In all of the circumstances, whether the dispensation will be in the public interest, balancing the likely impact on the clients affected by the exclusion or restriction with the potential impact on other clients / third parties if the firm were to cease practising with no cover in place for all other work carried out by the firm outside of the Excluded Activities.

The Committee may also consider whether a QAD visit (the cost of which would be met by the firm) is required before a decision can be made. Alternatively, whether a visit should be arranged during the policy term in order to provide assurance to the Committee. The visit may consider one or more of the following:

- that the firm has ceased its involvement in the Excluded Activities;
- that the firm has complied with the conditions imposed by the Committee;
- that the firm is taking steps to ensure that it will be in an improved position at the next policy renewal date to obtain compliant cover, and
- and any other reasonable information as required by the Committee.

Our role as an improvement regulator

Our role is to strengthen trust in ICAEW Chartered Accountants and firms. We do this by enabling, evaluating and enforcing the highest standards in the profession.

ICAEW's regulatory and conduct roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department (PSD) and overseen by the ICAEW Regulatory Board (IRB).

Our role is to:

- **authorise** ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- **support** the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- **provide** robust anti-money laundering supervision and monitoring;
- **monitor** ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

Chartered accountants are talented, ethical and committed professionals. ICAEW represents more than 202,450 members and students around the world. All of the top 100 global brands employ ICAEW Chartered Accountants.*

Founded in 1880, ICAEW has a long history of serving the public interest and we continue to work with governments, regulators and business leaders globally. And, as a world-leading improvement regulator, we supervise and monitor around 12,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct.

ICAEW is the first major professional body to be carbon neutral, demonstrating our commitment to tackle climate change and supporting UN Sustainable Development Goal 13.

ICAEW is a founding member of Chartered Accountants Worldwide (CAW), a global family that connects over 1.8m chartered accountants and students in more than 190 countries. Together, we support, develop and promote the role of chartered accountants as trusted business leaders, difference makers and advisers.

We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create sustainable economies and a better future for all.

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