

Professional indemnity insurance regulations and guidance

(This edition includes all amendments made up to 1 January 2008 and none have been made since.)

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Introduction

Changes to the professional indemnity insurance regulations

The PII regulations were originally issued in August 1991. These have now been revised to improve the clarity of the wording and to make other improvements and changes.

In deciding the format for the revised regulations an aim was to make them 'user-friendly'. This has been dealt with in a number of ways. The regulations are now divided into chapters and each covers a specific area. Within the limits of regulations which have a legal standing, the wording is in 'plain English'.

Guidance is now included with the regulations, or if too long, it is in chapter 6. The regulations are in **bold** print to distinguish them from the guidance. Where defined terms are used in the regulations they are printed in *italics*. The guidance is printed in plain type throughout.

The following gives a brief outline of the major revisions to the regulations.

- The period of retroactive cover is increased from five to six years. This is more in keeping with current practice. Most insurance policies already provide for a period of six years or more already. However, firms do not have to amend their policies in this respect until the first renewal after 1 January 1999.
- A new regulation has been added to define the period for the gross fee income to be used in calculating the amount of insurance.
- For those who need to enter the assigned risks pool (see chapter 4) the process is now easier.

Members and others who need to comply with the regulations

Professional indemnity insurance is compulsory for all members of the Institute who have a practising certificate and are engaged in public practice, regardless of the amount of practice income.

Council's statement on public practice is in section 6.1 in the Members' Handbook. This sets out a definition of public practice. If a member remains in doubt as to whether his activities amount to engaging in public practice, he should contact the Ethics Advisory Services on +44 (0)1908 248 258 and give all the facts of his circumstances.

Similarly the regulations for audit, investment business and insolvency require those so regulated to meet the requirements of the PII regulations.

Responsibility of members

The PII regulations apply to individual members but in practical terms professional indemnity insurance usually covers their practising entity - for example their partnership or their sole practice. For those members in practice with non-members these PII regulations effectively apply to the entire mixed practice. For example, in a mixed partnership, the principle of joint and several liability will make the member partner jointly liable for the actions of his non-member partners. Therefore the insurance should cover the whole practice, not just the member partner.

Members who are responsible for making their own or their firm's professional indemnity insurance arrangements should be sure that those arrangements comply with the PII regulations. Many members are in firms and the professional indemnity insurance arrangements are handled by someone else on their behalf. This does not affect the responsibility of individual members to ensure they meet the PII regulations.

Level of insurance cover

Chapter 3 details the requirements for the minimum level of cover you must obtain. When deciding on how to achieve that level of cover you should consider the following:

- professional indemnity insurance - your broker will be able to help you to obtain cover; and
- the amount of excess to be borne by the insured - this level should only be decided after consideration of both the firm's and the principals' resources, including the borrowing capacity of each. Consider the past incidence of claims and your ability to meet multiple losses.

This is only the minimum amount of cover and you should always consider if this is adequate for your firm.

Inability to obtain insurance

If you cannot obtain cover which satisfies the PII regulations you may be able to enter the assigned risks pool for a period of time until cover is obtained in the market. Chapter 4 provides details.

Who can provide insurance

You must obtain the minimum level of cover, subject to any allowable excess, from a participating insurer and appendix A explains who these are.

Certificate of compliance

Each year the Institute requires confirmation of compliance with the PII regulations. All those covered by these regulations are asked to complete and return a certificate of compliance, which is part of the Practice Assurance annual return. The Institute may check with brokers or insurers that the information is correct.

For many members the confirmation will be sent to their firm, and will cover all the members who are principals in the firm.

Further advice

It is possible that the minimum level of cover, while complying with the PII regulations, will not be high enough to ensure that all claims made against you will be covered. You should consider carefully the level of cover which is right for you or your firm. To assist you in this, chapter 6 includes answers to the queries which are most often raised by members and some general guidance notes.

Your broker will be able to help you if you have any further queries. If you would like to talk to someone at the Institute please telephone:

PII section

+44 (0)1908 546 365

Other useful telephone numbers are:

Advisory Services

+44 (0)1908 248 032

Assigned risk pool manager

+44 (0)1603 207 652*

* Members should refer to chapter 4 before contacting the Assigned risk pool manager.

Non-practising members

Some members hold a practising certificate even though they are not engaged in public practice. There is no requirement for these members to have professional indemnity insurance. Such members are required to confirm annually that they are still not practising. If any practice activity is contemplated, then such members should obtain professional indemnity insurance, in accordance with these regulations, 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 Insolvency Licensing Regulations is dealt with at regulation 5.3.

CHAPTER 1

General

Authority and Commencement

- 1.1 These *regulations* are issued by the authority of *Council*.
- 1.2 The *regulations* come into effect on 1 November 1998.
- 1.3 The Professional Indemnity Insurance Regulations which came into effect on 1 August 1991 cease to have effect on 1 November 1998. Except that any insurance held under regulation 12 of those regulations shall be deemed to meet the requirements of *regulation 3.1b* of these *regulations* until the date of its next renewal after 1 January 1999.

The definition of qualifying insurance in the previous regulations had a period of retroactive cover of five years. These regulations have a period of six years.

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.

Definition of terms

- 1.7 In these *regulations* the following words have the following meanings.

assigned risks pool	The arrangements by which firms 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 the <i>Institute</i> and which manages the <i>assigned risks pool</i> .
authorised firm	A sole practitioner, a partnership or a body corporate authorised under the Institute's Investment Business Regulations.
authorised insurer	An insurer regulated by the Financial Services Authority in the <i>United Kingdom</i> , or by the Irish Financial Services Regulatory Authority in the Republic of Ireland, to carry on general insurance business in the <i>United Kingdom</i> or the Republic of Ireland respectively.

Bye-laws	The Bye-laws of the <i>Institute</i>.
certificate of compliance	The certificate used by the <i>Committee</i> to monitor compliance with these <i>regulations</i>.
Committee	The Professional Indemnity Insurance Committee of the <i>Institute</i>.
Council	The Council of the <i>Institute</i>.
firm	<ul style="list-style-type: none"> a a <i>member</i> engaged in public practice as a sole practitioner or with others in a partnership or a body corporate; b an <i>authorised firm</i>; c a <i>licensed firm</i>; d a <i>registered auditor</i>; e an <i>insolvency practitioner</i>; or f an <i>insolvency affiliate</i>.
gross fee income	<p>All income in respect of work carried on in public practice, including:</p> <ul style="list-style-type: none"> 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. <p>It does not include:</p> <ul style="list-style-type: none"> a the recovery of disbursements and expenses which do not form part of the chargeable fee for professional services rendered; b value added tax. <p>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.</p>
Insolvency affiliate	An individual granted affiliate status under the Institute's Insolvency Licensing Regulations.
insolvency practitioner	An individual licensed under the Institute's Insolvency Licensing Regulations.
Institute	The Institute of Chartered Accountants in England and Wales.
Institutes	The <i>Institute</i>, the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland.
Joint Advisory Panel	The <i>Joint Advisory Panel</i> appointed under regulation 5.10.

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.
licensed firm	a sole practitioner, a partnership or a body corporate licensed under the Institute’s Designated Professional Body arrangements.
member	A member of the <i>Institute</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 the <i>Institute</i> authorising the <i>member</i> to engage in public practice.
qualifying insurance	<p>Insurance which:</p> <p>a is underwritten by <i>participating insurers</i> (see appendix A);</p> <p>b 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; and</p> <p>c is underwritten in terms of the minimum wording approved by the <i>Institute</i>.</p> <p>A policy which does not use the exact approved minimum wording must contain a difference in conditions endorsement in a form approved by the Institute. 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 chapter 6 explain this further.</p>
registered auditor	A sole practitioner, a partnership or a body corporate registered under the <i>Institute’s</i> Audit Regulations.
regulations	These regulations as modified or amended.
secretariat	The people employed by the <i>Institute</i> to carry out its functions.
United Kingdom	Includes the Channel Islands and the Isle of Man.

CHAPTER 2

Scope and Monitoring

This chapter explains who needs to take out professional indemnity insurance and how this is monitored. If you are about to start practising you should contact the Institute, which will be able to provide any further information you need.

Scope

2.1 These *regulations* apply to:

- a **a member holding a *practising certificate* and resident in the *United Kingdom* or the Republic of Ireland;**
- b **a member in public practice in the *United Kingdom* or the Republic of Ireland;**
- c **an *authorised firm*;**
- d **a *licensed firm*;**
- e **a *registered auditor*;**
- f **an *insolvency practitioner*; and**
- g **an *insolvency affiliate*.**

The regulations governing post-qualification education and training require a member who has a practising certificate to meet the requirements of these PII regulations. This is regardless of the form of practice (that is as a sole practitioner, or as a principal in a partnership or a body corporate) or the amount of practice income. Similarly those regulated by the regulations for audit, investment business or insolvency have to meet the requirements of the PII regulations.

Members who hold a practising certificate, but who do not engage in public practice, do not need to have professional indemnity insurance.

A practising certificate is evidence of being in public practice but these PII regulations only apply to those members who are also resident, or in practice, in the United Kingdom or the Republic of Ireland. Other members who hold a practising certificate but who are resident elsewhere do not need insurance that meets the requirements of these regulations. If a member is in practice in another country then some form of insurance is recommended, but it is not mandatory. Under the regulations governing post-qualification education and training the Institute has reserved the right to inspect the work of overseas members.

However, there is no geographical limit in the regulations for audit, investment business and insolvency.

Firms that are licensed by the Institute under the Designated Professional Body arrangements and those authorised by the Financial Services Authority will need to consider the insurance requirements specified in the EU's Insurance Mediation Directive. This applies only if such firms undertake regulated activities relating to those contracts of insurance

covered by the Directive. Further information is provided in the Designated Professional Body Handbook (see note 3 at the end of part 2 of the Handbook).

- 2.2** These *regulations* also apply to a *member* for a period of two years after ceasing to 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 *Council*. 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 return a completed *certificate of compliance* with the *regulations* to the *Institute* each year.
- 2.6** The *Committee* can require such further information and evidence as it may reasonably need from *members, firms* and *participating insurers*.

The Institute sends a reminder letter and blank certificate (which is part of the practice assurance annual return) to all those covered by these regulations before the date on which the insurance is due for renewal. Individual principals in a firm will not receive separate certificates 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 certificate but will be required to declare annually that they are not engaged in public practice.

As soon as you have negotiated your new cover you should complete the certificate and return it to the Institute. It is important that you comply with this requirement. If you have any problems completing the certificate, or if you experience any delay in renewing your cover, you will receive reminders from the Institute and you should contact the practice insurance section to explain the reasons for the delay.

If you fail to complete the certificate, or to explain to the Institute why you are unable to do so, the consequences may be serious. You may be in danger of losing your registered auditor status, investment business authorisation and/or insolvency practitioner status. Your eligibility to hold a practising certificate could also be in danger and you may also be liable to disciplinary action.

Cessation of practice

- 2.7** A *member* who ceases to be engaged in public practice in the *United Kingdom* or the Republic of Ireland must use his best endeavours to ensure that he is covered by arrangements which satisfy these *regulations* for at least two years from the date he ceased in public practice. The terms and extent of any cover must be equivalent to that provided by his *firm's* previous *qualifying insurance*.

2.8 When a *firm* ceases the *members* in practice in that *firm* at the date of cessation shall ensure that there is in place appropriate cover to meet requirements of *regulation 2.7* for at least 24 months following the cessation of the practice. Thereafter the *members* in practice in that *firm* shall use their best endeavours to ensure cover is in place to meet requirements of *regulation 2.7* for a further four years. The terms and extent of the cover must be equivalent to that provided by the *firm's* previous qualifying insurance.

(Regulation 2.8 is effective from 1 October 2002.)

It is extremely important that you secure 'run off' cover for your previous practice after you cease to practise. This is to cover you for claims for work done while in practice but arising after the practice ceased. Such cover is a requirement of these regulations and it is in your own interests, whether or not you think you might have a claim in future. If your practice has been taken over by someone else this cover may be effected by the new practice or by you.

You should maintain this cover for at least two years and at the end of that period you should carefully consider whether you need to continue cover. This will depend on whether you have had, or expect to have, any claims since you ceased practice. It is the Institute's recommendation that you should maintain run off cover for at least six years.

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

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

CHAPTER 3

Terms of cover

This chapter explains the Institute's scheme of insurance and 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. 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.

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

- exactly how the insurance works;
- what is covered;
- on what terms; and
- subject to what terms, conditions and exclusions.

Remember that the terms of any additional policies that you obtain for levels of cover over and above the minimum levels required by these regulations may not necessarily be the same as the terms of the qualifying insurance offered by participating insurers.

Ability to meet claims

3.1 A firm must:

- take reasonable steps to meet claims arising from being in public practice; and**
- arrange *qualifying insurance* which meets the limits in *regulation 3.2*.**

As well as taking reasonable steps to meet any claims that do arise, a priority is to limit the risk of claims against you. The guidance in chapter 6 gives some examples of the matters you should consider. Regulation 2.1 details who is subject to these regulations.

Qualifying insurance

Qualifying insurance is a special type of insurance for those in public practice. 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 the Institute's approved minimum wording. Those members taking out cover with a participating insurer can be certain that their policy meets the minimum requirements. These terms may be amended by insurers in an individual policy to include extensions of cover beyond the requirement of the approved minimum wording.

As an extra safeguard, the Institute has asked those participating insurers which use a slightly different wording to include a 'difference in conditions' endorsement in their wording. In the event of a dispute between a policy holder and his insurer, the endorsement will

ensure that the Institute's minimum wording overrides that of the insurer where the insurer's wording is less favourable.

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, limiting the period of cover for past acts. The date must be at least six years before the date of the current policy, or when the practice started if sooner.

The current text of the minimum policy wording and the difference in conditions endorsement may be obtained from the Institute at www.icaew.com/pii.

Firms that are licensed by the Institute under the Designated Professional Body arrangements and those authorised by the Financial Services Authority will need to consider the insurance requirements specified in the EU's Insurance Mediation Directive. This applies only if such firms undertake regulated activities relating to those contracts of insurance covered by the Directive. Further information is provided in the Designated Professional Body Handbook (see note 3 at the end of part 2 of the Handbook).

Minimum limit of indemnity

3.2 Except where *regulation 3.3* applies the *minimum limit of indemnity* must be £1.5 million for any one claim and in total.

This means that the insurance must pay a maximum of at least £1.5 million for a single claim or a number of claims totaling £1.5 million. It may be possible to obtain cover of £1.5 million for each and every claim, regardless of the number of claims made. Your cover up to the minimum limit of £1.5 million must be taken out with a participating insurer. Cover above that limit does not have to be with a participating insurer, nor does it need to comply with the minimum approved wording.

3.3 If the *gross fee income* of a *firm* is less than £600,000, the *minimum limit of indemnity* for any one claim and in total must be equal to two and a half times its *gross fee income*, with a minimum of £100,000.

Once a firm's gross fee income exceeds £600,000, the two and a half times multiplier gives an answer of £1.5 million which is the maximum required by these regulations. However, firms should always consider if this is sufficient for their situation.

The values in regulations 3.2 and 3.3 were changed with effect from 1 January 2008. They are effective for individual firms at the first commencement or renewal of insurance cover after 1 January 2008.

3.4 *Gross fee income* should be based on the accounting year of the *firm* which immediately precedes the start of the policy.

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 be based on the most recently completed accounting year. If this is your first year in practice, you should give your broker an estimate of your gross fee income. However, if the most recently completed accounts are not for a year or are for a period ending some time previously to the policy renewal date then you may need

to estimate the gross fee income figure to use. 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 although the insurance is on a claims made basis, regardless of when the work was done, claims do arise from previous years and if turnover was greater in the past the possibility of claims may be higher.

3.5 The *minimum limit of indemnity* can include an excess provided that:

- a for a sole practitioner the excess is not more than £30,000;**
- b for a partnership, the excess is not more than £30,000 multiplied by the number of *principals*;**
- c for a body corporate, the excess is not more than the greater of:**
 - 1 £30,000; or**
 - 2 the total of the amounts accepted by the *principals* as a legally binding personal obligation (but excluding any amount over £30,000 accepted by any *principal*).**

Although there is a minimum amount of insurance needed, part of this can be borne as an excess as in any other form of insurance. However, the above regulation sets a limit to the amount of the excess.

The minimum limit of indemnity 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 the above regulation although the Committee does have the power (see regulation 5.3) to vary these in specific situations. However, the general rule is that the maximum should be £30,000 per principal.

(Regulation 3.5 was amended with effect from 1 January 2004, the previous limit was £20,000.)

3.6 If the *Committee* is satisfied that a group (however composed) of *firms* has shown that together they comply with these *regulations*, it is at the *Committee's* discretion to allow that group to be treated as a single entity (compound firm) for the purposes of these *regulations*.

The Committee can treat a 'group' of separate firms as a compound firm. Such a firm will usually comprise a number of associated firms which appoint one of their number to arrange insurance under one policy.

CHAPTER 4

Inability to obtain cover

It is possible, for example if you have had a number of claims, that you may not be able to obtain cover. This chapter 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. 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. This can provide cover in an emergency and for up to two years, although premium levels are considerably higher than charged outside the assigned risks pool. The assigned risks pool manager (see introduction for telephone number) acts as coordinator between firms, participating insurers and the Institute. If you wish to apply to enter the assigned risks pool you should telephone the assigned risks pool manager who will be able to help you and will provide the documents you need.

If you establish to the satisfaction of the Joint Advisory Panel (regulation 5.10) 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:
 - 1 the quotation of a premium which the applicant is unable to pay within six months from the commencement of the policy; or**
 - 2 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 where cover following cessation of public practice (see *regulation 2.7* and *2.8*) is not available from any *participating insurer*.**

You may apply for entry into the assigned risks pool if you or your firm cannot obtain cover to comply with these regulations from any participating insurer. Declinature and constructive declinature are insurance terms. Declinature means that you have been refused cover. 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 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. Temporary cover for up to thirty days may be granted in the assigned risks pool and should provide sufficient time for all participating insurers to be approached.

The assigned risks pool manager will explain that anyone attempting to gain entry to the assigned risks pool 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 agree to pay to the *assigned risks pool manager* within thirty days any required deposit and agree to pay within six months the balance to meet the full premium as eventually assessed;**
 - 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.

- 4.5** Once in the *assigned risks pool* the person, *member* or *firm* must submit, at its own expense, to an investigation by the *Committee* or its appointed agent and, if the *Committee* so decides, a further investigation at a later date. A deposit for the costs of the investigation may be required at the *Committee's* discretion. The investigation will:
- 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*.
- 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 the *Institute* 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 have a review of your practice. 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.

The Institute will arrange for an investigation of your firm. This report will be used by the Joint Advisory Panel when 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.

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 twenty four consecutive months.
- 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 the *Institute* for that committee to take appropriate action.

It is a requirement that a member who holds a practising certificate must comply with these regulations. A member will therefore lose the right to a practising certificate at the end of the expiry of the maximum two year period (or any extension) allowed in the assigned risks pool if no other arrangements are made to meet the requirement of these regulations.

If a member ceases to be eligible to hold a practising certificate then the bye-laws require that the practising certificate must be returned to the Institute immediately.

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 will no longer be eligible to hold a practising certificate. 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. Further, such an extension must be acceptable to the committee.

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 and your new insurers might refuse a claim on the grounds of material non-disclosure.

CHAPTER 5

The Committees

Professional Indemnity Insurance Committee

Composition

5.1 *Council* will appoint the *Committee*, which must consist 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 the *Institute*;
- c deciding the content of the annual *certificate of 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 the *Institute* for that committee to take appropriate action following an investigation under *regulation 4.5*;
- g designating *authorised insurers* as *participating insurers*; and
- h granting, at its absolute discretion, an exemption under *regulation 5.3*.

5.3 The *Committee* may, at its absolute discretion, and in such terms 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 3.5* (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 requirements of these *regulations* concerning *participating insurers*;

- 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; and**
- 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 insurance¹.**

This regulation allows the committee to exempt members and firms from the requirements of particular regulations. These are the only exemptions allowed.

You may be in a firm which is regulated and insured under the requirements of another professional body. The Institute 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.

In exercising its discretion, the committee will take account of whether the cover is at least equivalent to that required by these regulations, and whether the insurer in question is a participating insurer in the Institute's scheme.

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 3.5. The committee can vary these in specific situations although the general rule is that the maximum self insured element should be £30,000 per principal.

The committee can permit a group of firms to arrange the insurance required by these regulations jointly. Regulation 3.6 details exactly how this can happen.

The committee can relax the requirements relating to participating insurers.

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 own professional indemnity insurance.

Some members hold a practising certificate even though not engaged in public practice. There is no need for such members to have their own professional indemnity insurance.

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

You may be subject to these regulations but employed or owned by another entity which is not. In this case the committee may exempt you from having 'qualifying insurance' but only if the other entity has other appropriate professional indemnity insurance arrangements in place.

¹ Regulation 5.3g is effective from 1 January 2008.

In all cases, any relaxation of the regulations is at the absolute discretion of the committee which may attach conditions to the relaxation.

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

5.5 Except where *regulation* 5.6 applies, the *Committee* may delegate its duties to sub-committees or to the *secretariat*.

5.6 The *Committee* may not delegate the following decisions:

- a a relaxation from these *regulations* for *members* insured under the requirements of another body; and**
- b a relaxation under *regulation* 3.5 (level of self-insured excess).**

Provision of information to the Committee

5.7 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 also applies to any of the *Committee's* sub-committees, the *secretariat*, or any duly appointed agent.

5.8 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 the *Institute* or the *Investigation and Discipline Scheme*;**
- c in connection with the discharge by the *Institute* of its function as a regulatory body; or**
- d as required by law or regulations.**

5.9 A person, *member* or *firm* which was subject to these *regulations* will nevertheless continue to be subject to *regulation* 5.7 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 5.8 neither the committee, nor any member of the Institute or secretariat, may disclose the insurance details of any member to any person other than that member.

Joint Advisory Panel

5.10 The *Joint Advisory Panel* will:

- a consist of two representatives from each of the *Institutes*, one of whom shall be nominated Chairman 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.

5.11 The *participating insurers*' membership of the *Joint Advisory Panel* will be reviewed annually by the *assigned risks pool manager* by reference to the *participating insurers*' level of participation in the *assigned risks pool*.

5.12 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 the *Institute*;
- c determining applications for admission to the *assigned risks pool*;
- d determining applications for extensions in particular cases to the maximum of twenty four months 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 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.

CHAPTER 6

Additional Guidance

- 6.1 This chapter has been compiled from questions asked by members and should answer most of your queries. If you are unable to find the answer to your particular problem, you should contact your broker, or the professional indemnity insurance section of Professional Standards.
- 6.2 This section, together with the guidance included with the regulations, also provides guidance on the 'reasonable steps' that regulation 3.1 requires firms to take.

Certificate of compliance

- 6.3 The certificate of compliance is the document used by the Institute to collect information on the amount of insurance each firm has. It is sent to all those who have professional indemnity insurance as part of the Practice Assurance annual return.
- 6.4 Individual principals in a firm will not receive separate certificates 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 certificate.

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 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 only lawyers and, ultimately, the courts are competent to decide.)
- 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 This is a matter between you and your insurer and the Institute will not become involved in these discussions unless 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).

Level of cover

6.12 Having carried out your risk assessment procedures (see paragraphs 6.16 to 6.23) 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. This should include consideration of whether the cover offered includes legal costs within, rather than in addition to, the limit of indemnity. 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.

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 in order for you to comply with the regulations. If your firm is dividing, each new firm must have sufficient qualifying insurance in its own right. Further guidance is in paragraph 6.24 onwards.

Recommended level of insurance cover (limit of indemnity)

6.14 The minimum required level is set out in chapter 3. No firm is currently required to have more than £1.5 million insurance cover but for many firms this limit may not be adequate. It is important to note that all firms are required to take reasonable steps to be able to meet claims arising from professional business.

Reminder letter from the Institute

- 6.15 This, together with a blank certificate of compliance (part of the Practice Assurance annual return), is sent out as a reminder to every firm and member, (resident in the United Kingdom or the Republic of Ireland) and holding a practising certificate but not engaged in public practice before cover is due for renewal. If you have not already started to negotiate your cover for next year you should do so immediately you receive the reminder.

Risk assessment

- 6.16 Your first priority is to limit the risk of claims against your firm.
- 6.17 The Institute 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.
- 6.18 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.
- 6.19 External information such as the general economic climate and the types of business experiencing difficulties should also be considered as part of the assessment.
- 6.20 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 company;
 - the effect of the fee on the quality of the work.
- 6.21 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.

6.22 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.

6.23 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

6.24 When a practitioner ceases in public practice (and assuming he does not keep his practising certificate) then 'run-off' cover should be arranged. This is explained below.

6.25 The position can be more complicated when a practitioner moves between practices. The obligation is on individual members to have 'qualifying insurance'. An important part of what constitutes qualifying insurance is retroactive cover. Although the insurance is on a claims made basis, which means the relevant time is when a claim is made, not when the work was done, insurers will frequently put a retroactive date on the policy. This cannot be less than six years and may well be much longer. The practical effect is that the insurers will not accept a claim if the original work was done before the retroactive period started.

6.26 When a practitioner changes practice, either by moving between firms or leaving a partnership to become a sole practitioner, it is very important that this retroactive part of the cover is maintained. This can be achieved in a number of ways:

- as retroactive cover in the new practice;
- as a former principal in the old practice;
- as a special policy;
- as a last resort, in the assigned risks pool (see chapter 4).

6.27 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.

6.28 Similar consideration applies when practices merge or break-up into smaller firms. Each member should ensure, through one route or another, that retroactive cover 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

- 6.29 Members are expected to use their best endeavours to ensure they are covered by arrangements which comply with the Institute's regulations for at least twenty four months after they cease to practise. The terms and extent of any cover should 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.
- 6.30 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.
- 6.31 You should continue to assess your need for such cover each year until you are satisfied that there is no possibility of a claim being made. It is recommended that you consider maintaining run-off cover for six years after you cease to practise.

Terms used in policy documents

Aggregate

- 6.32 The total limit of indemnity available. The policy may describe this as 'any one claim and in all' or 'each and every claim and in the aggregate'.

Claims made basis

- 6.33 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. 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

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

Limit of indemnity

- 6.35 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.

APPENDIX A

Participating Insurers

The Financial Services Authority (or the Department of Enterprise, Trade and Employment in the Republic of Ireland) is responsible for authorising insurers to carry on general insurance business in the United Kingdom or the Republic of Ireland. Any such authorised insurer prepared to agree to the conditions of the Institute'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 chapter 4;
- supply the Institute or its appointed agent such information as it may reasonably require;
- refer to arbitration all disputes with insured firms involving disagreement about:
 - 1 which of two or more participating insurers should indemnify a firm; or
 - 2 how two or more participating insurers should indemnify a firm.

The Institute has a list of participating insurers which is updated every year and can be obtained from the Institute's website at icaew.com/pii.

Most insurers underwrite in groups (facilities) with a lead underwriter and several following underwriters. On the list provided by the Institute, those insurers which accept business direct are indicated. The other insurers must be approached through a broker, preferably a Lloyd's broker, with access to all participating insurers.