



STATUTORY INSTRUMENTS.

S.I. No. 572 of 2019



LEGAL SERVICES REGULATION ACT 2015 (PROFESSIONAL
INDEMNITY INSURANCE) REGULATIONS 2019

ARRANGEMENT OF REGULATIONS

CONTENTS

Part I:

Preliminary

1. Citation
2. Definitions and Interpretation

Part II:

Scope of the Regulations

3. Practising Barristers
4. Practising Solicitors

Part III:

Practising Barristers

5. Obligation to effect and maintain a Qualifying Insurance Policy
6. Renewal of Insurance
7. Maintenance of Insurance in Run-off
8. Insolvency of Insurers and Other Events

Part IV:

General Requirements

9. Criterion for insurer
10. Minimum level of indemnity cover
11. Mandatory provisions
12. Prohibited provisions
13. Permissible self-insured excess

S.I. No. 572 of 2019

LEGAL SERVICES REGULATION ACT 2015 (PROFESSIONAL
INDEMNITY INSURANCE) REGULATIONS 2019

THE LEGAL SERVICES REGULATORY AUTHORITY, in exercise of the powers conferred on it by section 47 of the Legal Services Regulation Act 2015 (No. 65 of 2015) (“the Act”), hereby makes the following Regulations.

PART 1
PRELIMINARY

Citation

1. These Regulations may be cited as the Legal Services Regulation Act 2015 (Professional Indemnity Insurance) Regulations 2019.

Definitions and interpretation

2. (1) In these Regulations:

“claim” means a request or demand for, or an assertion of a right to, or an indication of an intention to seek, civil damages or compensation of any nature;

“claimant” means a person or entity which has made or may make a claim including a claim for contribution or indemnity;

“defence costs” means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the insurer in relation to a claim including but not limited to the costs of:

- (a) defending any proceedings; or
- (b) conducting any proceedings for indemnity, contribution or recovery; or
- (c) investigating, reducing, avoiding or compromising any actual or potential claim;

but the term “defence costs” shall not include any internal expenses of the insured or former insured or costs for the time of the insured or former insured;

“former insured” means a person who has previously been an insured but who is no longer a practising barrister or employed by a limited liability partnership;

“insolvency event” means, in relation to an insurer: -

- (a) the appointment of a liquidator, receiver, administrative receiver, administrator or examiner to the insurer (or an analogous appointment being made in respect of the insurer in any jurisdiction outside the State);

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th November, 2019.*

- (b) the passing by the members of an insurer of a resolution for the voluntary winding up of the insurer (or an analogous step being taken in relation to a participating insurer in any jurisdiction outside the State);
- (c) the making of a winding up order in relation to an insurer (or an analogous order being made in respect of the insurer in any jurisdiction outside the State); or
- (d) the approval of a voluntary arrangement or similar form of composition with creditors in respect of an insurer (or an analogous event in respect of the insurer in any jurisdiction outside the State);

“insured” means a practising barrister;

“insurer” means an underwriter which provides professional indemnity insurance to practising barristers and which satisfies the criteria set out in these Regulations for the provision of such insurance;

“minimum financial strength rating” means, in respect of each approved ratings agency, the long term insurer financial strength rating specified below:

- (a) in respect of AM Best, a rating of A-;
- (b) in respect of Fitch, a rating of A;
- (c) in respect of Moody’s, a rating of A3;
- (d) in respect of S&P, a rating of A;

“non-performance event” means, in relation to an insurer, the loss by that insurer of its ability to lawfully fulfil any obligations undertaken by it in respect of a policy of insurance in the State (whether by withdrawal or qualification of its authorisation to do so or otherwise);

“period of cover” means the period for which the insurer provides a qualifying insurance policy to the insured;

“qualifying insurance policy” means a policy or policies of insurance which (in the case of a single such policy) complies with these Regulations or (in the case of a number of policies) which taken together comply with these Regulations;

“run-off cover” means a policy or policies of qualifying insurance which provides insurance cover for a person who has previously been an insured but who is no longer a practising barrister or a partner in a limited liability partnership;

“run-off period” means the period of 6 years immediately following the end of the former insured’s last period of cover as an insured;

“self-insured excess” means an amount that the insured (not the insurer) is required, by the terms of any contract between the insured and the insurer, to pay to the claimant in the event of a claim;

“solicitor-only legal practice” means a legal practice as defined in section 47(1)(b) of the Act in which only practising solicitors are partners.

(2) In these Regulations, unless the context otherwise requires, words and phrases shall have the meanings (if any) assigned to them by the Act.

PART II

SCOPE OF THE REGULATIONS

Practising barristers

3. Subject to the exemptions specified in Regulation 5 and Part IV, these Regulations shall apply to every practising barrister.

Practising solicitors

4. These Regulations do not apply to practising solicitors, which persons are subject to regulations made by the Professional Indemnity Insurance Committee of the Law Society, including the Solicitors Professional Indemnity Insurance Regulations as may be in force from time to time.

PART III

PRACTISING BARRISTERS

Obligation to effect and maintain a qualifying insurance policy

5. (1) Every practising barrister shall, subject to and in accordance with the remaining provisions of these Regulations, effect and maintain in place a qualifying insurance policy.

(2) A practising barrister who provides legal services only as an employee of a partnership of solicitors (whether a limited liability partnership or not), shall, in accordance with section 46(2) of the Act, be taken to comply with clause (1) of this Regulation 5 where there is in place a policy of professional indemnity insurance in respect of that practice which covers that practising barrister and which complies with regulations made under section 26 of the Act of 1994 in the case of a partnership of solicitors.

(3) (a) If a practising barrister to whom clause (2) applies provided legal services prior to becoming an employee of a solicitor-only legal practice, he or

she shall have in place a policy of run-off cover with an insurer for the run-off period in respect of the provision of such legal services pursuant to Regulation 7(1), where applicable; and,

- (b) for the duration of a relevant period of cover, the practising barrister must not engage in the provision of legal services to or for any person other than the legal practice of which he or she is an employee.

(4) Clause (1) of this Regulation 5 shall not apply to or in respect of any practising barrister who provides legal services only as part of an employment within the State to provide legal services to and for an employer who is not a legal practice, provided that:—

- (a) for the duration of a period of cover, the practising barrister has not and will not engage in the provision of legal services to or for any person other than his or her employer; and,
- (b) if the practising barrister provided legal services prior to commencement of the relevant employment, he or she must have in place a policy of run-off cover with an insurer for the run-off period in respect of the provision of such legal services pursuant to Regulation 7(1), where applicable.

(5) Clause (1) of this Regulation 5 shall not apply to or in respect of any practising barrister who provides legal services only as part of his or her employment in the full-time service of the State, provided that:—

- (a) for the duration of a relevant period of cover, the practising barrister has not engaged and will not engage in the provision of legal services to or for any person other than in the course of his or her employment in the full-time service of the State; and,
- (b) if the practising barrister provided legal services prior to commencement of the relevant employment, he or she has in place a policy of run-off cover with an insurer for the run-off period in respect of the provision of such legal services pursuant to Regulation 7(1), where applicable.

(6) For the avoidance of doubt, if a practising barrister engages in the provision of legal services to or for any person other than as described in clauses (2) to (5) of this Regulation 5, he or she must have in place a qualifying insurance policy in respect of those services at the time that those services are provided.

(7) A practising barrister who is subject to clause (1) of this Regulation 5 shall provide, to the Authority, or have provided on his or her behalf, evidence that he or she has effected and is maintaining a qualifying insurance policy in accordance with these regulations within 14 days of the commencement date, and within 14 days of each renewal date, of that policy.

(8) Every practising barrister shall be responsible for complying with his or her own obligations and responsibilities under these Regulations, and it shall be misconduct for a practising barrister to fail to so comply.

Renewal of insurance

6. (1) If a practising barrister is unable to effect a qualifying insurance policy to commence upon the expiry of an existing period of cover, he or she must cease practice immediately upon the expiry of the existing period of cover.

(2) A practising barrister to whom clause (1) of this Regulation 6 applies, shall immediately effect and shall maintain for the run-off period a policy of run-off cover with an insurer with effect from the date of expiration of the existing period of cover.

(3) A practising barrister to whom clause (1) of this Regulation 6 applies shall notify the Authority in writing within 14 days of the cessation of the provision of legal services.

Maintenance of insurance in run-off

7. (1) A practising barrister who is ceasing to provide legal services or who is ceasing to provide legal services as a practising barrister, shall establish and maintain a policy of run-off cover for the duration of the run-off period in respect of the legal services formerly provided.

(2) A practising barrister to whom clause (1) of this Regulation 7 applies shall provide to the Authority such evidence that he or she has established and is maintaining run-off cover as required pursuant to clause (1) of this Regulation 7 within 14 days of ceasing to provide legal services and within 14 days of the renewal of such run-off cover (if applicable).

Insolvency of insurers and other events

8. (1) Where a practising barrister has effected a qualifying insurance policy with an insurer or a number of insurers in accordance with Regulation 5, and an insolvency event or non-performance event occurs in respect of that insurer or one or more of those insurers, as the case may be during the period of cover, he or she shall:

- (a) immediately take steps to effect and maintain in place a qualifying insurance policy with an insurer or insurers that is or are unaffected by the insolvency event or non-performance event; and,
- (b) have a qualifying insurance policy in place with cover incepting on and with effect from no later than 30 days from the date upon which the insolvency event or non-performance event occurs;

which qualifying insurance policy shall be effective from the date of the insolvency or other non-performance event.

(2) A practising barrister to whom clause (1) of this Regulation 8 applies shall provide to the Authority such evidence that he or she has effected and is maintaining a qualifying insurance policy within 14 days of the commencement date, and within 14 days of each renewal date, of that policy.

(3) For the avoidance of doubt, if a practising barrister is unable to establish and maintain in place a qualifying insurance policy with an insurer or insurers that is or are unaffected by an insolvency event or non-performance event, and that provides a qualifying insurance policy incepting on and with effect from the date not later than 30 days from the date upon which the insolvency event or non-performance event occurs, he or she must immediately cease the provision of legal services.

(4) For the avoidance of doubt, a practising barrister to whom clause (3) of this Regulation 8 applies, shall immediately establish and maintain a policy of run-off cover with an insurer that provides cover incepting on and with effect from the date upon which the insolvency event or non-performance event occurred.

(5) A practising barrister who ceases to provide legal services in accordance with clause (3) of this Regulation 8 shall provide the Authority with evidence that he or she has effected and is maintaining run-off cover as required pursuant to clause (4) of this Regulation 8 within 14 days of ceasing to provide legal services and within 14 days of the renewal of such run-off cover (if applicable).

PART IV

GENERAL REQUIREMENTS OF QUALIFYING INSURANCE POLICY

Criterion for insurer

9. An insurer for the purpose of these Regulations must meet the minimum financial strength rating and must be licensed and authorised to transact business in Ireland.

Minimum level of indemnity cover

10. (1) In the case of a practising barrister (not engaged in the provision of legal services as an employee in a solicitor-only legal practice) the minimum level of indemnity cover that must be in place is €1.5 million.

(2) The minimum level of cover in clauses (1) and (2) of this Regulation 10 must relate to each and every claim made and not to the aggregate value of all claims made.

Mandatory provisions

11. A qualifying insurance policy effected and maintained by a practising barrister must: -

- (a) indemnify the insured in respect of all valid claims made and notified during the period of cover;

- (b) be fully retroactive and must cover any valid claims made during the period of cover regardless of when the work was undertaken;
- (c) provide that cover will not be refused or reduced on the basis of innocent or unintentional non-disclosure;
- (d) provide that, following the period of cover, the insurer will offer annually renewable run-off cover at a fixed premium for the run-off period on terms that are no less favourable than the terms of the qualifying insurance policy.

Prohibited provisions

12. A qualifying insurance policy must not exclude from the scope of cover claims arising from:

- (a) the provision of any specified legal services or categories of legal services;
- (b) practice in specified areas of legal practice; or,
- (c) the provision of services to specified clients or categories of clients.

Permissible self-insured excess

13. A practising barrister shall be permitted to agree to a self-insured excess in respect of qualifying insurance, provided that:

- (a) the self-insured excess does not exceed the greater of 1.5% of the annual practice revenue of the practising barrister or €5,000;
- (b) the insurer has agreed that, in any case where the practising barrister defaults in making payment of any part of such self-insured excess to a claimant when lawfully due, the insurer will pay the outstanding amount directly to the claimant;
- (c) the maximum permissible excess shall apply on an individual claim, and not on an aggregate, basis;
- (d) the excess cannot apply to first party defence costs or to claim expenses.



GIVEN under the Official Seal of the Legal Services
Regulatory Authority,

14 November 2019.

DR. DON THORNHILL

Chairperson of the Legal Services Regulatory
Authority

DR. Brian J. Doherty

Chief Executive Officer of the Legal Services
Regulatory Authority

EXPLANATORY NOTE

(This note is not a part of the instrument and does not purport to be a legal interpretation).

The purpose of these Regulations is to set out rules in relation to the professional indemnity insurance required to be maintained by practising barristers.

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