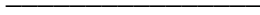




STATUTORY INSTRUMENTS.

S.I. No. 490 of 2024



LEGAL SERVICES REGULATION ACT 2015 (PROFESSIONAL
INDEMNITY INSURANCE FOR BARRISTERS) REGULATIONS 2024

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LEGAL SERVICES REGULATION ACT 2015 (PROFESSIONAL
INDEMNITY INSURANCE FOR BARRISTERS) REGULATIONS 2024

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S.I. No. 490 of 2024

LEGAL SERVICES REGULATION ACT 2015 (PROFESSIONAL
INDEMNITY INSURANCE FOR BARRISTERS) REGULATIONS 2024

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), hereby makes the following Regulations.

PART 1
PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the Legal Services Regulation Act 2015 (Professional Indemnity Insurance for Barristers) Regulations 2024.

Definitions

2. 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,
- (b) conducting any proceedings for indemnity, contribution or recovery, and
- (c) investigating, reducing, avoiding or compromising any actual or potential claim,

but not including any internal expenses of the insured or costs for the time of the insured;

“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),
- (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

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 27th September, 2024.*

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 the person, persons or partnership covered by a professional indemnity insurance policy;

“insurer” means the underwriter which provides a professional indemnity insurance policy;

“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);

“partner” means a partner in a legal partnership or limited liability partnership and shall include, where the context so permits or requires, a person being held out as a partner in that partnership;

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

“qualifying insurance policy” means a policy or policies of professional indemnity insurance covering the provision of legal services by a practising barrister or practising barristers which (in the case of a single such policy) complies with Part 4 or (in the case of a number of policies) which taken together comply with Part 4;

“run-off cover” means professional indemnity insurance which provides cover for legal services previously provided by a practising barrister or practising barristers in circumstances where —

- (a) the person concerned is no longer providing legal services to which Part 2 applies, or
- (b) a partnership to which Part 3 applies is no longer providing legal services;

“run-off period” means the period of 6 years immediately following the cessation of the provision of the legal services concerned.

PART 2

PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS FOR BARRISTERS PRACTISING OUTSIDE OF PARTNERSHIPS

Scope and purpose of Part 2

3. (1) This Part applies to practising barristers providing legal services other than as:

- (a) a partner or employee of a legal partnership or limited liability partnership to which Part 3 applies,
- (b) an employee of a partnership of solicitors which is not a limited liability partnership,
- (c) an employee of the State providing legal services exclusively to their employer, or
- (d) an employee providing legal services exclusively to their employer,

and provides for the professional indemnity insurance required to be maintained by such practising barristers in respect of such services.

(2) For the avoidance of doubt, practising barristers providing legal services coming within paragraph (1)(c) or (d) are not required to have in place professional indemnity insurance in respect of such services.

Obligation on barrister to have policy of professional indemnity insurance in place

4. (1) A practising barrister providing legal services to which this Part applies shall, at the time of the provision of such services, have in place a qualifying insurance policy which covers such legal services.

(2) A practising barrister to whom this Part applies shall ensure that the Authority is provided with evidence that the policy referred to in paragraph (1) is in place within 14 days of the commencement date of such policy and within 14 days of each renewal date of such policy.

(3) If a practising barrister to whom this Part applies is unable to put in place a policy of professional indemnity insurance in compliance with this Regulation commencing upon the expiry of an existing period of cover, he or she shall cease practice immediately upon the expiry of the existing period of cover.

(4) A failure to comply with this Regulation may be considered as constituting misconduct.

Effect of insolvency or non-performance of insurer on barrister's obligations

4. (1) Where a practising barrister has put in place a qualifying insurance policy with an insurer or a number of insurers in accordance with Regulation 4

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 put in place a new qualifying insurance policy with an insurer or insurers that is or are unaffected by the said event,
- (b) have a qualifying insurance policy in place no later than 30 days from the date upon which the event occurs, providing cover from the date of the event, and
- (c) not be engaged by, or in respect of, any new clients until such cover is in place.

(2) A practising barrister to whom paragraph (1) applies shall provide to the Authority evidence that he or she has put in place a new qualifying insurance policy within 14 days of the commencement date of that policy.

(3) If a practising barrister to whom paragraph (1) applies is unable to comply with subparagraph (b) of that paragraph, he or she shall immediately cease the provision of legal services upon the expiry of the 14 day period referred to in that subparagraph.

Run-off insurance on ceasing legal services to which this Part applies

6. (1) A person who, for whatever reason, ceases to provide legal services to which this Part applies shall—

- (a) put in place a policy of run-off cover commencing on the date he or she ceases to provide such services, and
- (b) maintain such policy for the duration of the run-off period in respect of the legal services formerly provided.

(2) A person to whom paragraph (1) applies shall ensure that the Authority is provided with—

- (a) evidence that he or she has put in place the required run-off cover within 14 days of ceasing to provide the legal services to which this Part applies, and
- (b) where applicable, evidence of the renewal of such run-off cover within 14 days of such renewal.

(3) For the avoidance of doubt, a person to whom Regulation 4(3) or 5(3) applies is required to comply with this Regulation.

PART 3

PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS IN RESPECT OF BARRISTERS PRACTISING IN PARTNERSHIPS

Scope and purpose of Part 3

7. This Part applies to—
- (a) legal partnerships, and
 - (b) limited liability partnerships which have one or more partners or employees who are practising barristers,

and provides for the professional indemnity insurance required to be in place in respect of the provision of legal services by the partners and employees of such partnerships who are practising barristers.

Obligation on partnership to have policy of professional indemnity insurance in place

8. (1) A partnership to which this Part applies, which provides legal services through a practising barrister, shall, at the time of provision of those services, have in place—

- (a) a qualifying insurance policy, or
- (b) a policy of professional indemnity insurance which complies with the requirements of the Solicitors Professional Indemnity Insurance Regulations 2020 (S.I. No. 429 of 2020), as amended from time to time,

covering such legal services.

(2) A partnership to which this Part applies shall ensure that the Authority is provided with—

- (a) evidence that a policy referred to in paragraph (1)(a) is in place, or
- (b) the name of the insurer and broker, if applicable, and policy number of a policy referred to in paragraph (1)(b),

as applicable, within 14 days of the commencement date of such policy and within 14 days of each renewal date of such policy.

(3) If a partnership to which this Part applies is unable to put in place a policy of professional indemnity insurance in compliance with this Regulation commencing upon the expiry of an existing period of cover, the partners and employees of the partnership who are practising barristers shall cease practice immediately upon the expiry of the existing period of cover and the partnership shall notify the Authority in accordance with Regulation 4 of the Legal Services Regulation Act 2015 (Legal Partnership) Regulations 2024 and in accordance with Regulation 6 of the Legal Services Regulation Act 2015 (Limited Liability Partnership) Regulations 2024.

(4) A failure to comply with a provision of this Regulation may be considered as constituting misconduct by all or any legal practitioners being a partner in the partnership concerned.

Scope of partnership policy

9. A policy put in place in compliance with this Part shall provide that current and past partners and employees of the partnership, and their heirs, successors and assigns, shall be protected against personal liability arising from the performance of the business of the partnership.

Effect of insolvency or non-performance of insurer on partnership's obligations

10. (1) Where a partnership to which this Part applies has put in place a policy with an insurer or a number of insurers in accordance with Regulation 8, 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, the partnership shall—

- (a) immediately take steps to put in place a new policy in accordance with Regulation 8 with an insurer or insurers that is or are unaffected by the said event,
- (b) have such policy in place no later than 30 days from the date upon which the event occurs, providing cover from the date of the event, and
- (c) not be engaged by, or in respect of, any new clients until such cover is in place.

(2) A partnership to which paragraph (1) applies shall ensure that the Authority is provided with evidence that it has put in place the new policy within 14 days of the commencement date of that policy.

(3) If a partnership to which paragraph (1) applies is unable to comply with subparagraph (b) of that paragraph, it shall immediately cease the provision of legal services by practising barristers upon the expiry of the 14 day period referred to in that subparagraph and shall notify the Authority immediately.

Run-off insurance on partnership ceasing legal services

11. (1) A partnership to which this Part applies which, for whatever reason, ceases the provision of legal services shall—

- (a) put in place a policy of run-off cover commencing on the date it ceases to provide such services, and
- (b) maintain such policy for the duration of the run-off period in respect of the legal services formerly provided.

(2) A partnership to which paragraph (1) applies shall ensure that the Authority is provided with—

- (a) evidence that it has put in place the required run-off cover within 14 days of ceasing to provide the legal services formerly provided, and
 - (b) where applicable, evidence of the renewal of such run-off cover within 14 days of such renewal.
- (3) For the avoidance of doubt, a partnership to which Regulations 8(3) and 10(3) applies is required to comply with this Regulation.

PART 4

GENERAL REQUIREMENTS OF QUALIFYING INSURANCE POLICY

Insurer requirements

12. (1) A qualifying insurance policy shall be provided by an insurer which meets the minimum financial strength rating and is licensed and authorised to transact business in the State.

(2) For the purposes of paragraph (1), “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; and
- (d) in respect of S&P, a rating of A.

Minimum level of indemnity cover

13. (1) A qualifying insurance policy shall have a minimum level of indemnity cover of €1.5 million.

(2) The minimum level of indemnity cover required under paragraph (1) shall relate to each and every claim made, and not to the aggregate value of all claims made.

Scope of cover

14. A qualifying insurance policy shall—

- (a) indemnify the insured in respect of all valid claims made and notified during the period of cover,
- (b) be fully retroactive and 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, and

- (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 exclusions from cover

15. A qualifying insurance policy shall 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

16. (1) A qualifying insurance policy shall not provide for a self-insured excess unless—

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

(2) For the purposes of paragraph (1), “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.

PART 5

REVOCATION AND TRANSITIONAL PROVISION

Revocation

17. The Legal Services Regulation Act 2015 (Professional Indemnity Insurance) Regulations 2019 (S.I. No. 572 of 2019) (in this part referred to as the “Regulations of 2019”) are revoked.

Transitional provision

18. Notwithstanding Regulation 17, where, immediately before the coming into operation of these Regulations, a person is maintaining a policy of run-off cover pursuant to Regulation 6, 7 or 8 of the Regulations of 2019 those Regulations shall continue to apply as if not revoked.



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

26 September 2024.

DON THORNHILL

Chairperson of the Legal Services Regulatory Authority

BRIAN J. DOHERTY

Chief Executive Officer of the Legal Services Regulatory
Authority

EXPLANATORY NOTE

(This note is not 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 certain practising barristers and by legal partnerships and limited liability partnerships in respect of their partners and employees who are practising barristers.

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