

# Quarterly Consultation

## CP23/18

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No 41

September 2023

## How to respond

The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 9 October 2023 for Chapters 2 and 3.

Comments may be sent by electronic submission using the form on the FCA's [website](#).

### **Alternatively, please send comments in writing to:**

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If you are responding in writing to several chapters please send your comments to Mary McGowan in the Handbook Team, who will pass your responses on as appropriate.

All responses should be sent to:  
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London E20 1JN  
**Email:** [cp23-18@fca.org.uk](mailto:cp23-18@fca.org.uk)

When we make rules, we are required to publish an account of the representations we receive and how we have responded to them. We are also required to publish a list of the names of the respondents who made the representations, where those respondents have consented to the publication of their names. In your response, please indicate whether or not you consent to the publication of your name. For further information on confidentiality of responses, see the disclaimer at the end of this consultation paper.



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## Chapter 1

# Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	To make changes to ICOBS 8 Annex 1 to simplify the ERN matching requirements	5 weeks
3	To make changes to SUP 12.4.10AR to clarify its interaction with MIPRU 3.2	5 weeks

## Chapter 2

# Changes to the employers' liability insurance rules to simplify the ERN matching requirements

## Introduction

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- 2.1** In 2011, we introduced Handbook rules (under Insurance Conduct of Business sourcebook (ICOBS) 8.4 and ICOBS 8 Annex 1) mandating employers' liability insurers to publish an employers' liability register. As part of the rules, insurers are required to exercise their best endeavours (and have processes in place) to obtain and include the insured firm's employer reference number (ERN) on the register unless certain exceptions apply. The register is then published either on insurers' websites or on the website of a tracing office that meets the conditions of ICOBS 8.4.9R. In particular, it must be in a searchable format and contain policy information, including the insured firm's ERN, unless an exception applies. The register enables individuals who want to bring claims against their employer arising out of the course of their work to search for and identify the insurer(s) that provided employers' liability cover, particularly where the employers no longer exist or cannot be located.
- 2.2** As far as we are aware, the Employer's Liability Tracing Office (ELTO) is the only tracing office that meets our requirements. It was set up by the industry to host and manage the employers' liability register. Within the active employers' liability market, 99% are ELTO members and use the employers' liability register to publish the information required by our rules.
- 2.3** ELTO updates us periodically on developments in its tracing. It has asked us to consider updating some of our rules to take account of enhancements to its policy matching processes:
- In ELTO's experience, where firms do provide ERNs, they are not always accurate. Insurers in turn face challenges in obtaining and providing ERNs to ELTO because they are reliant on intermediaries or individual customers (outside the scope of our regulation), who do not always provide this information.
  - As a result of this, ELTO has set up an alternative process to obtain ERNs from HM Revenue & Customs (HMRC) directly through a matching process using other policy information supplied by insurers.
  - ELTO has told us that it has a notably higher success rate in obtaining ERNs through HMRC (approximately 55% to 75%) compared with obtaining this data from firms (approximately 50% to 55%). ERNs obtained via HMRC are also more likely to be correct.
  - ELTO feels that the current requirement for insurers to obtain and provide ERNs, even where ELTO has obtained them from HMRC, results in a duplication of processes and costs. It feels that this cost could be better spent on tracing the remaining cases where ELTO can't obtain the ERN from HMRC.

## Summary of proposals

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- 2.4** As ELTO's use of the HMRC matching process has improved the success rate, the requirement for insurers to obtain ERN information as well results in a duplication of costs and processes. The industry's resources could instead be better directed at tracing the approximately 25% of cases where ELTO can't obtain the ERN from HMRC.
- 2.5** Given this, we are proposing to amend ICOBS 8 Annex 1 so that employers' liability insurers which meet the following conditions will no longer be required to exercise their best endeavours to obtain and provide ERNs to a tracing office:
- the firm is utilising the employers' liability database of a tracing office (such as ELTO) that meets the conditions in ICOBS 8.4.9R to publish the policy information required by our rules;
  - that tracing office has effective systems in place to obtain and record accurate ERN data on the employers' liability database; and
  - that tracing office obtains the ERN.
- 2.6** In the remaining cases where ERNs are not available, insurers must use their best endeavours in assisting the tracing office as far as reasonably possible to obtain the information. We are proposing a window of 28 business days for the tracing office to obtain the ERN from HMRC, after which insurers must use their best efforts to obtain the outstanding ERNs.
- 2.7** Therefore, our current rules will continue to apply where firms do not meet the above conditions.
- 2.8** We have engaged with the Prudential Regulation Authority and HM Treasury in developing our proposals.

**Q2.1: Do you agree with our proposed changes to ICOBS 8 Annex 1? If not, please explain why.**

**Q2.2: Do you agree with allowing a 28-business-day period for the tracing office to obtain the ERN through the matching process before insurers must use their best endeavours to obtain the remaining information (proposed rule ICOBS 8 Annex 1 1.1CAR(3))? If not, please explain why.**

## Cost benefit analysis

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- 2.9** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Our analysis is set out below. However, section 138L(3)(a) of FSMA states that we do not need to provide a CBA where we consider that there will be no increase in costs.

- 2.10** The intention of our proposed rule change is to remove some of the regulatory burden for employers' liability insurers and improve the outcome for consumers (in this case, claimants with a potential right to claim under their employer's policy). We anticipate that our proposals will remove duplication of costs and processes as insurers will be required to do less and therefore will not incur additional costs. We expect firms to use some of the cost savings to trace ERNs when they are not available through HMRC matching.

## Impact on mutual societies

- 2.11** Section 138K of the FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies compared with other authorised persons. We do not expect the proposals to have a significantly different impact on mutual societies.

## Compatibility statement

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- 2.12** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives and (so far as reasonably possible) the secondary international competitiveness and growth objective. Further, we must have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 2.13** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The proposals advance our operational objective to enhance market integrity by providing a proportionate regime in relation to employers' liability products. Through the proposals, the ERN data that must be published on the employers' liability register will be easier to obtain and more reliable.
- 2.14** Our proposals also advance our consumer protection objectives as the data obtained by ELTO is likely to be more accurate. This will make it easier for claimants to search for and trace historic policies. They also advance our competition objective as they are intended to provide a more level playing field between employers' liability insurance manufacturers.
- 2.15** We consider these proposals to be compatible with the FCA's secondary international competitiveness and growth objective. The proposals improve the operational efficiency of insurers and reduce their costs. The proposals will maintain a proportionate regulatory regime and facilitate the international competitiveness and growth of the UK economy.

## Equality and diversity

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- 2.16** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this

chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment). In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.

- 2.17** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.



## Chapter 3

# Changes to SUP 12.4.10AR to clarify its interaction with MIPRU 3.2

## Introduction

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- 3.1** Chapter 3 of the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) sets out rules regarding the requirement for certain authorised firms to maintain professional indemnity insurance (PII), including firms acting as principal. In particular, MIPRU 3.2.1R requires a firm to take out and maintain continuous PII. MIPRU 3.2.4R(1) requires that the contract of PII must include provisions for cover in relation to claims for which it may be liable as a result of the conduct of:
- itself;
  - its employees; and
  - its appointed representatives (ARs) acting within the scope of their appointment.
- 3.2** At the same time, Supervision manual (SUP) 12.4.10AR requires that, before a firm appoints a person as an AR to carry on a Mortgage Credit Directive (MCD) credit intermediation activity, the principal firm must ensure that the person has, and will maintain on a continuing basis after appointment, PII cover in accordance with the rules applicable to MCD credit intermediaries, which can be found in MIPRU.
- 3.3** We have identified an inconsistency between MIPRU 3.2 and SUP 12.4.10AR that could lead to a different interpretation of how a principal firm with an AR carrying out an MCD credit intermediation activity can comply with the requirement to have PII.
- 3.4** SUP 12.4.10AR(1) suggests that there is an option for an AR to obtain its own PII cover instead of this being provided by the principal firm. While there is nothing to prevent an AR from choosing to have its own policy (and which it may find of benefit), the rules in MIPRU 3 require the principal firm to obtain and maintain continuous PII for the activities of its current and former ARs. The AR having its own cover would not satisfy the obligation upon the principal firm to cover all its business, including the regulated activities conducted by its AR.
- 3.5** We therefore propose to amend SUP 12.4.10AR to clarify that it is the principal firm that must obtain and maintain continuous PII cover for the activities for which it may be liable as a result of the conduct of its ARs.

## Summary of proposals

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- 3.6** We propose to delete SUP 12.4.10AR(1). Currently, this may suggest that a principal firm would satisfy the rules in MIPRU 3.2 if its ARs that carry out an MCD credit

intermediation activity obtain PII themselves. We also propose to amend SUP 12.4.10AR(2) to clarify that a principal firm must obtain PII for its ARs in order to satisfy the rules in MIPRU 3.2.

- 3.7** In addition to these amendments, we propose to add guidance to SUP 12.4.10AR to further clarify the interaction between this rule and the requirements in MIPRU 3.2.
- 3.8** These changes are being made to remove any inconsistency between SUP 12.4.10AR and the requirements in MIPRU 3.2 and provide greater clarity on the original policy intention as set out in MIPRU 3.
- 3.9** We believe that the majority of principal firms are holding PII policies that extend to the activities of their ARs in line with MIPRU 3.2. Principal firms that are subject to SUP 12.4.10AR and MIPRU 3 should check their policies to ensure that the activities for which they may be liable as a result of the conduct of their current and former ARs are covered and make amendments where necessary.

**Q3.1: Do you agree with our proposals to amend SUP 12.4.10AR to bring it in line with the PII requirements in MIPRU 3.2? If not, please explain why.**

## Cost benefit analysis

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- 3.10** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules unless, in accordance with section 138L(3) of FSMA, we believe that there will be no increase in costs or that the increase will be of minimal significance.
- 3.11** Principal firms that are subject to MIPRU 3 should already be complying with the rules to obtain and maintain continuous PII for the activities of their current and former ARs. We are therefore satisfied that the proposed amendments do not increase costs to firms or consumers, or that any increase will be of minimal significance. The amendments being proposed are to clarify existing rules.

## Impact on mutual societies

- 3.12** Section 138K(2) of FSMA requires us to prepare a statement setting out our opinion on whether proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons. We are satisfied that the proposals in this chapter would not have a significantly different impact on mutual societies compared with other authorised persons.

## Compatibility statement

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- 3.13** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective,

advances one or more of our operational objectives and (so far as reasonably possible) the secondary international competitiveness and growth objective. Further, we must have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

- 3.14** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The clarification will remove ambiguity about who is to obtain PII for the activities of ARs that carry out an MCD credit intermediation activity. It will also ensure that principal firms are clear on their obligation to obtain and maintain PII cover in line with our expectations. These amendments therefore advance our operational objectives of securing an appropriate degree of consumer protection. The proposed clarification removes ambiguity in the requirement without bringing material costs to firms or consumers and is compatible with the FCA's secondary international competitiveness and growth objective.

## Equality and diversity

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- 3.15** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation, and gender reassignment).
- 3.16** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

## Annex 1

# Abbreviations used in this paper

<b>Abbreviation</b>	<b>Description</b>
<b>AR</b>	Appointed representative
<b>CBA</b>	Cost benefit analysis
<b>ELTO</b>	Employers' Liability Tracing Office
<b>ERN</b>	Employer reference number
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>HMRC</b>	HM Revenue & Customs
<b>ICOB</b>	Insurance Conduct of Business sourcebook
<b>MCD</b>	Mortgage Credit Directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property
<b>MIPRU</b>	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
<b>PII</b>	Professional indemnity insurance
<b>SUP</b>	Supervision manual

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## Appendix 1

# List of questions

- Q2.1:** Do you agree with our proposed changes to ICOBS 8 Annex 1? If not, please explain why.
  
- Q2.2:** Do you agree with allowing a 28-business-day period for the tracing office to obtain the ERN through the matching process before insurers must use their best endeavours to obtain the remaining information (proposed rule ICOBS 8 Annex 1 1.1CAR(3))? If not, please explain why.
  
- Q3.1:** Do you agree with our proposals to amend SUP 12.4.10AR to bring it in line with the PII requirements in MIPRU 3.2? If not, please explain why.

## Appendix 2

# Changes to the employers' liability insurance rules to simplify the ERN matching requirements

**INSURANCE: CONDUCT OF BUSINESS SOURCEBOOK (EMPLOYERS'  
LIABILITY INSURANCE AMENDMENTS) INSTRUMENT 2023**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules); and
  - (2) section 137T (General supplementary powers).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- D. The Insurance: Conduct of Business (ICOBS) sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Insurance: Conduct of Business Sourcebook (Employers’ Liability Insurance Amendments) Instrument 2023.

By order of the Board  
[*date*]



## Annex

## Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

## 8 Claims handling

...

## 8 Employers' liability register

## Annex

## 1

See *ICOBS* 8.4.4R(1)(a)

Part 1 In relation to information to be included in the employers' liability register			
...			
1.1C	R	A <i>firm</i> is not required to include the employer reference number (ERN) required by 1.1R(1) and (2) if the following conditions are met:	
		(1)	(a) the <i>firm</i> has not been able to obtain that information solely due to failures by parties outside the <i>firm's</i> control; <del>and</del> <u>or</u>
			(b) <u>a tracing office meets the conditions in <i>ICOBS</i> 8.4.9R and 1.1CAR(1) and (2) but fails to meet the condition in 1.1CAR(3); and</u>
		(2)	the <i>firm</i> has used and continues to use its best endeavours to obtain the information, other than refusing to provide cover to an employer solely because it has not provided the information requested.
1.1CA	R	The conditions referred to in 1.1CR(1)(b) are:	
		(1)	<u>in accordance with <i>ICOBS</i> 8.4.7R(1)(a)(ii) and <i>ICOBS</i> 8.4.11R(2), the <i>firm</i> has arranged to make the information on its employer's liability register available on the website of a tracing office that meets the conditions in <i>ICOBS</i> 8.4.9R;</u>
		(2)	<u>the tracing office referred to in 1.1CAR(1) has effective systems in place to obtain the ERN; and</u>
		(3)	<u>the tracing office referred to in 1.1CAR(1) and (2) obtains the ERN within 28 business days of the date that the <i>firm</i> arranged to make the information on its employer's liability register available on the tracing office's website.</u>

...			
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## Appendix 3

# Changes to SUP 12.4.10AR to clarify its interaction with MIPRU 3.2

**SUPERVISION MANUAL (PROFESSIONAL INDEMNITY INSURANCE AND APPOINTED REPRESENTATIVES) INSTRUMENT 2023**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers); and
  - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

**Notes**

- E. In the annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers, but do not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Supervision Manual (Professional Indemnity Insurance and Appointed Representatives) Instrument 2023.

By order of the Board  
[*date*]

## Annex

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 12 Appointed representatives

...

## 12.4 What must a firm do when it appoints an appointed representative or an FCA registered tied agent?

...

Appointed representative carrying on MCD credit intermediation activity

12.4.10 R Before a *firm* appoints a *person* as an *appointed representative* to carry on an *MCD credit intermediation activity*, it must ensure that the *person* has, and will maintain on a continuing basis after appointment, professional indemnity insurance in accordance with the *rules* applicable to *MCD credit intermediaries*. A *firm* will satisfy this requirement if:

- (1) ~~the *appointed representative* has professional indemnity insurance which satisfies the *rules* in *MIPRU* 3.2 applicable to the activities of the *appointed representative*, as if the *appointed representative* were an *MCD credit intermediary*; [deleted]~~
- (2) professional indemnity insurance which would satisfy the requirements of *SUP* 12.4.10AR(1) is provided by the *firm* the *firm* has professional indemnity insurance in respect of claims for which the *firm* may be liable as a result of the conduct of its *appointed representative*, which satisfies the *rules* in *MIPRU* 3.2; or
- (3) the *appointed representative* holds a comparable guarantee (as understood by reference to *MIPRU* 3.1.1R(3)(b)) provided by the *firm*.

[Note: article 31(2) of the *MCD*]

- 12.4.10 G (1) The effect of *SUP* 12.4.10AR(2) is that a *firm* itself must take out and maintain professional indemnity insurance that covers claims for which it may be liable as a result of the conduct of its *appointed representatives* (in addition to the conduct of the *firm* and its *employees*). This approach is consistent with the requirement in *MIPRU* 3.2.4R(1) and the responsibility of the *firm* for the conduct of all of its *appointed representatives* (*MIPRU* 3.2.6G).
- AA (2) In addition to the professional indemnity insurance that the *principal* must hold under *SUP* 12.4.10AR(2), an *appointed representative* may take out, or have its own, professional indemnity insurance covering its

activities to provide additional mitigation against the risk of harm to consumers, market integrity or itself.

...

