

Handbook Notice No 114

December 2023

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1 Overview

Legislative changes

- 1.1 On 23 November 2023, the Board of the Financial Conduct Authority (FCA) made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
CP22/20	Sustainability Labelling and Disclosure of Sustainability-Related Financial Information Instrument 2023	FCA 2023/39	28/11/23

- 1.2 On 4 December 2023, the Board of the FCA made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
CP23/11	Senior Management Arrangements, Systems and Controls Instrument 2023	FCA 2023/40	08/12/23

- 1.3 On 14 December 2023, the Board of the FCA made the relevant changes to the Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
CP23/19	Insurance Distribution Directive Delegated Acts: Smarter Regulatory Framework Instrument 2023	FCA 2023/45	05/04/24
CP23/18	Insurance: Conduct of Business Sourcebook (Employers' Liability Insurance Amendments) Instrument 2023	FCA 2023/46	22/12/23
N/A	Handbook Administration (No 68) Instrument 2023	FCA 2023/47	15/12/23

Summary of changes

- 1.4 The legislative changes referred to above are listed and briefly described in Chapter 2 of this notice.

Feedback on responses to consultations

- 1.5 Consultation feedback is published in Chapter 3 of this notice or in separate policy statements.

FCA Board dates for 2024

- 1.6 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

FCA board meetings		
January	25	2024
February	29	2024
March	28	2024
April	25	2024
May	23	2024
June	27	2024
July	25	2024
September	26	2024
October	31	2024
November	28	2024
December	19	2024

2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the FCA Handbook and other material made by the FCA Board under its legislative and other statutory powers on 23 November 2023, 4 December 2023 and 14 December 2023. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see www.bankofengland.co.uk/news/publications.

Sustainability Labelling and Disclosure of Sustainability-Related Financial Information Instrument 2023

- 2.2 Following consultation in [CP22/20](#), the FCA Board has made changes to the Handbook sections listed below:

Glossary of definitions
PRIN 2A.3
COBS 4.1, 4.10 and 18.5
ICOB 2.2
MCOB 3A.2
BCOBS 2.2
CMCOB 3.2
FPCOB 4.2
PROD 3.3
ESG 1.1, 1.2, 2.1, 2.2, 2.3 and TP 1
COLL 4.2, 4.5, 6.9, 8.3, 15.4, 15.5 and TP 1
CONC 3.3
FUND 3.2 and TP 1

- 2.3 This instrument also introduces the following new chapters:

ESG 1A, ESG 3, ESG 4 and ESG 5

- 2.4 In summary, this instrument makes changes to the FCA Handbook to help consumers navigate the market for sustainable investment products. The new regime that the instrument introduces will help underpin the UK's position as a world-leading competitive centre for asset management and sustainable finance.
- 2.5 This instrument came into force on 28 November 2023. Feedback is published in a separate [policy statement](#).

Senior Management Arrangements, Systems and Controls Instrument 2023

- 2.6 Following consultation in [CP23/11](#), the FCA Board has made changes to the following Handbook sections:

**Glossary of definitions
SYSC 19D.3, 19D Annex 1 and 27.8**

2.7 This instrument also introduces the following new chapter:

TP 12

2.8 In summary, this instrument makes changes to the FCA Handbook to ensure that the remuneration rules for smaller, less complex UK banks, building societies and PRA-designated investment firms, including third-country branches, are proportionate to the risks they pose to consumers and markets in the UK. The instrument makes changes to proportionality thresholds and exempts firms meeting the updated proportionality thresholds from the requirements relating to malus and clawback.

2.9 This instrument came into force on 8 December 2023. Feedback is published in a separate [policy statement](#).

Insurance Distribution Directive Delegated Acts: Smarter Regulatory Framework Instrument 2023

2.10 Following consultation in [CP23/19](#), the FCA Board has made changes to the Handbook sections listed below:

**Glossary of definitions
SYSC 1 Annex 1, 3.3, 9.1, 10.1, 10.1A, Sch 1
COBS 1.3, 2.3A, 6.1ZA, 9A.1, 9A.2, 9A.3, 9A.4, 10A, 10A.1,
10A.2, 10A.4, 10A.7, 16A.1, 16A.4, Sch 1
ICOBS 6 Annex 3R
PROD 1.4, 4.1, 4.2, 4.3, 4.4, 4.5 and 4.6**

2.11 In summary, this instrument issues rules to replace and replicate the provisions of the Insurance Distribution Directive, which the government plans to repeal in early 2024, to ensure continuity of regulatory obligations aimed at delivering appropriate consumer protection.

2.12 This instrument comes into force on 5 April 2024. Feedback is published in a separate [policy statement](#).

Insurance: Conduct of Business Sourcebook (Employers' Liability Insurance Amendments) Instrument 2023

2.13 Following consultation in [CP23/18](#), the FCA Board has made changes to the Handbook section listed below:

ICOBS 8 Annex 1

2.14 In summary, this instrument issues rules to remove duplication of costs and processes to firms and provide a proportionate regulatory regime in relation to employers' liability products.

2.15 This instrument comes into force on 22 December 2023. Feedback is published in Chapter 3 of this notice.

Handbook Administration Instrument (No 68) 2023

2.16 The FCA Board has made minor changes to various modules of the FCA Handbook, as listed below.

2.17 These changes were not consulted on separately because they are minor amendments that correct or clarify existing provisions which have previously been consulted on. None of these changes represent any change in FCA policy.

2.18 In summary, the amendments this month consist of amendments to:

- COBS 4.12A to clarify existing text made in line with published policy;
- SUP 10C Annex 5R to add a short line of text reflecting the consumer duty;
- SUP 12 Annex 6R to update the FCA's email address and add an additional numerical field;
- SUP 16.1 to add details of consequential changes; and
- various other provisions to remove references to commencement dates in guidance provisions that will cease to be required with effect from 7 February 2024.

2.19 This instrument came into force on 15 December 2023.

3 Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate policy statement published by the FCA.

CP23/18: Insurance: Conduct of Business Sourcebook (Employers' Liability Insurance Amendments) Instrument 2023

Background

- 3.2 ICOBS 8.4 and ICOBS 8 Annex 1 mandate insurers to obtain and include the insured business's employer reference number (ERN) on a register. Firms are not required to include the ERN where they have used, and continue to use, their best endeavours to obtain it but are unable to do so. The register is to be published either on the insurer's own website or on the website of a tracing office that meets the conditions of ICOBS 8.4.9R.
- 3.3 As far as we are aware, the Employer's Liability Tracing Office (ELTO) is the only tracing office that meets our requirements. Of the employer's liability market, 99% are members of ELTO and utilise the employers' liability register published by it.
- 3.4 ELTO asked us to consider updating some of our rules to take account of enhancements to its policy matching processes. Specifically, ELTO's HMRC matching process has a notably higher success rate in obtaining ERNs (approximately 55%–75%) than when this data is obtained from firms (approximately 50%–55%). ERNs obtained via HMRC are also more likely to be correct. ELTO felt 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.
- 3.5 Taking this into account, in [CP23/18](#), we proposed changes to our current rules.
- 3.6 In [CP23/18](#), we proposed to amend ICOBS 8 Annex 1 so that employers' liability insurers which met the following conditions would no longer be required to obtain and provide ERNs to a tracing office:

- the firm is utilising the employers' liability database of a tracing office 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 within 28 days of being asked to do so.

3.7 In the remaining cases where ERNs are not available, we proposed that insurers would have to use their best endeavours to obtain the information. We also proposed a window of 28 business days for the tracing office to obtain the ERN from HMRC, after which insurers would have to continue to use their best endeavours to obtain the outstanding ERNs. We also confirmed that our current rules would continue to apply where firms did not meet the above conditions.

3.8 We asked respondents the following questions:

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

Feedback

3.9 We received 21 responses to our consultation. Of these, 4 respondents completely agreed with our proposals. However, most respondents, including ELTO, disagreed that firms should exercise best endeavours to obtain the ERN data if the qualifying tracing office (such as ELTO) has not been able to obtain it after 28 days. They felt that the responsibility to use best endeavours to obtain the ERN should remain with the qualifying tracing office only. Various reasons were given in support of this, but the key contentions were as follows:

- Firms only obtain the ERN at point of purchase. If they are required to do so post-inception, this will require additional processes, which will be costly to firms that are already funding for ELTO's matching process. Given this, the proposed rule changes would not have made a real difference to firms, as the duplication of processes and costs would continue to exist.
- Firms' success rate in obtaining the ERN data, and the accuracy of this data, is low compared with ELTO's matching process. If firms are unable to obtain it at point of purchase, they are unlikely to be able to do so post-inception, particularly as customers are not legally obliged to provide it. Therefore, the additional costs and processes are unjustified.
- ELTO has confirmed that firms currently provide them with a lot of additional non-mandated data to help improve the tracing process. ELTO is confident that firms will continue to obtain and supply the ERN along with other data where possible.
- ELTO no longer believes that the ERN is crucial to tracing historic policies. For example, despite ERNs being populated only on roughly half the records, ELTO has continued to achieve search success rates of 96%. This is because technological and procedural advances mean that ELTO has better ways of tracing historic policies even without the ERN.

3.10 For the above reasons, respondents requested that we remove the obligation on firms to exercise best endeavours to obtain the ERN entirely. Firms are happy to provide this data to ELTO if they do obtain or have it.

Our response

3.11 We note the points raised by respondents. In particular, we appreciate that ELTO's matching process has a better success rate and is more accurate than when firms obtain the ERNs. Also, we note that the industry is funding for the ELTO matching process. We also note that there would continue to be a duplication of processes, with potential for additional costs, if firms were required to use their best endeavours to obtain this data post-purchase of the policy (ie, after 28 days). Given that firms have said that, where the ERN is not obtained at the point of purchase, it is unlikely that they will be able to obtain it mid-term of the policy, we appreciate that any additional costs or procedures will be disproportionate to the benefits (if any).

3.12 Given this, we have made the following changes to the rules we consulted on:

- We have amended ICOBS 8 Annex 1 so that employers' liability insurers that meet the following conditions are not required to include the ERN in their published register:
 - the firm is utilising the employers' liability database of a tracing office 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 has provided the firm with a commitment that it will use its best endeavours to obtain the ERN.
- We have added guidance to clarify that if firms do (at their discretion) obtain or otherwise have the ERN data, they should provide it to the qualifying tracing office.
- We have added guidance to clarify that, although not mandated to do so, a firm should take reasonable steps to assist the qualifying tracing office to locate missing ERNs if asked to do so by the tracing office, in line with its obligations under:
 - Principle 2 (to conduct its business with due skill, care and diligence); and
 - Principle 3 (to take reasonable care to organise and control its affairs responsibly and effectively).

- We have added guidance to clarify that where a firm makes information on its employers' liability register available on its own website in accordance with ICOBS 8.4.7R(1)(a)(i) but is unable to obtain the ERN, or the tracing office fails to meet any of the conditions above, the rule that requires the firm to use and continue to use its best endeavours to obtain the ERN may apply.

3.13 The current rules will continue to apply where firms do not meet the above conditions. These rule changes will come into force on 22 December 2023.

How this links to our objectives

3.14 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.

3.15 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.

3.16 We consider these proposals to be compatible with our 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.

Cost benefit analysis

3.17 Section 138I(2)(a) of 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.

3.18 Respondents to [CP23/18](#) informed us that the rules we consulted on could result in additional costs and processes to firms with little added benefits.

3.19 The intention of our proposed rule change is to reduce the regulatory burden on employers' liability insurers and improve the outcome for consumers (in this case, claimants with a potential right to claim under their employer's policy). Given the concerns raised by respondents, we have amended our rules so that firms are no longer mandated to obtain ERN data where they use a qualifying tracing office with effective arrangements to obtain that information but that office is unable to do so. We believe that this amendment will remove duplication of costs and processes.

Equality and diversity statement

- 3.20 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

Environmental, social and governance considerations

- 3.21 We have considered the environmental, social and governance implications of our proposals and our duty under sections 1B(5) and 3B(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net zero emissions target under section 1 of the Climate Change Act 2008. Overall, we do not consider that the proposals are relevant to contributing to those targets.

4 Additional information

Making corrections

- 4.1 The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2 This notice is published on the FCA website and is available in hardcopy.
- 4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at www.handbook.fca.org.uk/instrument. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4 The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5 The consolidated text of the Handbook can be found on the FCA's website at www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.
- 4.6 Copies of the FCA's consultation papers referred to in this notice are available on the FCA's website.

Obligation to publish feedback

- 4.7 This notice, and the feedback to which paragraph 1.5 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

- 4.8 We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbook.feedback@fca.org.uk (or see contact details at the end of this notice).

Annex

List of non-confidential respondents

We are required by section 138I(4A) of the Act to include a list of the names of respondents to rules consultations where the respondent has consented to the publication of their name. This annex lists the names of consenting respondents for consultations where those names are not otherwise listed in a separate consultation response document.

CP23/18: Insurance: Conduct of Business Sourcebook (Employers' Liability Insurance Amendments) Instrument 2023

Association of Financial Mutuals

Aviva

Axis Capital

NPA insurance

MS Amlin Insurance SE

ELTO

Handbook Notice 114

This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 23 November 2023, 4 December 2023 and 14 December 2023.

It also may contain information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant consultation papers and policy statements referred to in this notice.

General comments and queries on the Handbook can be addressed to:

Mary McGowan

Tel: 02070661321

Email: Mary.McGowan@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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