

# PS 11/4

Financial Services Authority

## Tracing employers' liability insurers

February 2011



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This Policy Statement reports on the main issues arising from Consultation Paper 10/13 (*Tracing employers' liability insurers*) and publishes final rules.

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# Acronyms used in this paper

<b>ABI</b>	Association of British Insurers
<b>CP</b>	Consultation Paper
<b>CBA</b>	Cost benefit analysis
<b>CHRN</b>	Companies House Reference Number
<b>DPA</b>	Data Protection Act 1998
<b>DWP</b>	Department for Work and Pensions
<b>EEA</b>	European Economic Area
<b>EG</b>	Enforcement Guide
<b>EL</b>	Employers' Liability
<b>ELCI</b>	Employers' Liability Compulsory Insurance
<b>ELCOP</b>	Employers' Liability Code of Practice
<b>ELD</b>	ELTO's database
<b>ELR</b>	Employers' Liability Register
<b>ELTO</b>	Employers' Liability Tracing Office
<b>ERN</b>	Employers' Reference Number
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Markets and Services Act 2000
<b>GWP</b>	Gross written premium
<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>ICAEW</b>	Institute of Chartered Accountants for England and Wales

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<b>ICOBS</b>	Insurance: Conduct of Business Sourcebook
<b>IIDB</b>	Industrial Injuries Disablement Benefit
<b>SUP</b>	Supervision Manual
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls

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# 1

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## Overview

- 1.1 In Consultation Paper CP10/13 (the CP) we consulted on proposals to help claimants trace insurers that provided commercial lines employers' liability cover for claimants' employment by requiring each relevant insurer to publish tracing information through a qualifying tracing office or on its website. We received 23 responses to the consultation from the organisations listed in Annex 1. No respondents wished to keep their responses confidential.
- 1.2 In developing our policy further, we have liaised with the Department for Work and Pensions (DWP) to ensure that current government policy and the responses to the DWP consultation, *Accessing Compensation – Supporting people who need to trace Employers' Liability Insurance (February 2010)* about the Employers' Liability Tracing Office (the ELTO) have been appropriately taken into account.
- 1.3 The CP proposed that all policies entered into, renewed or for which claims were made on or after 1 November 1999 be included in insurers' Employers' Liability Registers (ELRs). Respondents broadly supported our proposals on future transactions. However, most respondents strongly objected to our proposal to backfill ELRs to 1 November 1999. Some respondents considered that it would be a disproportionate requirement. Others considered that it fell short of what was needed and may have an adverse effect on consumer protection. We will continue actively to consider how best to address the issue of historical policies, including those providing cover before 1 November 1999 in consultation with stakeholders. In light of the consultation responses, this Policy Statement addresses the recording of policies entered into, renewed or for which claims are made in future to secure policyholder protection going forward. The policy has been made now to avoid undue delay in improving consumer protection while further work on historical policies takes place. The corresponding rules, guidance and evidential provision are contained in the Employers' Liability Insurance: Disclosure by Insurers Instrument 2011 (FSA 2011/12) as shown in Appendix 1.
- 1.4 As proposed in the CP, our policy applies to all general insurers with permission to carry our general insurance business in the UK, both UK-authorized firms (including UK branches of non-EEA insurers authorised in the UK) and EEA firms passporting into the UK, whether providing cover cross-border under freedom of services or through a UK branch. We have

therefore amended the general good provisions in SUP 13A Annex 1, adding to the rules in our Handbook that apply to EEA incoming firms.

- 1.5** Our policy is intended to support long-term structural change to the way firms record employers' liability information. This will ensure that employees are able to access the relevant insurers, who provide employers' liability cover, whenever they need to for future cover. Our policy is also intended to start to address the issues of historical cover by providing a comprehensive list of insurers that are liable or potentially liable for UK commercial lines employers' liability insurance and including future claims in respect of historical policies. As suggested by the consultation responses, we have introduced a number of improvements and refinements to the FSA list and the Employers' Liability Register (ELR) proposed in the CP. We are proposing to consult further on the scope and form of director certification and independent assurance and the relationship between them.
- 1.6** We have made the following amendments and clarifications to our proposals in response to the consultation:
- a) We have extended the FSA list to include the dates of employers' liability coverage and contact details for each insurer.
  - b) We have adjusted the content of the ELR in line with that of the proposed ELTO database.
  - c) Both the Employers' Reference Number (ERN) and Companies House Reference Number (CHRN) are required to be included in the ELR for policies that are issued or renewed from 1 April 2012. For limited companies, the employer's name and address registered with Companies House is required. If different from the registered name, the trading name must be added to the registered name. We are making it clear that all employers covered by a policy should have their details included (e.g. relevant subsidiaries of a principal employer in whose name the policy is taken out).
  - d) We have extended access to the ELR to employers and, where an insurer may be jointly liable for a specific claim, a relevant intermediary acting for the insurer.
  - e) Insurers not using tracing offices are required to make information in their ELRs available to qualifying tracing offices on request provided that the information is needed, and used solely for the purposes of enabling the tracing office to provide comprehensive employers' liability search facilities and also subject to the insurer having no reason to suspect that the ELR information may be misused.
  - f) More specific guidance on what is meant by responding to search requests 'without delay' and by an 'effective search function' has been included.
  - g) The requirement for updating the ELR has been clarified so that it must be updated at least quarterly and a change to tracing information must take no more than three months to be reflected in the ELR.



- h) Director certification will be required annually in conjunction with an annual requirement for independent assurance (previously described as an audit requirement).

**1.7** The timing of our requirements and transitional arrangements are as follows:

FSA rules and guidance made.	24 February 2011
FSA rules and guidance come into force.	6 March 2011
Where applicable, insurers set up initial ELRs (not necessarily with any policy information included) dated 1 April 2011. ELRs are updated at least quarterly.	From 1 April 2011
Insurers start to include on their ELRs information they already have (apart from information on all other employers covered by the policy and ERNs, which is required after 1 April 2012) for policies that, on or after 1 April 2011, are entered into, renewed or for which claims are made. A claim received before 1 April 2011, but not yet settled at that date, is treated as a 'claim made' on or after 1 April.	From 1 April 2011
Information must be made available on ELRs no later than three months from the date of the entry, renewal or claim. So, information for a transaction on 1 April 2011 must be included no later than 1 July 2011. The date of claim is the date the claim is created in the firm's systems or the date it is settled by the firm (depending on the firm's systems). For claims received before 1 April 2011, but not settled at that date, firms have three months from the date the claim is settled to include the information.	From 1 April 2011
All general insurers notify us of their actual or potential liability for UK commercial lines employers' liability cover, and, where applicable, the internet address of the tracing office used or their own web page and other contact details.	By 6 April 2011
We publish the initial FSA list when sufficient notifications have been received and verified and update it when changes are notified.	From 6 April 2011
Insurers begin to obtain all information required (including information on all employers covered by policies and ERNs) for policies entered into or renewed from 1 April 2012 and start to make it available on their ELRs from 1 April 2012. For claims made after 1 April 2012 (unless the claim relates to a policy also entered or renewed after that date) firms provide information required to the extent that they already have it.	From 1 April 2012
Information must be made available no later than three months from the date of the entry, renewal or making of the claim (the transitional provision for firms to treat the date a claim is made as the date it is created or settled expires on 1 April 2012). So, information for a transaction on 1 April 2012 must be included no later than 1 July 2012.	From 1 April 2012
A director's certificate and independent assurance report for the ELR as at 1 April 2012 must be obtained and made available by the firm on request by 1 July 2012.	By 1 July 2012
A director's certificate and independent assurance report for the ELR is obtained and made available at least annually thereafter.	From 1 July 2012

- 1.8** Some respondents thought that we would need to be prepared to apply strong sanctions to ensure all insurers comply with our requirements for tracing to be effective. We expect all insurers to comply with our employers' liability tracing requirements as an ongoing supervisory matter and are prepared to administer strong sanctions to ensure effective tracing takes place where proportionate to do so. Where we consider it appropriate to take enforcement action, we will have regard to our enforcement policy, as set in our Enforcement

Guide (EG). Enforcement action may result in significant penalties being imposed against a firm and/or individual. Additionally, an individual could also be prohibited from, among other things, being employed in a firm regulated by us. Furthermore, failure to comply with our requirements to provide tracing information may lead to us concluding that a firm is not 'fit and proper' to carry out contracts of insurance and to us withdrawing approval of approved persons and/or permissions of the firm to effect contracts of insurance.

## Who should read this document?

- 1.9 This document will be of interest to all insurers who are providing general insurance cover in the UK and their intermediaries, including Lloyd's market participants. It will be of particular interest to those who are providing employers' liability insurance cover and those who are providing associated tracing services to consumers. Employers, trade bodies and audit firms will also have an interest.

### CONSUMERS

Consumers include all employees covered by the employers' liability insurance of their employers both past and present. Our policy seeks to ensure that employees will, in future, be able to claim compensation for disease and injury caused at work whenever they need to and focuses particularly on the need that arises when employers no longer exist or cannot be located when claims can be made directly against insurers. Our policy only partially addresses consumers' current needs in respect of past employment and we are continuing actively to investigate how best to address these needs with other stakeholders.

## Next steps

- 1.10 The timetable for our requirements and transitional arrangements is set out in paragraph 1.7. We will also work with stakeholders to plan the further work needed on historical policies and on director certification and independent assurance of ELRs and tracing offices.

# 2

## Consultation responses

2.1 The responses to the specific questions raised in the CP are described below, together with our policy response.

### Notification requirements

**Q1:** Do you agree with our proposal to require all insurers with permission to carry out contracts of general insurance in the UK, to notify us, with director approval, whether they carry out (i.e. are potentially liable for) UK commercial lines EL contracts, and for us to publish a list of general insurers showing whether they are potentially liable and including a link to the tracing information required?

2.2 Respondents broadly agreed with our proposal for firms to notify us and for us to publish a list of all general insurers on the FSA website.

2.3 Respondents made several comments about the details of the proposal, such as :

- a) the proposal should apply to all insurers, including run-off insurers;
- b) it is essential that all insurers that have written, or are writing, Employers' Liability Compulsory Insurance are identified;
- c) for insurers not currently writing Employers' Liability (EL) insurance, the list should show details of the period for which the company did sell EL contracts;
- d) any declaration by an insurer should cover commercial situations where EL cover is provided, not as stand alone cover, but as part of a commercial insurance package;
- e) insurers should be required to declare if EL cover is underwritten and sold by an agent on their behalf such as an intermediary on a delegated basis;

- f) insurers that are currently writing business should be identified as many have permissions but are not writing business;
- g) self-insured and state-insured employers should be included;
- h) direct writing captive insurers should be included;
- i) the link to the tracing information should be directed to the ELTO website where insurers have signed up for ELTO membership.

2.4 The ELTO commented that they had already initiated the process of contacting all insurers authorised to write EL business in the UK including those passporting from Europe into the UK, notifying them of our proposed requirements and seeking confirmation from them of whether or not they write EL insurance in the UK.

2.5 Some respondents agreed that the notification should come with director approval and that any changes should be notified within seven days. They recognised that as changes are likely to be infrequent this is effectively a one-off notification and director notification would not be onerous. Others considered that director approval was unnecessary. They suggested that a quarterly update may be more appropriate than notification within seven days. Some questioned the meaning of the term 'director' and considered that certification by an appropriately authorised officer would be sufficient.

### **Our response**

Our proposals apply to all insurers and Lloyd's managing agents with respect to the activity of carrying out contracts of insurance. This regulated activity extends beyond the period covered by insurance contracts to include any period during which there is any liability or potential liability under those contracts. Run-off insurers require permission to carry out contracts of insurance to continue their activities, including those under the Financial Services Compensation Scheme (FSCS), and are included within the scope of our proposals by definition. In the same way, direct writing captive insurers are also included.

Our proposals are designed to identify all insurers that have liability or potential liability for commercial EL cover in the UK, whether compulsory or voluntary, whether through a stand alone policy or as part of a combined policy and whenever it was written. This represents a significant improvement over the current information available and is an essential minimum for eliminating unsuccessful insurer traces.

We consider that, to be effective in ensuring complete and reliable information, the director's certification should be provided by a 'director' as currently defined in the FSA Handbook Glossary, so that the responsibility rests with a person appointed to direct the affairs of the insurer.

Insurers do not have liability or potential liability for self-insurance by employers and we do not regulate those employers that self insure. It is therefore inappropriate to include self-insurance, including state insurance, within the scope of the FSA list.

Where applicable, insurers are required to notify us of the internet address at which the employers' liability register is made available. This may be an internet address of the tracing office or the insurer.

We agree that it would be useful to include information about periods of coverage in the FSA list. Our rules include a requirement to notify us of the period of cover by the firm, including whether they currently provide cover.

To improve access, we consider it important that there is a named individual identified for queries by telephone and/or in writing. Our rules include notification of a contact name plus address and/or telephone number. This provides firms with an option about how they receive queries.

To avoid making our rules unduly onerous in some circumstances, our rules allow up to one month for notifying us of any change in notification information.

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## Tracing information in the ELR

**Q2:** Do you agree with our proposal for the tracing information to be included in an Employers' Liability Register (ELR)?

- 2.6** Some respondents agreed with our proposals for the content of records in the register, while others said they were broadly supportive or agreed with the proposals to the extent they were within the parameters specified by the ELTO. Some said they were broadly supportive or comfortable with the minimum information requirements proposed in the DWP consultation.
- 2.7** Some respondents referred to the ELTO's database (ELD) for EL policies and expressed support for the ELTO's approach. They provided a list of data fields for the ELD, which built on and refined the ABI's Protocol for Recording EL policies introduced in 2008. They maintained that this data would be sufficient for tracing purposes and that requiring further information would be an undue burden on employers and insurers.
- 2.8** One respondent welcomed the proposal that information about company subsidiaries be included, but said that details of group companies should also be included to increase the likelihood of a successful trace. They also said it is important that information about changes of company names should be included, along with details of when the changes took place, even in circumstances where the company's name had changed since the claimant was employed. Another respondent thought it was vital that subsidiary companies and changes of name are identified.

- 2.9 One respondent said that any disclosures made by firms will have to be in line with data protection requirements, particularly for sole traders and partnerships.
- 2.10 Another respondent asked how information would be captured where an EL risk is written on a subscription market basis – i.e. where a number of insurers underwrite a proportion of the risk. They argued that, in such cases, to avoid significant duplication and possible discrepancies in the information provided, it would be useful to identify some ground rules on having a single data entry, perhaps by the intermediary on behalf of the subscribing insurers or by the lead underwriter on the slip. In this regard, it was noted that following market insurers may only know the identity of the lead underwriter and their own percentage participation on the risk and not the whole constitution of the insurance slip. Another respondent asked whether there were any circumstances (i.e. co-insurance, excess, or subscription) in which a firm might be exempted from having to provide policy details.

### Our response

All respondents supported the proposal that information about subsidiaries covered by the employers' liability insurance should be recorded on the ELR. To allow sufficient time for this information to be collected, it is not required to be included for policies entered into or renewed or claims made before 1 April 2012. We consider it appropriate for all employers covered by a policy to be identified on the tracing record. However, this does not necessarily include all companies in a group that the insured employers are a part of, if some group companies are not insured by the same insurer.

An employer's trading name should also be included and we have amended our proposals to make this clear using the ELTO's approach of appending the trading name to the employer's registered name. If an employer changes its name during the coverage period then an additional record will be required so that all names by which the employer was known during the coverage period are included. We consider it unduly onerous, however, to require insurers to keep records of changes in employers' names for periods other than the period covered by the policies for which they are responsible. We have also clarified this point in our rules.

We have adjusted the requirements in ICOBS 8 Annex 1 to include the policyholder name and name of the original insurer in line with the content of the proposed ELTO database.

Where cover is written on a subscription, co-insurance or excess basis, insurers do not necessarily know who the participants are. Each insurer involved in providing cover under a single policy is therefore required to complete a record to help ensure that all insurers liable can be identified when needed.

With regard to data protection for sole traders, partnerships and natural persons generally, s. 35 of the Data Protection Act 1998 (DPA) exempts personal data from its non-disclosure provisions 'where the disclosure is required by or under any

enactment, by any rule of law'. Any rules we make would fall into this category so that insurers would not be able to use the DPA as a shield against complying with FSA rules regarding data publication.

In our view, our publication rules do not unduly interfere with natural persons' interests in privacy under section 8 of the Human Rights Act 1998. The information published about natural persons would be about such persons in their capacity as employers (and such persons have less of a reasonable expectation of privacy over information regarding their 'public persona'). The scope of the information required to be published would be proportionate to the rule's purpose (i.e. the only info required to be published is that which helps employees trace insurers). Our publication rules serve a valid consumer protection purpose.

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## Keeping records of ERNs and CHRNs

**Q3:** Do you agree with our proposal to require insurers that enter into or renew Employers' Liability cover in future to keep a record of the Employers' Reference Numbers (ERNs) provided by Her Majesty's Revenue and Customs and any Companies House Reference Numbers (CHRNs) allocated by the Registrar of Companies for all employers covered by a policy?

- 2.11** Respondents agreed that having a unique employer identifier would significantly improve the effectiveness of searches for new policies and future renewals and claims. One respondent observed that, while including the ERN will be a solution for the future, it will not address the problem of identifying historic employers and insurers for disease claims that arise many years after insurance cover was provided (long tail claims).
- 2.12** One respondent agreed with our proposal with qualifications. With the support of DWP and HMRC, they had identified the Employer's Reference Number (ERN) provided by HMRC as a suitable unique identifier for the employer on the basis of its wide application, uniqueness, permanence and accessibility. They explained that the ELTO had therefore designed its ELD around the ERN as a unique identifier.
- 2.13** Another respondent agreed with including the ERN, although they believed that significant amendments to IT systems, processes and records would be needed to capture this data in the future. They considered that, to be a successful solution, the HMRC systems will also need amending. Another respondent observed that, under the ELTO proposals, there will be significant additional work required by the industry for 12 months to collect ERN information from employers who are existing customers. Many of these policies would not otherwise have human intervention to calculate renewal terms and issue renewal documents under automatic IT system renewal processes.

- 2.14** One respondent explained that the ELTO is also undertaking work to include the Companies House Reference Number (CHRN) in their database using a download from Companies House. All limited companies in the UK are registered at Companies House and, on registration, a company is allocated a CHRN, which is found on any documentation received from Companies House. They also observed that a company would normally display the CHRN on its documentation, correspondence and website.
- 2.15** Some respondents disagreed that the CHRN should be made a requirement. One respondent believed that the provision of a CHRN added no benefit over the ERN but added significant complexity to system builds for insurers. Other respondents supported the use of a download from Companies House.
- 2.16** However, while they had no objection to including the ERN, other respondents considered that including the CHRN was essential. Their experience clearly showed that the ERN, on its own, would not work as a unique employer identifier. They said that there were many examples of companies that have taken on the trading names of other companies, through various business arrangements. Such arrangements can lead to wholesale changes in the make up of the company, but the CHRN cannot be changed. The CHRN will also be simple to search for historically, as numbers are stored even after companies have gone out of business.
- 2.17** Another respondent considered that it was important to record the ERN and CHRN where available, but pointed out that some employers may have neither. They considered that ERN covered a wider range of employers than the CHRN, which only applied to limited companies, but that it was not as easy to access. They considered that insurers should provide one or other and both where at all possible. Another respondent considered, as an ancillary point, that it would be beneficial if HMRC (and/or Companies House for CHRNs) could develop a means for easy access by insurers (and intermediaries), perhaps via a database, to a list of those ERNs already granted. This would further assist insurers at the pre-ELR submission stage to minimise their own administration, avoid duplication of information gathering and help ensure that data is available to claimants in a timely manner.
- 2.18** One respondent commented that over time an alternative unique identifier may become possible, and that IT systems should have the flexibility to use this and retain the existing data.
- 2.19** One respondent queried whether it was the intention to require the relevant insurers to keep a record for the ERN or CHRN only for new or renewed policies. Another respondent explained that the ELTO will be adding the ERN and CHRN to the ELD from April 2012 onwards. They proposed that our requirements start from a similar date, to ensure that the education process of employers, intermediaries and insurers on the ERN is complete and to allow intermediaries and insurers sufficient time to change and test their systems for collecting the ERN.
- 2.20** One respondent commented that EL business in the Lloyd's market is almost entirely arranged via intermediaries, so insurers will be dependent on intermediaries supplying the



relevant information. They thought that it may be prudent to require intermediaries to collect the necessary dataset for insurers, as part of the placement process.

### Our response

Experience suggests that both ERN and CHRN are needed for searches to be effective. We are therefore requiring that the ELR includes both numbers, where these have been allocated by HMRC and Companies House respectively. The requirement for the ERN does not apply to policies entered into or renewed, or claims made before 1 April 2012, to allow time to set up the collection of this information. The CHRN may be included by using a facility which searches data obtained or downloaded from Companies House.

We have also clarified that, for limited companies, the employer's name and address registered with Companies House must be included. This will help to ensure effective matching if a download from Companies House is used to collect the CHRN rather than obtaining it directly from the insured employer. As referred to above, if the trading name is different from the registered name then the trading name must also be added.

As they do not change once allocated, including the ERN and CHRN will avoid difficulties arising from name changes both before and after the end of the coverage period.

Our rules on employers' liability tracing apply to insurers, as we consider that providing effective tracing information to be insurers' responsibility. Insurers should obtain the relevant information from their intermediaries where necessary.

## Accessing the ELR

**Q4:** Do you agree with our proposals for access to the Employers' Liability Register (ELR)?

- 2.21** One respondent agreed with our proposals and suggested that, in addition, if any insurer chooses to publish its own ELR, the ELTO should have free access to it so that the information can be added to the ELD.
- 2.22** Several respondents commented that access will be needed, not only for claimants or their legal representatives, but also for insurers and intermediaries who will find the data useful in determining any potential joint liability for any claim identified. One respondent considered that all FSA-registered general insurance intermediaries (as well as insurers) should have access so that they can check the information if necessary. They suggested that

we should keep a register of those who are permitted to access the data. Another respondent explained that the ELTO website and enquiry facility would be targeted mainly at claimants and claimant lawyers, but that employers, intermediaries, insurers, and defendant lawyers would also be able to use the service where there was a specific claim in question.

- 2.23** Several respondents considered that careful construction of ELR would be required to prevent the inappropriate use of data. Some respondents considered it imperative to put controls in place to prevent the misuse of the ELR as a competitive or marketing tool. They considered that registering and preventing copying or downloading would not be sufficient to prevent insurers obtaining information for commercial purposes such as 'poaching' policyholders. As a result, they considered that the procedures need to be far more robust and the industry and consumers would be best served by central database and restrictions, such as those being developed by the ELTO.
- 2.24** Another respondent considered that suitable safeguards were needed to avoid the use of ELRs for targeting claimants to offer services to them.
- 2.25** Another respondent identified the issue of confidentiality for personal safety. They said there have been instances of those insurers providing cover to certain enterprises being targeted to prevent the enterprise from conducting business. A mechanism would need to be found to balance the personal safety risk with transparency over the EL policy details.
- 2.26** One respondent considered that any database must be fully live and interactive with no compulsory fields so that the database can be interrogated in an intuitive and intelligent way. They proposed allowing live access for solicitors. They considered the proposals to require matches to be returned to any specified character string and common variations in the spelling of names as an important first step, but not in itself sufficient to ensure the best possible chance of returning a positive trace. They commented that there was no indication of the timescale involved in responding 'without delay'.
- 2.27** Another respondent considered that there should be full and easy access to insurance records by claimants and their representatives, and a database should respond, as far as is possible, to minimum information. They thought it vital, as proposed, that a search can respond to common variations in spelling names. They did not support screening, involving registration, before access to insurance records.
- 2.28** Respondents described the proposed operation of the ELTO as follows:

'On accessing the ELTO website, claimants will be taken through a verification process, which will explain the purpose of the ELTO and ask them to verify that they are trying to find an EL policy to make a claim against. They will then be taken to an enquiry form. They will be asked for their name and details, the employer's name and details, a description of the disease (or injury caused), and the dates during which they were exposed to the cause of the disease (or the date of the accident when the injury occurred).

The ELTO will ensure as much relevant information is returned to the claimant as possible. The enquiry details will be checked against the ELD, and if a match is made to the employer name and dates of disease/injury, results will immediately come up on the screen. The system search will be based on returning any matches where the employer name is contained for the specified period. The results will be prioritised using the closeness of name and address match.

The claimant will then have the opportunity to filter these results further by name and address. If no results are returned by the ELTO, the claimant can request an 'extended search', which will send the enquiry details out to all EL insurers individually to check the details against their own policy records. If an insurer returns a match for the employer, the policy information will be created and added to the ELD and sent immediately via email to the claimant. If no results are returned and the enquiry is for a coverage post April 2011, this will be investigated further.

Some claimant solicitor firms that use the facility frequently will be able to gain easier access through an annual registration fee.'

- 2.29 They explained that providing information about the claimant and their disease or injury ensures that the service is being used for claims for disease or injury in the course of employment and establishes that the claim is likely to relate to an EL policy.

### **Our response**

While it is beyond our powers to require insurers to join an organisation (such as the ELTO) over which we have no control, or to comply with its ongoing requirements, we are able to require insurers to provide access to their information if it is proportionate to do so.

In general, we consider it appropriate to allow insurers to screen access to prevent misuse of their data. This appears to be necessary for it to be commercially acceptable to make tracing information readily available.

However, for qualifying tracing offices (who themselves should have sufficient controls in place to prevent the misuse of data) we consider that the benefits of a reduction in the number of sources of tracing information outweigh the cost of giving them access to insurers' data. We are making it a requirement for insurers to make information available to qualifying tracing offices if it is needed for, and is solely for the purposes of, enabling the tracing office to make comprehensive employers' liability searches, subject to the insurer having no reason to suspect misuse of the ELR information. An insurer may choose to

provide to the tracing office a download of the information in the ELR if it is feasible and proportionate to do so.

We have extended the minimum requirement for access to:

- intermediaries acting for insurers with a potential joint claim ;and
- employers, where there is a specific claim in question.

The requirement allowing access to authorised representatives of a claimant will allow intermediaries and tracing offices authorised to act for a claimant for a particular claim to have access.

We do not propose to maintain a list of organisations permitted to have access, as this would not be cost effective.

We have included more specific guidance about the requirement to provide responses to search requests without delay, so the result of the search of the ELR would normally be expected to be provided within one business day.

We note that the search process proposed by the ELTO does not precisely meet the proposed guidance on an effective search function, as it does not find all matches in the register to any specified character string and to common misspelling of names. However, given the requirement to respond without delay, we consider that it would be sufficient for the search function to find all occurrences of any specified whole word. We have amended our guidance accordingly.

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## Discrimination issues

**Q5:** Do any discrimination issues arise from our proposals?

- 2.30** Most respondents considered that there were no discrimination issues. One thought it important to make sure people without the internet can access the database.
- 2.31** One respondent pointed out that the ELTO website will meet a high accessibility level that will ensure accessibility to all users, including those with disabilities. Another said that, provided access is not restricted to potential claimants (or their legal representatives), they did not believe any discrimination arises.
- 2.32** Another respondent considered that there may be discrimination issues arising where claimants have impaired sight, or other disabilities that mean they are unable to use the database themselves. They suggested that the solution to this potential problem was to give solicitors full and live access to the database, so that a search can be made on the behalf of the claimant. They said that solicitors have a duty to comply with the Disability Discrimination Act 2005.

### Our response

We have included a name of an individual at the firm and correspondence and/or telephone contact details in the FSA list so that we can refer enquiries from those without internet access to the appropriate contact.

## Historical policies

**Q6:** Do you agree that the ELR should include at least those policies for which insurers are potentially liable that, on or after 1 November 1999, were entered into, renewed or for which claims were made?

- 2.33** Respondents had strong and conflicting views on this proposal and most disagreed with us about the extent to which historical policies should be included in the ELR. All respondents agreed, however, that new policies, renewals and claims made after a specified future date should be included.
- 2.34** Many respondents supported the proposal for the ELD to capture all relevant EL policies over time, but maintained that the requirement to backfill policies to November 1999 would be disproportionate and ineffective.
- 2.35** They explained that the ELTO members will be required to submit all new and renewed compulsory EL records from April 2011 onwards, policy records relating to new claims they receive after April 2011 and to continue responding to enquiries from the ELTO for policies not on the database. Successful traces to date and in future will also be added. They pointed out that ELTO members will also be able to upload further policy records on a voluntary basis.
- 2.36** They said that, while insurers were party to the Employers' Liability Code of Practice (ELCOP), under which they committed to keeping EL policy records from November 1999, the requirement was to keep the policy records in a format accessible for their own tracing purposes. Therefore, there was no agreed industry format or system for maintaining this data, and it would require significant expense to translate all of this data into the required format to submit to ELD.
- 2.37** Another respondent said that the request to provide data for all policies (back to 1999 or any other date) was disproportionate, as the vast majority of policies would never need to be traced. Only a proportion of policies receive EL claims and the vast majority do not receive long tail claims. They considered this to be important, as injury claims are required to be made (essentially) within three years, a time period over which tracing of an EL insurer is much easier compared with the many years that 'long tail disease' claims can take to manifest themselves and be recognised as a potential claim.

- 2.38** A further respondent did not at present capture the policy information proposed for inclusion in the ELR in an easily transferable format. To convert the required policy information into a transferable format would be an enormous exercise and take a number of man years at significant cost (potentially tens of millions of pounds) and would be of little benefit to claimants.
- 2.39** Another respondent said that while they considered the costs of including all historical data back to 1999 would not be proportionate to its potential usage, they might well consider uploading some of this historical data where they continued to see a frequency of claims being notified each year.
- 2.40** One respondent considered that there could be issues with gathering information for prior years as only parent company information was captured electronically. Subsidiary and associated company information was either not available or was piecemeal. They were, however, prepared to provide such information for historical policies where a new claim had been raised.
- 2.41** One respondent questioned if proposed backfilling was necessary as these records are already searched against on behalf of claimants under ELCOP, so adding these records may not lead to any improvement in tracing rates.
- 2.42** One respondent thought it was not clear from the consultation exactly what information would be required for the post-1999 submission. If it was the same as that required for new and renewed policies, along the lines of the ELTO and the DWP proposals, it was unlikely that all of that information would be consistently available. For example, information on subsidiaries might not be available, as insurers have often received incomplete data from intermediaries and customers and, even where received, have not been under any obligation to maintain this information in a standard format.
- 2.43** Another respondent considered our proposals to be an absolute minimum and that there may be a retrograde step if the proposed minimum information in the ELR became the standard. They said the proposals could be disastrous for people lodging claims before 1999.
- 2.44** A further respondent disagreed with our proposals, as the cost of the failure to maintain a record of insurance policies had been wholly borne by those suffering occupational diseases. They considered that there was no proper acknowledgement of this cost, largely borne by asbestos victims and that the cost to insurers of recording policies, including paper policies, pre-1999 was wholly justified. It was not sufficient to state that post-1999 information should be the minimum because, in their view, this would become the standard. They said that this proposal would create a tracing system, which may provide protection for future claimants (providing the wholly inadequate post-1999 ELCOP record is improved), but did nothing for those who need to trace historic policies. They said that much information was held in a variety of locations and by many insurers. They considered that all this information must be made available, including paper records, which could easily be scanned to provide electronic records.

- 2.45 They considered that, while capturing all information over the past 50 years for all employers may appear to be too daunting a task, it was possible to prioritise certain industries that are known to have caused exposure to asbestos. They considered that it was also possible to commence with specific decades when asbestos was intensively used.
- 2.46 Another respondent believed that the ELR should be compulsory for EL policies inceptioned on or after the inception of the system. They said that insurers should endeavour to load information on policies post November 1999 if possible, but noted that some fields may not be completed as the information may not be available. They considered that data included should be checked by an independent audit paid for by the insurer. They also considered that data for policies issued before 1999 should be uploaded if the information was available in transferable format and that the existing code of practice should continue for policies not loaded on the system.
- 2.47 Another respondent considered that insurers should be actively encouraged to provide historic records to the extent that they are able to do so. The advantage to an insurer in doing this was that it should decrease the enquiries about EL coverage that it received. Insurers should be encouraged to provide what information they can without any risk of penalty or censure if that information is incomplete.
- 2.48 Some respondents did not understand why a duty to keep insurance details should be limited to cases where there is potential liability and considered that all insurance records should be recorded. They also considered that there should be no waiver, under any circumstances, for any insurer. They thought it obvious that any failure to make tracing information generally available would give rise to undue risk to consumers. On that ground alone, waivers should be excluded.

### Our response

As confirmed by the consultation responses, we consider that our proposals for new policies, renewals and claims are proportionate and, while we are continuing to address the issue of historical data, we have introduced requirements to include tracing information for new data. These requirements apply to both ELCI and insurance cover voluntarily taken out by employers.

All the information specified in ICOBS 8 Annex 1 is compulsory for each policy entered into or renewed on or after 1 April 2012. For policies entered into or renewed on or after 1 April 2011, but before 1 April 2012, the information required is compulsory only to the extent that the firm already has it and it does not include information about other employers covered by the policy (e.g. subsidiaries) referred to in paragraph 27 and the ERN referred to in paragraph 43.

For claims made on or after 1 April 2011 (including claims made after 1 April 2012, but not if the policy was also entered into or renewed after 1 April 2012), ICOBS Annex 1 applies only to the extent that the firm holds the

information. The transitional provisions for information on other employers covered by the policy (e.g. subsidiaries) and ERNs also apply to claims made on or after 1 April 2011 but before 1 April 2012. A claim received by a firm before 1 April 2011 but still outstanding at 1 April 2011 is treated as a 'claim made'. Firms' obligations for such claims arise from the date the claims are settled so that, for example, firms will need to include information on their ELRs within three months from the date such claims are settled.

For other claims made, we have provided a transitional provision to accord with current ELTO practice and reflect current industry practice, which is that, for the purposes of determining the date that a claim was 'made', firms may use either the date it was created in the firm's systems or the date the claim was settled. This transitional provision is only available to the extent that it is consistent with the way that a firm's systems treat claims made information as at 1 April 2011. The transitional provision expires on 1 April 2012 so that, from that date, the firm's obligations will arise from the date a claim is 'made'. After the transitional period, we want to avoid delays arising out of the uncertainty involved in whether, or when, a claim may be settled, and also avoid the situation where a firm's obligations are dependent on their own 'creation' of the claim in their systems.

A modification or waiver of a specific rule may be appropriate where it is unduly burdensome on the insurer, but an alternative approach is just as effective in protecting consumer interests.

Insurers are reminded of SYSC 3.2.20R (1), under which firms are required to take reasonable care to make and retain adequate records of matters and dealings (including accounting records) that are the subject of requirements and standards under the regulatory system. In particular, we expect an insurer to retain all records relating to contracts of insurance under which it is actually or potentially liable, whenever written, to ensure it meets claims when due.

Further details on historical policies are contained under Q11 and Q12 below.

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## Updating the ELR

**Q7:** Do you agree that the Employers' Liability Register (ELR) should be updated at least quarterly?

**2.49** Respondents agreed that the ELR should be updated at least quarterly.

**2.50** One respondent pointed out the ELTO will update information monthly. They said that under the ELTO, all ELCI data must be uploaded by members within three months of any change to a policy and considered that a similar requirement should apply to all ELRs to



avoid inconsistencies. Some respondents considered that all ELRs should be subject to identical timing to that required by the ELTO.

- 2.51** Some respondents described the ELTO process and said that the ELTO will ensure that changes in the data on employers will be recorded. They said that when policy records are supplied to the ELD, these will reflect changes to any of the fields in the policy records for the policyholder (the parent employer) or the named beneficiaries (e.g. subsidiaries). They indicated that, during the uploading process, comparisons will be made to determine whether the new information will replace the old records, which will then be archived automatically, or whether a new record should be created. They said that the insurer will also be required to capture any changes in subsidiary names from the policyholder on renewal of the policy, and to provide the changed names to the ELD.
- 2.52** One respondent regarded a quarterly update to be reasonable and proportionate, given the use of the information for facilitating claims. They considered that it is highly unlikely that a claimant suffering injury or disease occurring instantly or over a short period of time would not be able to determine their employer's insurers directly, from access to the employers' liability certificate for example. In such circumstances, the ELR is unlikely to be used.
- 2.53** Another respondent commented that the insurer should be able to achieve the ELR update at least quarterly since many intermediaries work one month in arrears. They considered that ELR is designed to help trace claims that were caused many years before and that the timing of these updates is not critical. However, they considered that insurers must have a formal system in place and that updating at least quarterly was sufficient.

### **Our response**

We have retained the proposed minimum requirement for updates to be made at least quarterly as we agree that this is proportionate given that the ELR is unlikely to need to be used for a short period after policies are entered into or renewed and given the time it takes to process claims that are made. Consistent with a quarterly update, we have clarified our requirements for the update of the ELR so that it contains all changes to information within a maximum of three months of those changes. We have also introduced a requirement for firms to state the date at which the register may be considered to be fully up-to-date, which depending on the firm's circumstances, may be a date up to three months before the date on which the register was updated.

In particular, policies that, from 1 April 2011, are issued, renewed or for which claims are made, are required to be included in ELRs within three months of the transaction.

## Director certification and independent assurance of the ELR

**Q8:** Do you agree with our proposal that the ELR should be certified by a director each time it is updated and that it should be audited annually?

### *Director certification*

- 2.54** Most respondents considered that director certification every time the ELR was updated was disproportionate. One respondent considered that since the ELTO would have a rigorous auditing process in place, members of the ELTO should not be required to give director certification each time they submit data to the ELTO.
- 2.55** Another respondent thought it likely that some, if not most, EL insurers would be looking to update the register as soon as cover is written. The requirement for director certification for every update was therefore likely to discourage the prompt and timely updating of the register.
- 2.56** Another respondent did not believe that such register updates should require a director certification as there was existing allocation of accountability for systems and controls by way of the FSA's approved persons' framework. They considered that the data structures would be subject to a testing regime before starting the ELR and that the ELR would be subject to quality checks by the insurer thereafter.
- 2.57** Another respondent considered that, due to the seriousness of the issues at stake, it was important that this is overseen at director level.
- 2.58** Some respondents believed that an annual declaration by a director certifying the robustness of the data transfer processes adopted and the reliability of data published should be sufficient.
- 2.59** One respondent believed that an authorised official of the insurer (who should be an FSA-approved person) would need to be charged with the responsibility for updating the ELR. They considered that it may not always be practical for an insurer to have a director of the company signing off the updates due to the volume of data and its production from many sources, e.g. different offices/branches.
- 2.60** Another respondent considered that director certification and audit on a quarterly and annual basis would not be disproportionate.

### *Auditing the ELR*

- 2.61** Most respondents welcomed the proposals for an annual audit of the ELR.
- 2.62** One respondent considered that the ELR should be audited annually to ensure that the obligations to publish the requisite data are taken seriously, and that insurers that are

diligent in publishing their data, or are members of a tracing office such as the ELTO, are not left at a competitive disadvantage.

- 2.63** They also pointed out that for historic policies, the ELTO will provide tracing compliance guidance and that the ELTO proposed a three-pronged approach to auditing: (i) an audit of compliance to be added to the existing portfolio of audits by each members' external auditor; (ii) the ELTO ensuring sign-off by the auditors has occurred'; and (iii) the ELTO sampling the audits.
- 2.64** Another respondent said that, to enable them to comment on whether an annual audit would provide sufficient safeguards to ensure compliance, further information was required – e.g. who would conduct the audit, what it would entail and whether it would involve spot checks, etc.
- 2.65** One respondent supported some form of annual auditing and considered that it was probably essential. However, they believed that this could be achieved in a number of ways. It could, for example, be performed by an internal audit function of the organisation with relevant certification being provided to the FSA that it was complying as required.
- 2.66** Another respondent thought there should be formal procedures in place for auditing and that the responsibility for carrying out the audits needed to be clarified.
- 2.67** One respondent agreed with directors' certification, but questioned the need for and cost of an annual audit.
- 2.68** Another respondent considered that the format of audit opinion should be determined in consultation with the APB, the Institute of Chartered Accountants for England and Wales (ICAEW) and audit firms. A further respondent considered that it was unclear whether a requirement for external audit of the ELR would bring a significant benefit to potential claimants and ourselves and that we should consider instead using a risk-based solution involving targeted use of skilled persons' reports. They thought that, from a practical point of view, it was unlikely that reporting accountants would be able to give a positive opinion, such as 'properly prepared', as suggested in the CP. They suggested that if we were to decide that routine involvement of reporting accountants was necessary, then agreed upon procedures might be the most appropriate approach. They suggested that an alternative approach might be to provide limited assurance. They considered that any proposals we seek to bring forward should be reconsulted on, with an explicit cost benefit analysis of the audit requirements.
- 2.69** One respondent considered that requiring an independent external audit seemed excessive and overly prescriptive. Firms should just be required to maintain internal controls to ensure the ELR is accurate, complete and up-to-date.

### Our response

We agree that director certification each time the ELR is updated may be disproportionate, even if the ELR is updated only quarterly and that existing requirements for systems and controls and approved persons already place responsibilities on firms. We have therefore amended our proposals to require annual director certification in line with an assurance requirement.<sup>1</sup>

Consistent with most consultation responses, we consider it appropriate to introduce an independent annual assurance requirement for each relevant firm (rather than a more reactive requirement that is only for firms with perceived shortcomings) over the reliability of the information provided by the ELR. This will be required to be met as at 1 April 2012 and an assurance report produced by 1 July 2012 and annually thereafter. The assurance report will be addressed to the directors of the insurer.

We intend to consult further on the requirements for director certification and independent assurance and their cost effectiveness and are liaising with the APB concerning our guidance. This will allow account to be taken of early experiences in setting up and operating the new employers' liability tracing systems. We would expect director certification to reflect the insurer's responsibility for tracing information and that only limited independent assurance would need to be provided by the assurance report. We expect to amend our rules to include details of the form and scope of the director certification and the assurance report that are now required and the relationship between them, before the first certificate and assurance report are required.

## Tracing offices

**Q9:** Do you have any comments on our proposals to allow insurers to arrange for tracing offices to make tracing information available, including the requirements that would apply to insurers using a tracing office and the conditions the tracing office needs to meet, of which the insurer would need to have adequate evidence?

**2.70** Some respondents supported our proposals, but considered that our requirements were best met by insurers submitting details to the ELTO and that, if insurers kept their own ELRs, the requirements should be similar to that of insurers submitting data to the ELTO so that the ELTO was not at a competitive disadvantage.

<sup>1</sup> The CP referred to the notion of an 'audit'. Here, the deliberately broader term 'assurance' has been used, reflecting the existence of various assurance alternatives, which vary in terms of the level of assurance provided and the form of the assurance opinion expressed. The term 'audit', conveys a level of assurance, usually reserved for financial information, which is not applicable here.

- 2.71 Several respondents considered that it was unnecessary for individual insurers to be independently satisfied about a particular tracing office or to perform their own checks or due diligence that it met the FSA requirements. They considered that it would be more efficient and cost effective if we were able to determine that a prospective tracing office had met the requisite criteria.
- 2.72 Some respondents expressed concern about the relationship between the ELTO and the insurer. Since our proposed rules did not apply specifically to the ELTO, the relationship appeared to be the same as an Appointed Representative relationship. However, insurers would be reluctant to monitor or control the ELTO in this way. They considered that we and the ELTO should put in place a memorandum of understanding on our working relationship and in particular establish a threshold on the concept of materiality in the context of rule breaches. They considered that more clarity was needed about what would happen if using the tracing office went wrong, and about our relationship with tracing offices.
- 2.73 Some respondents considered that it made sense that insurers kept copies of records sent to the ELTO as back up. They did not consider it to be appropriate for individual insurer members of the ELTO to guarantee that the ELTO met the tracing office requirements and thought that the ELTO itself should be granted authorised tracing office status provided it met the final requirements.
- 2.74 Several respondents considered that the governance behind the ELTO would include an extensive audit function and external assurance checkpoints to ensure that the service was being properly managed. They expected that this function would meet almost all of the evidential requirements proposed. They additionally agreed that insurers should also continue to hold the raw data submitted to the tracing office. Assuming the ELTO is used, they thought it would make sense for the evidential requirements to be met by a blanket ELTO confirmation covering all participating insurers rather than numerous individual submissions to us confirming that the ELTO meets the compliance requirements.
- 2.75 One respondent expressed concern over us being unable to regulate the activities of the ELTO and considered that sight of the database on request and the annual report was not sufficiently robust. Another respondent considered that the ELTO must be properly regulated. The fact that we cannot regulate tracing offices was not sufficiently mitigated by the requirements we can place on insurers using tracing offices.

### **Our response**

Our requirements place responsibility on each insurer to make adequate tracing information available. Using a tracing office is effectively outsourcing this activity and does not absolve an insurer from its primary responsibility. As such, we do not expect to have a formal relationship with tracing offices. We have included an evidential provision to the effect that a tracing office publishing both a directors' certificate and independent 'assurance report' would tend to

allow an insurer to be satisfied that it is using a tracing office meeting most of the conditions set out in our rules.

We have also included a transitional provision having the same effect as the evidential provision before the publication of the directors' certificate or assurance report under which the tracing office issues a public statement approved by its directors containing a similar type of confirmation. Our requirements therefore do not require each insurer to perform a separate assessment of the tracing office it uses, but to have adequate evidence that it meets certain conditions. This evidence can comprise information produced centrally and available to all members of a tracing office. However, to the extent that an insurer becomes aware that a tracing office is not satisfying the conditions set out in our rules, despite a directors' certificate and an independent assurance report having been published, the insurer may need to take further appropriate action to satisfy itself that it is able to comply with our rules.

As with the director certification and independent assurance requirement for the ELR, we intend to consult further on the requirements for director certification and independent assurance of tracing offices, including the form and scope of the directors' certificate and independent assurance report and the relationship between them.

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## Specific comments on the instrument

**Q10** Do you have any comments on the draft instrument in Appendix 1?

**2.76** A number of respondents raised specific comments in connection with the draft instrument text. Those comments are referred to below and expand on the points raised under the earlier questions above.

**2.77** On our relationship with tracing offices respondents asked:

- a) Do we intend to establish or have a working relationship with permitted tracing offices to monitor and ensure compliance is being maintained, or will we rely on reports solely from insurer members?
- b) Is a permitted tracing office expected to inform us where they are aware of any inconsistencies or errors in an insurer's records, or are they only expected to inform or deal with the insurer member?
- c) Will we have any objections to a permitted tracing office imposing their own sanctions on insurers for any failure to adhere to the rules of that permitted tracing office providing that such does not inhibit the operation of any of our rules?

### Our response

The primary responsibility for complying with our requirements rests with insurers, and our relationship as regulator is with them. We do not expect to establish a formal relationship with qualifying tracing offices. Nevertheless, we take into account information relevant to firms' compliance from a number of sources, which may include tracing offices. We would expect insurers to comply with our requirements. Sanctions imposed by qualifying tracing offices on their members will be a matter for the tracing office and the member. We do not envisage this inhibiting the operation of any of our rules.

#### 2.78 On director certification:

- a) Respondents considered that we would need to be explicit regarding the content of the director's certificate and the consequences of an incorrect statement verifying compliance. They considered that gaps and inconsistencies were likely to arise especially for historical data given the size and nature of the insurers, the complexity and size of the data sets to be transferred and the need to extract data from multiple systems/original data supplies.
- b) Respondents asked what the consequences or FSA requirements be for directors if a director was not able to provide such certification.
- c) They also asked what factors and evidence must a director take into account to certify and be satisfied that the register is accurate if the information presented is audited subsequently?
- d) One respondent considered that it would be prudent to require best endeavours as opposed to absolute accuracy in every piece of data.

### Our response

Under our final requirements, a firm responsible for producing an ELR is required to obtain a written statement by a director of the firm that, to the best of their knowledge, the register has been properly prepared in accordance with the requirements of ICOBS 8.4. This means that:

for policies entered into or renewed after 1 April 2012, certification is required that confirms the ELR contains the information required.

for policies entered into before 1 April 2012, certification is required that confirms the ELR faithfully reproduces the firm's information, subject to transitional provisions.

It may therefore be possible for a director to provide a certificate if there are lost or incomplete records for policies issued or renewed before 1 April 2012. The first

certificate is not required until 1 July 2012 for the register as at 1 April 2012. If a director is not able to provide such a certificate, an insurer may need to take action to make corrections so that such a certificate can be given. If the director can demonstrate that they have taken reasonable steps in providing their certificate, we will take that into account when considering our response if errors subsequently come to light for whatever reasons. As referred to above, further consultation on director certification is planned before the first certificate is required.

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**2.79** On our assurance requirements for ELRs, respondents:

- a) Asked if we could provide some further clarity regarding the extent of detail and examination that an auditor's report is likely to have to consider. They considered that an audit report designed in effect to provide a 'true and accurate' opinion would in practice be extremely onerous to provide, was likely to be overly burdensome in terms of cost, and result in potentially numerous qualifications.
- b) Stated that the form of the audit opinion required was not provided in the CP and asked for a consultation process to be undertaken with the Auditing Practices Board, ICAEW and audit firms prior to the finalisation of the Policy Statement so that audit opinion wording can be included that is appropriate for the circumstances, clarifies who the opinion will be addressed to and where and how the opinion will be made public.
- c) Identified the need for clarity about the timing of the auditor's report, as it seemed to suggest that a register needed to be audited as at each effective date rather than just annually as described in Q6.
- d) Commented that the requirement for an auditor's report to be made available within 60 days of the start of the register was excessive and might produce a heavy compliance burden on insurers and auditors alike, with all insurers requiring to be audited in a very short timescale, and not in accordance with their usual audit periods. They suggested that an initial statement confirming compliance should be sufficient.

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### **Our response**

Our rules make it clear that our assurance requirement is an annual requirement. An assurance report is not required until 1 July 2012 for the position on 1 April 2012. An insurer is required to obtain an assurance report within three months of the effective date of the ELR to which it relates. As referred to above, we intend to consult further on the requirements for independent assurance before the first assurance report is required.

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## 2.80 On our notification requirements:

- a) One respondent pointed out that there may be operational and technical obstacles to compliance with the seven business day notification requirements with Part VII transfers if this means that a director of an acquiring insurer will need to sign off on a completed and verified ELR when providing such notification. They asked whether we intended to grant a temporary waiver or exemption in such circumstances until the director of an acquiring firm had had sufficient opportunity to approve the entries being submitted to the register.
- b) They also considered that there was a need for further clarity in relation to the notification requirement at 8.4.5R(1) that a firm carries on employers' liability insurance. It was unclear what the general reference to 'in accordance with the requirements of ICOBS 8.4' implied in this context.
- c) One respondent considered that the requirement to notify the FSA within seven business days if an insurer starts underwriting EL insurance seemed an excessively short lead-time given that we require the necessary policy information to be deposited regularly in any case.

### Our response

Our notification requirement requires insurers to tell us simply whether they are liable or potentially liable for commercial lines employers' liability cover, to provide dates of coverage, contact details and a link to the ELR/tracing office from which tracing information may be obtained, and the firm's FSA Firm Reference Number. The notification is required by 6 April 2011 and any update is required within one month of a change. The notification is entirely separate from the director certification of the ELR itself, which is not required until 1 July 2012 for a 1 April 2012 ELR. We would expect an insurer starting to write EL insurance to set up contact details and a link to tracing information when preparing to write the business. An insurer has three months to include any new transactions in its ELR.

## 2.81 On the content of the ELR:

- a) Some respondents commented that it was unclear what was meant by the 'effective date' of the register.
- b) One respondent asked how much notice we would require if it transpired that the policy information and details being provided by insurers needed to be amended/ altered, how much notice we are likely to give and how long we would generally expect to allow before implementing such changes.

- c) A further respondent requested clarification on section 1.1 of Annex 1, which set out what information was required for new and renewed policies, but contained no information about policies against which a claim had been made.
- d) One respondent commented that the wording in the proposed paragraph 2.1 of Annex 1 seemed to be superfluous, as long as the registers were clear about the extent of data being supplied.

### Our response

The effective date of the ELR is simply the date at which the ELR is produced or updated. The effective date is also used to determine which changes should be reflected in the ELR. At least those changes that occurred more than three months before the effective date should be reflected. Our rules require firms to include a statement that the ELR may be relied on as being fully up-to-date as at a date three months before the effective date or at a later date as applicable to the firm. The effective date is also used to determine when director certification and independent assurance report should be obtained.

Any changes that are made to our requirements will be subject to consultation in accordance with the applicable legislation at the time. The principle of proportionality applies and sufficient notice will be given according to the priority of the changes and the costs and benefits of making them.

We require information to be provided to users of the ELRs to show if the insurer is liable or potentially liable for policies other than those on the ELR and the extent to which more policies have been included than required by our rules. We have amended the note to the ELR to clarify its purpose.

#### 2.82 On qualifying tracing offices:

- a) One respondent asked what (if any) were the consequences for the ELTO (or any qualifying tracing office) where the ELTO was responsible for an insurer(s) breach of our rules. They asked whether we would look to impose sanctions against insurers who were members of that tracing office (either independently or collectively) given that we cannot directly sanction a qualifying tracing office.
- b) Respondents commented that the draft consultation stated that insurers must be satisfied that there is adequate evidence that the tracing office meets the stipulated conditions. This was not clear from the draft instrument. They asked whether, if we added a tracing office to our list, an insurer was required to take into account any further evidence or make their own independent assessment that such requirements are met.

- c) Respondents considered that further elaboration and clarity was needed on the level of detail and the extent to which the tracing office auditors will be required to investigate to be able to sufficiently determine whether updates have been successfully incorporated and whether a tracing office has satisfied the functions. They considered that it should not be necessary to report the detail of the individual compliance results and accuracy of submissions from each insurer using the permitted tracing office.

### **Our response**

Our requirements and any sanctions for non-compliance apply to insurers. Our list of tracing offices that have published the required directors' certificate and auditors report is intended to assist insurers in identifying qualifying tracing offices. The use of a tracing office is effectively using outsourcing to meet our requirements. As such, the responsibility lies with insurers, and it is for them to take any action they consider appropriate on a tracing office they are outsourcing to, having regard to evidential provision ICOBS 8.4.8E and transitional provision 11.

Insurers that become aware that a tracing office they are using is not satisfying our conditions from whatever source should consider the appropriate action to take. In our final requirements, the requirement to publish a directors' certificate and auditors report does not apply until 1 July 2012. As stated above, we intend to consult on detailed requirements for director certification and independent assurance of tracing offices during 2011.

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# 3

## Cost Benefit Analysis and Compatibility Statement

### Cost assumptions

#### Q11 Do you agree with our cost assumptions?

- 3.1 Some respondents did not agree with some of our cost assumptions.
- 3.2 One respondent considered that there was no evidence provided for the figures included in the CP and no indication about how they had been reached. They said they would like to see, in the interest of transparency, the publication of the detailed evidence that led to our estimate of £30.7m for the one-off costs to the insurance industry. They were also concerned that the costs to intermediaries of adapting their systems for the ELTO appeared to be based on an assumption and urged us to carry out more detailed work on the potential cost to ensure that an accurate figure is reached. One respondent suggested that the costs be independently verified.
- 3.3 Other respondents had cooperated in estimating overall costs. They agreed that the cost to employers for providing the additional information (ERN and subsidiary information) would be insignificant in most cases. However, during the course of scoping and setting up the ELTO, they had reviewed the costs to the industry a number of times. While the costs for the ELTO infrastructure, EL database (ELD) and running costs had remained the same, the estimated costs for insurers of making changes to their systems, and providing information to the ELD, had continued to rise. Their revised estimate comprised total set-up costs for insurers (excluding intermediaries) of £21.8m, and ongoing costs of £9.6m per annum, including the annual cost of audit. This assumed that there was no backfilling of data. A separate estimate for backfilling of data to November 1999 was provided. One of these respondents commented that there was no allocated expense for any necessary changes to policy wordings and associated documents, where at the very least a revised data protection wording would be required.

- 3.4** These respondents had estimated costs based on a survey of ELTO members according to market share. They had used the following assumptions in their estimated costs:
- there are 1.2m EL policies sold per year;
  - 80% of policies will be renewed rather than bought new; and
  - operational costs are charged at £10 per hour.
- 3.5** They estimated set-up costs to insurers of £21.8m compared with £12.2m estimated in their response to the DWP consultation. The latest estimate of set up costs included:
- £1.7m for the set up of the ELTO infrastructure and database;
  - £10.5m for insurers' internal IT and system changes; and
  - £9.6m for insurers' initial operational costs (this is an estimate for the cost of obtaining the additional information (ERN and subsidiary information) from employers on renewed policies – assuming an hour of work will be needed with the employer on a one-off basis to gather the additional information).
- 3.6** Respondents considered that we had underestimated the one-off cost to the rest of the insurance industry (intermediaries, software houses and comparison websites) and that it was likely to be 20-30% rather than 10% of insurers' costs. They considered that this would mainly be incurred in obtaining the additional information from employers for both new and renewed policies. They said that many intermediaries use technology provided by software houses to collect information from employers. For software houses to change this technology, and intermediaries to implement and test it, they considered that this would be costly. They also identified that comparison websites would need to make changes to their systems to capture the additional information.
- 3.7** Respondents estimated ongoing costs at £9.6m including the cost of audit. Insurers had updated their estimates of likely costs, based on the more detailed specification for providing information to the ELD. The latest estimate included:
- £700,000 p.a. to run the ELTO infrastructure and database; and
  - £8.9m p.a. for insurers to supply new and renewed policies, old policies with new claims made against them, and continued tracing costs (respondents envisaged the need for insurers to continue investing in tracing their internal EL policy records for several years to come).
- 3.8** These respondents estimated the additional cost to insurers of backfilling data to November to be between £24m and £36m. They stated that, while insurers party to the ELCOP committed to keeping EL policy records from November 1999, the requirement was to keep the policy records in a format accessible for their own tracing purposes. Therefore, there was no agreed industry format or system for maintaining this data, and it would require significant expense to translate all of this data into the required format to submit to

ELD. They estimated that, for each policy, an average of 1-1.5 hours of work would be needed to translate it into the correct format. On the basis that 20% of 1.2m policies are bought new each year over the past ten years, this would require 1-1.5 hours, spent on 2.4 million policies.

- 3.9** Another respondent considered that supplying historical data would be cost prohibitive, encompassing multiple prior companies and many different levels of systems and paper records.
- 3.10** Some respondents considered that there was not sufficient detail around the costs of auditing the insurers' register and auditing the tracing offices' operations in the cost-benefit analysis, and that auditing costs could potentially be significant. They considered that it was not clear from the analysis in the CP if the cost assumptions took into account the cost of audit requirements and, if so, on what basis these have been included. They recommended that any revised assurance or agreed procedure requirement we seek to bring forward be reconsulted on with a supporting cost-benefit analysis.
- 3.11** One respondent noted that, in the short term (possibly meaning several years) the introduction of the ELTO would do nothing to relieve insurers of costs of tracing past policies. They said that the vast majority of tracing requests related to periods of time before the 1990s, and aside from the existing ABI successful search data, the ELD would not contain the relevant data for those searches for earlier periods of time to be successful. As such, insurers would fund, not only the development and ongoing operation of the ELTO and their own system developments, but also the costs of continued tracing efforts in respect of earlier periods. They stated that they employed several full time personnel for such continued tracing efforts.

### **Our response**

As explained in the CP, in analysing the costs of our proposals, we assumed for that purpose only that the ELTO will be in place, relevant insurers will have evidence that the ELTO meets the relevant conditions, and most would join the ELTO. We recognised that some firms may decide not to join the ELTO, but provide information in a different way. If firms decided not to use the ELTO, the costs of setting up and running the ELTO would not arise. However, other costs would arise and certain services needed may be at least as or more expensive as a result of the lack of economies of scale, and possibly scope. We considered that firms would choose the most cost efficient option (namely join ELTO or not) and that the costs identified by assuming that the ELTO will be fully used, reflected an upper bound on the compliance costs to insurers – otherwise they would not join ELTO as the alternative would be less costly.

Our original estimate of one-off costs to the industry in the CP of £30.7m comprised £1.7m for ELTO set-up costs, £10.5m for internal insurer costs, £1.5m

for intermediary costs and £17m for the costs of making available historical data since 1999. The £17m assumed that ongoing running and recording costs estimated under the DWP consultation (Option 2) of £1.7m for each year would also be required for each of ten years of historical data.

As described above, the responses to the consultation have provided further information and additional costs have been identified. We thank respondents for their confirmation of some of our estimates and for providing more up-to-date information on costs. Based on this information, set up costs are estimated at £28.4m, including intermediary costs, but excluding costs of backfilling of data. The £28.4m comprises £1.7m for ELTO set-up costs, £10.5m for internal insurer IT and systems changes, initial operational costs of £9.6m and intermediary costs of £6.6m.

The costs of backfilling data to November 1999 is now estimated to be between £24m-£36m. We consider that this cost may have been overestimated. Insurers envisage continuing to invest in improving searches of their internal EL policy records for several years to come and have included this in their estimates.

We consider that there would be savings in the cost of tracing internal records arising from backfilling, as there would be a reduction in the number of requests for which all EL insurers will be expected to search their data individually. We also consider that the assumption that 1-1.5 hours would need to be spent on each relevant policy may also be overstated given that historical data required to be included contains information insurers already use for tracing rather than the full data required for new and renewed policies. Our rules, however, do not require back-filling, and we are investigating the costs of back-filling further as part of investigating how the issue of historical policies may be best addressed.

Ongoing costs are estimated at £9.6m per annum, compared with previous annual estimate of £3.1m. However, we understand that these revised estimates include the ongoing costs of insurers searching historical records that are not on the ELD. To the extent that these costs do not arise as a result of our proposals, this estimate may be overstated and therefore represent an upper bound for the ongoing costs.

We have set broad requirements for independent assurance of tracing information provided on ELRs and by tracing offices on the basis of the ELTO's costings including its rigorous audit requirements. These costings are therefore assumed to include an upper bound on the costs of our requirements for independent assurance. As referred to above, we intend to consult further on requirements for these aspects and the associated costs and benefits once further experience has been gained of compiling tracing information. Such independent assurance will not be required until July 2012.

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## Cost benefit analysis

**Q12** Do you have any comments on our cost benefit analysis?

- 3.12** Some respondents believed that the benefits would outweigh the costs, while others considered that the costs would outweigh the benefits. One respondent noted that the DWP consultation had included a numerical analysis of benefits and considered that it would have been useful to have had a similar benefit analysis to be able to fully assess the consequent value of the costs expected to be borne by insurers. Another respondent noted that, while the rationale behind our proposals was explained in the compatibility statement, the benefits had not been quantified, whereas the costs had. They expressed an interest in the decision-making mechanism for determining the threshold at which the costs would be excessive, given the unmeasured consumer benefits.
- 3.13** Several respondents agreed with the benefits outlined in our cost benefit analysis, although they believed that there were further benefits to supporting the ELTO itself, e.g. the benefits of having a comprehensive central database. They believed that more needed to be done to fully secure protection for future employees. EL insurers were therefore investing a significant amount to set up the ELTO and a database of EL policies, which was expected to meet our requirements in full and go further in helping employees.
- 3.14** They believed that investing in the ELTO was necessary to protect employees. They believed that investing 1-2% of gross written premium (GWP) in the ELTO, and a database holding the necessary data, was proportionate to provide benefits to 1-2% of employees who are not currently able to trace a defendant to claim against.
- 3.15** These respondents did not agree that putting 2.4 million policies on the ELD at a potential cost of £24m-£36m would be a proportionate measure, when less than 2% of all claimants would need to access the database to pursue a claim. They believed that the requirements on ELTO members to submit all new and renewed policies, and all old policies with new claims made against them, plus a requirement to continue tracing against their own policy records, would ensure that the necessary relevant data would be included on the ELD within a short space of time.
- 3.16** One respondent commented that once historical records had been lost it was not possible to recreate them in future and therefore the £17m costs of backfill would be disproportionate to the value of historical claims. Such costs would be incurred as an operational expense that may result in an increase in premiums.
- 3.17** Another respondent considered that if claimants currently cannot trace insurers, but have access to some form of compensation through various government funds, the development of tracing offices will more than likely reduce the burden on government by finding appropriate insurers to claim against. They noted that this was not a complaint, as they recognised their obligations to pay all legitimate claims. Another respondent pointed out that insurers have benefited from credits of government lump sum payments where an



action for negligence was successful and from other recoveries, so they were able to afford the cost of populating the central database, including pre-1999 information.

- 3.18** One respondent anticipated that the introduction of the ELTO would result in an initial spike of new claims as people try (maybe in addition to previous tracing attempts) to use the new tracing resource to find an appropriate insurer to claim against. However, they considered that the level of any such increase was guesswork at this stage.
- 3.19** Another respondent referred to the 'Transfers' section, which outlined the possible amount of money that could be 'transferred' from insurance companies to claimants. They considered that our statement that figures involved would have a negative effect on the stability of the industry appeared to miss the point of principle, which is that where liability exists it is the insurance industry's duty to pay fair compensation. They also commented that our proposal to include only post-1999 historical data avoided the difficulties of providing appropriate information for all relevant policies for which insurers have potential liabilities and that it would have a detrimental effect on injured people.
- 3.20** Another respondent welcomed the degree of compulsion introduced by our proposals, but believed that more needed to be done to redress the imbalance between complainants and insurers. They suggested that the difficulties associated with pre-1999 historical data should be addressed. They considered that it was possible to prioritise certain industries that are known to have caused exposure to asbestos. It was also possible to commence with specific decades when asbestos was intensively used. They also considered that transfers were a significant 'benefit' and should be termed as such.
- 3.21** One respondent stated that many employers', intermediaries' and insurers' records relating to historic EL policies had been lost, destroyed or never existed and commented that our proposals would not resolve these issues. However, they considered that if using the ELTO was compulsory, the proposals would result in claimants receiving compensation more quickly, as the process for tracing insurers would dramatically speed up. This would be because claimants would receive an immediate response, where policy records have previously been supplied (compared to the current eight weeks). However, if individual ELRs were pursued, this may build in delays to the claims process.
- 3.22** They also considered that, once ELRs/ELTO are established, and the assurance and governance of the proposals are sufficiently rigorous, a complete EL record would exist for policies after the inception of our rules. They considered that this would be a benefit for claimants in the future and may provide a mechanism to police the purchase of ELCI. However, this would take some years to establish.
- 3.23** Another respondent noted our comment that the 'potential increase in legitimate claims as a result of improved search facilities will not be significant enough to have a big effect on premiums and thereby on other policyholders. They considered that given the costs that would be incurred, the fact that the potential increase in valid claims was expected to be small raised concerns over the proportionality of the proposals.

## Our response

The cost benefit analysis that we are required to make under FSMA comprises an estimate of costs, together with an analysis of benefits, which compares the position if the proposals are made with the position if the proposals are not made. We are required to have regard to the principles that a burden or restriction we impose should be proportionate to the benefits expected to result from the imposition of that burden or restriction when considered in general terms.

We have made some changes and clarifications to the detail of our proposals in finalising our requirements. Some changes – for example, those made on director certification and transitional requirements – are expected to result in lower costs. Other changes are expected to improve the effectiveness and efficiency of tracing without introducing significant additional costs. Our updated cost benefit analysis (CBA) for these changes is reflected in our revised cost estimates under Q11 above and detailed in the table in next section.

In relation to government funds, we understand that the government pays out a weekly benefit (Industrial Injuries Disablement Benefit (IIDB)) to compensate those injured at work. It is a no-fault scheme, but if civil damages are awarded, some of the IIDB is recovered and always has been. The government also has two lump sum schemes, the Pneumoconiosis etc (Workers' Compensation) Act 1979 and the Child Maintenance and Other Payments Act 2008. The first pays out to people with certain dust-related diseases and the second to people with mesothelioma. When the 1979 Act was set up, no provision to recover awards from subsequent civil damages was made. Consequently, we understand that insurers reduced the amount of civil damages they paid by the 1979 Act award. We understand that this is the money some respondents suggest should be used to backfill the ELRs. When the 2008 Act was passed, compensation recovery was introduced into the 1979 Act and the new 2008 Act so that government lump sums are now recovered from civil damages and paid back to the government, as well as recoveries of IIDB. With more civil damages awards expected as a result of more effective tracing of insurers, more recoveries are expected so that the government will get more money back by way of compensation recovery.

Overall, we consider that insurers collectively should be able to identify whether or not they are liable or potentially liable for a particular employer for a particular period of coverage. We recognise that there is an ongoing issue concerning historical coverage, which we are continuing to investigate. Our rules address future coverage periods and future claims for historical coverage, which we believe will lead to significant benefits. This is because every policy represents a potential or actual liability and new sources of claim may arise in future. Effective recording for future transactions can be expected to substantially reduce the incidence of tracing difficulties for future coverage. Our FSA list and recording information for new claims will also provide some benefit for past coverage. We believe, and many consultation respondents agreed, that

the costs are proportionate to these benefits, even though these benefits may not be evident for several years.

We agree that the transfer arising from our proposals from insurers to government/complainants would also give rise to benefits in terms of the reduction in suffering and injustice experienced by claimants and greater confidence in the industry. Our reference to the effect on the stability of the industry was not a factor relevant to whether changes were needed, but to the timescale over which they should be implemented, taking the interests of all policyholders (including those not covered by employers' liability insurance) into account.

Countervailing the effect of the difference in timing between costs and benefits is the welfare effect for people able to claim successfully. The payments received are expected to improve their living standards to a greater degree than is measured by the monetary value of those payments. The benefit of payments to claimants can make a significant difference to their lives, a benefit not fully captured by the monetary amount of those payments.

For the reasons above, it is our judgement that the costs of our requirements are proportionate to the associated benefits. However, while we recognise that there is a significant injustice surrounding historical policies, it is less clear to us that the cost of the requirements we have proposed putting in place in this respect would be proportionate to the benefits. Alternative approaches to addressing this injustice are therefore being considered in consultation with other stakeholders.

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## Amendments to CP10/13 proposals

- 3.24 Below is a table of amendments to the proposals in CP10/13 and an update to the CBA to take into account the effect of these changes. In most cases the changes bring our rules more in line with the way in which the insurance industry and the ELTO expect to operate. Consequently, our estimates based on those of the industry's estimates and the assumption that most insurers join the ELTO, already largely take the requirements in our rules into account. Changes to notification requirements should be seen in the context of there being about 500 general insurers authorised in the UK and about 600 insurers authorised in another European state with permission to conduct general insurance in the UK under freedom of services and/or through a UK branch, many of whom are not expected to have any liability or potential liability for UK commercial lines employers' liability insurance.

Question in CP10/13	Change to draft rules from CP	Effect of change, with respect to CBA in CP10/13
Q1. Notification to FSA of carrying out UK commercial lines EL insurance	Notification of period of cover	Costs of additional one-off notification are not expected to be material. If 200 insurers are liable or potentially liable the cost for the industry is estimated to be about one man year or £25,000 approximately.
	Notification of name, address, and telephone number	We expect costs to be minimal, given that firms are supplying other information at the same time.
Q2. Content of Employer' Liability register	Including trading name and changes of name during coverage period.	These costs are included in our latest estimates which are based on industry costings assuming most insurers join the ELTO, which as explained above, we believe would be an upper bound on costs for those who choose not to join ELTO.
	Include policyholder name and name of original insurer.	
Q3. Employer's Reference number and Companies House references	Employer name and address registered with Companies House, where applicable.	The benefit is that we expect tracing to be improved.
Q4/5. Access to tracing information and discrimination issues	Insurers to make their information available to qualifying tracing offices	We do not expect any material additional costs as most insurers are assumed to join the ELTO, which as explained above, we believe would be an upper bound on costs for those who choose not to join ELTO. The requirement is also subject to conditions that are expected to limit the cost to proportionate levels for insurers if they do not join ELTO.
	Minimum access should include intermediaries acting for insurers with a potential joint claim and employers where there is a specific claim in question.	Costs are included in latest estimates which are based on industry costings.  The benefit is that we expect tracing to be improved
	Access to be provided within one business day of request. Effective search function based on word search.	Costs are included in latest estimates as based on industry costings.  As the ELTO plans to provide almost instantaneous access using word search, the cost estimates included are an upper bound.
Q6. Historical Policies	Including claims settled after 1 April 2011 but received before that date.	Costs are included in the latest estimates. The ELTO claims 'effective date' is settlement date or the date the claim is created on the insurer's systems. Insurers are expected to use claims settled after 1 April 2011. We expect consistent treatment of claims settled post 1 April 2011 to result.

Question in CP10/13	Change to draft rules from CP	Effect of change, with respect to CBA in CP10/13
	Using the date claims are made. Transitional provision to allow firms to use the date a claim is created or the date of settlement for the date the claim is made depending on firms' systems.	The requirement to use the date claims are made is our original proposal. As the latest estimates are based on ELTO claims 'effective date' some costs of entering information may be estimated to arise later, for some firms, than they would arise under our requirements. The transitional provision will, however, reduce the costs of firms' adapting their systems to use the date claims are made in future. The use of the date claims are made avoids delays in recording claims in the ELR.
Q7. Frequency of updating ELR	ELR to contain all changes to policies older than three months. ELR to be updated at least quarterly. ELR to include a statement that information has been received in the previous three months (or other period applicable) which has not yet been included in the register.	These costs are included in the existing costings, i.e. the costs associated with joining ELTO. As the ELTO plans to require changes to be reflected within three months with monthly updates, the cost estimates included are an upper bound. Tracing is expected to improve as a result of clarity of what is included in the ELR.
Q8. Directors certification and independent assurance requirement	An annual director's certificate rather than a certificate every time the ELR is updated	This change creates a cost saving compared with our consultation proposals. The current industry estimates are based on this requirement.
	Independent assurance of ELRs	These costs are included in industry estimates as the ELTO plans rigorous audit requirements. We expect the benefit to come from an improvement in the quality of the ELRs.
Q9. Use of tracing offices	Evidential provision that a tracing office needs to provide evidence of adequacy of systems and processes. Clarification that there is no requirement for each insurer to make a separate assessment.	No change as this was the original intention costed.
	Director certification and independent assurance of tracing offices.	These costs are included in the current industry estimates as the ELTO plans rigorous audit requirements.

## Compatibility statement

**Q13** Do you have any comments on our compatibility statement?

- 3.25** One respondent was happy to support the compatibility statement and considered that the best vehicle for this initiative is as laid out by the ABI, by membership of the ELTO.
- 3.26** Some respondents agreed that allowing access to updated and accurate employers' liability policy information is of substantial benefit to achieving consumer protection objectives. They said that the consumer protection objectives can best be met where the majority of insurers agree to publish data onto a single database. In a situation where each insurer provides its own ELR with a search facility, tracing insurers in the future will be more onerous for consumers than with the current ELCOP voluntary arrangement. They considered that it would be preferable for all insurers who fall with our regulations to become members of the ELTO and to provide information to one central ELTO database. This would allow claimants quick and easy access to information in one place, and also central reporting on performance and audits. They suggested that we seek to encourage use of permitted tracing offices by insurers as much as legitimately possible to minimise multiple searches for one insured.
- 3.27** One respondent agreed that allowing access to updated and accurate EL policy information was of substantial benefit to achieving consumer protection objectives. However, they considered it to be clear that the consumer protection objectives can best be met where the majority of insurers agree to publish details on a single database. They therefore suggested that we seek to encourage collective use of permitted tracing offices by insurers as much as legitimately possible to minimise multiple searches for one insured. They considered that a requirement that all ELRs should reflect new information within three months would also reduce the need for multiple searches.
- 3.28** Another respondent said that they understood and backed the objective of protecting consumers and had indicated this by their voluntary membership of the ELTO ahead of any regulatory intervention.
- 3.29** Some respondents did not believe that the statement was compatible with consumer protection, especially in this context, when some people are dying without receiving the compensation to which they are entitled. They considered that the 'light touch' of rules, guidance and principles was simply not robust enough to deal with all the concerns they, and others, had raised about the need for a full and flexible database, available to all, which is transparent, subject to independent oversight, compulsory and properly policed. While they placed some welcome requirements on insurers, they fell far short of what was needed: a central database, populated by information with no cut-off date, independently regulated, compulsory and available to all. They said that even with our proposals, asbestos victims would continue to subsidise insurers.

- 3.30** One respondent said that data protection rules must be observed and that they believed there should be one tracing office that must be tightly controlled. They believed that the proposal could have a significant impact on intermediary costs as intermediaries adapt to the new arrangements and have to pay for new software systems and training. They thought the 1999 EL regulations did not have the desired effect of a successful tracing service because information was not put on in sufficient detail and there were no sanctions. They suggested that we needed to enforce our proposed new system and to make sure all stakeholders were fully aware of it and its implications. They considered that if all stakeholders, including employers, HMRC, insurers and insurance intermediaries did not cooperate this could cause problems for the database. They believed that a deterrent should be available for those businesses who blatantly flouted this important task.
- 3.31** Another respondent reiterated their concern that the proposed requirements may in places be disproportionate, given the size of the population that is affected by problems in tracing their employer's liability insurer, the range of measures that are now being implemented to address the problems and the fact that we did not expect legitimate claims to increase significantly.

### **Our response**

The changes from the proposals in the CP included in our rules and guidance affect the compatibility statement in the CP only in respect of its reference to historical data. The compatibility statement in the CP therefore remains valid for the policy we have introduced.

We consider our requirements to be the most appropriate way of meeting our objectives within the limits of our powers that prevent sub-delegation to an organisation over which we have not control. In response to our consultation, we have extended the access to information on insurers' ELRs to include qualifying tracing offices, subject to certain conditions. These are designed to give greater encouragement to developing collective search facilities. We have also recognised that further work is needed on historical policies.

Placing the responsibility for making tracing information available on individual insurers helps to ensure that such information continues to be available in the long term, irrespective of additional tracing services that are provided to complainants from time to time.

We consider that our requirements are proportionate given the benefits of increased accessibility to compensation where due.

## Annex 1

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# List of respondents

Association of British Insurers

AIOI Motor and General Insurance Company of Europe Limited

Allianz

Association of Personal Injury Lawyers

Asbestos Victims Support Groups' Forum UK

Aspen Insurance

AVIVA

AXA

British Insurance Brokers' Association

Chartis Insurance

Employers' Liability Tracing Office

Ernst & Young

Institute of Chartered Accountants of England and Wales

Institute of Insurance Brokers

International Underwriting Association

KPMG

Lloyd's Market Association

Malcolm Ward

Motor Insurance Bureau

Price Waterhouse Coopers



Royal & Sun Alliance

Unite

Zurich

## Appendix 1

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# Final Instrument

**EMPLOYERS' LIABILITY INSURANCE: DISCLOSURE BY INSURERS  
INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority 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 138 (General rule-making power);
  - (2) section 149 (Evidential provisions);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 6 March 2011.

**Amendments to the Handbook**

- D. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Employers' Liability Insurance: Disclosure by Insurers Instrument 2011.

By order of the Board  
24 February 2011

## Annex A

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

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

After ICOBS 8.3 insert the following new section. The text is not underlined.

#### 8.4 Employers' Liability Insurance

##### Application

- 8.4.1 R (1) The general application *rule* in *ICOBS* 1.1.1R applies to this section subject to the modifications in (2).
- (2) This section applies to:
- (a) any *firm* solely with respect to the activities of:
    - (i) *carrying out contracts of insurance*; or
    - (ii) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;

in relation to *general insurance contracts* and, in either case, including business accepted under *reinsurance to close*;
  - (b) all *incoming EEA firms* or *incoming Treaty firms* falling within (a) including those providing *cross border services*.
- (3) In this section references to:
- (a) an 'employers' liability register' are to the employers' liability register referred to in *ICOBS* 8.4.4R(1)(a);
  - (b) a '*director's* certificate' are to the statement complying with the requirements in *ICOBS* 8.4.4R(1)(b); and
  - (c) *employers' liability insurance* include business accepted under *reinsurance to close* covering *employers' liability insurance* (including business that is only included as *employers' liability insurance* for the purposes of this section).
- 8.4.2 G *ICOBS* 8.4 does not generally apply to activities carried out in relation to a *reinsurance contract* (see *ICOBS* 1.1.2R and *ICOBS* 1 Annex 1 Part 2 1.1R) but it does apply to business accepted under *reinsurance to close*.

## Purpose

- 8.4.3 G The purpose of *ICOBS* 8.4 is to assist individuals with claims arising out of their course of employment in the *United Kingdom* for employers carrying on, or who carried on, business in the *United Kingdom*, to identify an *insurer* or *insurers* that provided *employers' liability insurance* by requiring *insurers* to produce an employers' liability register. In particular it aims to assist ex-employees whose employers no longer exist or who cannot be located.

## Principal obligation to produce an employers' liability register and supporting documents

- 8.4.4 R (1) A *firm carrying out contracts of insurance*, or a *managing agent managing insurance business*, including in either case business accepted under *reinsurance to close*, which includes *United Kingdom* commercial lines *employers' liability insurance*, must:
- (a) produce an employers' liability register complying with the requirements in (2) and *ICOBS* 8 Annex 1;
  - (b) obtain a written statement, by a *director* of the *firm* responsible for the production of the employers' liability register, that to the best of the *director's* knowledge the register has been properly prepared in accordance with the requirements of *ICOBS* 8.4; and
  - (c) obtain an independent assurance report addressing the accuracy and completeness of the employers' liability register, prepared by an auditor satisfying the requirements of *SUP* 3.4 and *SUP* 3.8.5R to 3.8.6R, and addressed to the *directors* of the *firm*.
- (2) For the purposes of (1)(a) the employers' liability register is required to:
- (a) include the date upon which the register was produced;
  - (b) include a database which:
    - (i) reliably stores information required by *ICOBS* 8 Annex 1;
    - (ii) in relation to information required by *ICOBS* 8 Annex 1.1.1R(1), contains accurate information and, in relation to information required by *ICOBS* 8 Annex 1.1.1R(2), contains information which faithfully reproduces the information that the *firm* has; and
    - (iii) has an effective search function which allows a person inputting data included on the register relating to a particular employer over a particular period to retrieve information on the register relating to a potential employers' liability claim corresponding to that employer and period;

- (c) allow for requests for information or searches relating to a potential claim to be made by:
    - (i) individuals with the potential claim, or their authorised representative, or
    - (ii) any employer to whom the potential claim relates; or
    - (iii) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
    - (iv) a relevant *insurance intermediary* acting for an *insurer* in (iii);
  - (d) allow for requests by a tracing office which meets the conditions in *ICOBS* 8.4.9R relating to the use of information on the *firm's* register to the extent that the information is necessary, and used solely, to enable the tracing office to provide comprehensive searching facilities to its users; and
  - (e) allow for responses to requests or searches in (c) to be provided without delay.
- (3) For the purposes of (1)(b) and (c) the *director's* certificate and independent assurance report must:
- (a) relate to a version of the register as at a date no later than 12 *months* after it is first produced in accordance with (1)(a); and :
  - (b) be obtained within 3 *months* of the date in (a).
- (4) For the purposes of (1):
- (a) *United Kingdom* commercial lines *employers' liability insurance* means commercial lines *employers' liability insurance* where both the employer's business was or is carried on, and the employees' course of employment was or is, in the *United Kingdom*; and
  - (b) commercial lines business comprises *contracts of insurance* carried out in relation to *persons* whose *employers' liability insurance* relates to a business or profession they carry on.
- 8.4.5 G (1) For the purposes of *ICOBS* 8.4.4R(2)(c) and (d), a *firm* may put in place appropriate screening on its employers' liability register to monitor:
- (a) requests for information and searches to ensure that they are being made for a legitimate purpose by persons falling into one of the categories in *ICOBS* 8.4.4R(2)(c); and
  - (b) requests from tracing offices to ensure that the information is necessary, and will only be used by the tracing office, for the purposes of providing users of the tracing service with the same

information as the *firm* itself would have provided had the inquirer approached the *firm* directly.

If a *firm* has any reason to suspect that the information is, or may be, being misused then it may restrict the use of the information provided or request its return.

- (2) For the purposes of *ICOBS* 8.4.4R(2)(e) the *FSA* expects that, in the ordinary course, a person searching or making an information request will be provided with a response within one *business day* of the initial request.
- (3) In the *FSA*'s view, commercial lines business does not include *employers' liability insurance* provided for retail consumers, for example, in relation to insurance taken out to cover liability in relation to domestic arrangements such as home help.

#### FSA notification requirements

8.4.6 R A *firm* must:

- (1) notify the *FSA*, within one *month* of falling within *ICOBS* 8.4.1R(2), as to whether or not it, or, if relevant, a member of the *syndicates* it manages, carries on business falling within *ICOBS* 8.4.4R(1) and, if it does, include in that notification:
  - (a) details of the internet address of the *firm* or tracing office at which the employers' liability register is made available;
  - (b) the name of a contact person at the *firm* and their telephone number or postal address, or both; and
  - (c) the period over which the *firm* or *syndicate* member provided cover under relevant *policies* or, if still continuing, the date that cover commenced; and
  - (d) the *firm*'s *FSA* Firm Reference Number; and
- (2) ensure that the notification in (1):
  - (a) is approved and signed by a *director* of the *firm*; and
  - (b) contains a statement that to the best of the *director*'s knowledge the content of the notification is true and accurate.

#### Requirement to make employers' liability register and supporting documents available

8.4.7 R (1) A *firm* must make available:

- (a) the information on the employers' liability register either:
  - (i) on the *firm*'s website at the address notified to the *FSA* in

*ICOB*S 8.4.6R(1); or

- (ii) by arranging for a tracing office which meets the conditions in *ICOB*S 8.4.9R to make the information available on the tracing office's website; and
  - (b) on request, the latest *director's* certificate and independent assurance report.
- (2) If a *firm* arranges for a tracing office to make information available for the purposes of (1)(a)(ii) the *firm* must:
- (a) send to the tracing office copies of its latest *director's* certificate and independent assurance report;
  - (b) maintain records of all the tracing information and copies of all documents it has provided to the tracing office;
  - (c) retain all legal rights in relation to the ownership and use of the information and documents provided to the tracing office to enable the *firm* to provide that information or documentation to another tracing office or to make it available itself; and
  - (d) send to the tracing office its *FSA* Firm Reference Number.

- 8.4.8 E For the purposes of *ICOB*S 8.4.4R(2)(d) and *ICOB*S 8.4.7R(1)(a)(ii) the existence of published and up-to-date versions of both a certificate from the *directors* of the tracing office, stating that the tracing office has complied in all material respects with the requirements in *ICOB*S 8.4.9R(1) to (6), and an independent assurance report, addressing the accuracy and completeness of the tracing office's database, may be relied upon as tending to establish that a *firm* has satisfied the requirement to use a tracing office which meets the conditions in *ICOB*S 8.4.9R(1) to (6).

#### Qualifying tracing offices

- 8.4.9 R The conditions referred to in *ICOB*S 8.4.4R(2)(d) and *ICOB*S 8.4.7R(1)(a)(ii) are that the tracing office is one which:
- (1) maintains a database which:
    - (a) accurately and reliably stores information submitted to it by *firms* for the purposes of complying with these *rules*;
    - (b) has systems which can adequately keep it up to date in the light of new information provided by *firms*;
    - (c) has an effective search function which allows a person inputting data included on the database relating to a particular employer over a particular period to retrieve information on the database relating to a potential employers' liability claim corresponding to



that employer and period;

- (2) maintains adequate records of the *director's* certificates and independent assurance reports sent to it by *firms* for the purposes of complying with these *rules*;
- (3) has effective arrangements for information security, information back up and business continuity and to prevent the misuse of data;
- (4) accepts search requests in relation to information in (1) relating to a potential claim from:
  - (a) individuals with the potential claim, or their authorised representative; or
  - (b) the employer to whom the potential claim relates; or
  - (c) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
  - (d) a relevant *insurance intermediary* acting for an *insurer* in (c);
- (5) provides responses to requests in (4) without delay;
- (6) has adequate arrangements for providing to a *firm*, upon request and without delay, a full copy of the information on the database that the *firm* has provided to it;
- (7) includes in its published annual report:
  - (a) a certificate from the *directors* of the tracing office stating whether the tracing office has complied with the requirements in (1) to (6) in relation to the period covered by the annual report; and
  - (b) an independent assurance report addressing the accuracy and completeness of the database, prepared by an auditor satisfying the requirements of *SUP* 3.4 and *SUP* 3.8.5R to 3.8.6R, and addressed to the *directors* of the tracing office; and
- (8) provides to a *firm* making use of the tracing office for the purposes of *ICOBS* 8.4.7R(1)(a)(ii):
  - (a) a copy of its annual report promptly after publication; and
  - (b) upon request and without delay a full copy of the information on the database that the *firm* has provided to it.

- 8.4.10 G (1) *ICOBS* 8.4.4R(2)(b) and *ICOBS* 8.4.9R(1) require a *firm*, or a tracing office used by a *firm*, to have an effective search function in relation to the employers' liability register database. In the *FSA's* view an effective search function is one which finds all matches in the register to any specified whole word.

- (2) For the purposes of *ICOBS* 8.4.9R(5) the term ‘without delay’ should have the same meaning as in *ICOBS* 8.4.5G(2).
- (3) In order to assist *firms* with their obligations under these *rules* the *FSA* has agreed to publish on its website at [http://www.fsa.gov.uk/Pages/consumerinformation/product\\_news/insurance/employers\\_liability/index.shtml](http://www.fsa.gov.uk/Pages/consumerinformation/product_news/insurance/employers_liability/index.shtml) a list of *persons* providing tracing office facilities which have published the *directors’* certificate and independent assurance report referred to in *ICOBS* 8.4.9R(7).

#### Updating and verification requirements

- 8.4.11 R (1) A *firm* must notify the *FSA*:
- (a) of any information provided to the *FSA* under *ICOBS* 8.4.6R which ceases to be true or accurate; and
  - (b) of the new position, in accordance with the notification requirements in *ICOBS* 8.4.6R;
- within one *month* of the change.
- (2) A *firm* producing an employers’ liability register must:
- (a) update the register with any new or more accurate information falling within *ICOBS* 8 Annex 1:
    - (i) by virtue of the entry into or renewal of, or of a claim made in relation to, a *policy*, as required by *ICOBS* 8 Annex 1 Part 1; and
    - (ii) in all other cases, by virtue of the *firm* having received that new or more accurate information;
  - (b) make the updated information in (a) available, in accordance with *ICOBS* 8.4.7R, no later than:
    - (i) in relation to new or more accurate information arising out of the entry into or renewal of, or a claim made in relation to, a *policy*, three *months* from the date of entry, renewal or the date upon which the claim was made; and
    - (ii) in all other cases, three *months* from the date upon which the *firm* received the new or more accurate information;
  - (c) update the register, no less frequently than once every three *months*, and include the date that the register was updated and a statement that the register may be relied on as up-to-date as at a date three *months* prior to the date upon which the register was updated, or such later date as applicable to the *firm*;

- (d) obtain a *director's* certificate:
  - (i) no later than twelve *months* after the date of the most recent *director's* certificate, obtained in accordance with *ICOBS* 8.4.4R(1)(b) or this *rule*;
  - (ii) complying with the requirements, and containing the statement, set out in *ICOBS* 8.4.4R(1)(b); and
  - (iii) in relation to a version of the employers' liability register dated no more than three *months* prior to the date of the *director's* certificate;
- (e) obtain an independent assurance report:
  - (i) no later than twelve *months* after the date of the most recent independent assurance report, obtained in accordance with *ICOBS* 8.4.4R(1)(c) or this *rule*;
  - (ii) complying with the requirements, and containing the statement, set out in *ICOBS* 8.4.4R(1)(c); and
  - (iii) in relation to a version of the employers' liability register dated no more than three *months* prior to the date of the assurance report; and
- (f) make available, in accordance with *ICOBS* 8.4.7R, the *director's* statement in (d) and the independent assurance report in (e) no later than 3 *months* after the effective date of the version of the register to which they relate, in place of the previous certificate and report.

8.4.12 G For the purposes of *ICOBS* 8.4.11R(2)(c) a *firm* is required to include the date at which it updates the register. However, depending on the *firm's* processes for making information available for the purposes of *ICOBS* 8.4.11R(2)(b), the register may only be relied upon as being up-to-date as at a date three *months* prior to the date on which the *firm* has updated the register, or such lesser period as applicable to the *firm* as is consistent with the *firm's* processes. *ICOBS* 8.4.11R(2)(c) requires the *firm* to include a statement as to the date at which the register may be relied upon as containing up-to-date information which can be no earlier than three *months* prior to the new date on the register, but may be later depending on the *firm's* circumstances.

#### Transfers of insurance business

8.4.13 R The transferor in an *insurance business transfer scheme* must provide the transferee with the information and documents the transferor holds in compliance with *ICOBS* 8.4 in respect of the insurance business transferred.

**8 Annex 1 Employers' liability register**

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

Part 1 In relation to information to be included in the employers' liability register

1.1 R A *firm* must:

- (1) for each *policy* it enters into or renews on or after 1 April 2011, include, in relation to that *policy*, all the information required by the form in 1.2R, in accordance with the notes;
- (2) for each *policy* not falling in (1) and in relation to which a claim is made on or after 1 April 2011, include, in relation to that *policy*, all the information required by the form in 1.2R that the *firm* holds, in accordance with the notes; and
- (3) in relation to (1) and (2) include the notes set out in 1.2R..

1.2 R FORM (*see next page*)

**EMPLOYERS' LIABILITY REGISTER (effective date: [ ])**

FRN (Firm Reference Number)	Name of Insurer						
Policy Number	Policy inception date	Policy end date	Name of Original Insurer				
Policyholder name							
Employer's Name 1.1	Postcode	Address Line 1	Address Line 2	Town/City	County	ERN (HMRC Employer reference number)	CHRN (Companies House reference number)
Employer's Name 1.2	Postcode	Address Line 1	Address Line 2	Town/City	County		
Employer's Name 1.3	Postcode	Address Line 1	Address Line 2	Town/City	County		
...							
Policy Number 2	Policy inception date	Policy end date					
Employer Name 2.1	Postcode	Address Line 1	Address Line 2	Town/City	County	ERN (HMRC Employer reference number)	CHRN (Companies House reference number)
...							

NOTES

1. The register must be completed by all insurers and managing agents managing the insurance business of *syndicates* of Lloyd's members that are carrying out contracts of insurance that provided commercial lines employers' liability cover to employers carrying on, or who carried on, business in, and in relation to their employees' course of employment in, the *UK*.

2. All *policies* under which *UK* commercial lines employers' liability cover has been provided to employers which commenced or were renewed or for which claims were made on or after 1 April 2011 must be included.
3. The register must include all employers covered by a *policy*, for example, all employers in a group where the *policy* is taken out in the name of one entity in the group.
4. The FRN number is that given to the insurer by the *FSA*. The FRN is not required to be included in the form if a *firm* uses a qualifying tracing office to make available its register in accordance with *ICOBS* 8.4.7R(1)(a)(ii).
5. The register must include all names by which an employer was known between the *policy* inception date and the *policy* end date must be listed including the name registered with Companies House where applicable and trading names. Trading names, if different from the registered name, should be appended to the registered name.
6. The employer's address is the latest address for that employer. Where the employer is registered with Companies House, the employer's address is the latest address registered with Companies House.
7. The ERN is the employers' reference number provided by Her Majesty's Revenue and Customs for that employer.
8. The CHRN is the employers' reference number provided, where relevant, by the Registrar of Companies. The CHRN may be included by utilising a facility which searches data obtained or downloaded from Companies House.

*continued*

## Part 2 In relation to information not required to be included

- 2.1 R A *firm carrying out contracts of insurance*, in relation to which information is not required to be included in the register under *FSA rules*, must, beneath the form in 1.2R, state the following, where applicable, tailored as necessary to the *firm's* circumstances:

“We have potential liability for policies under which UK commercial lines employers’ liability cover has been provided to employers and which commenced or were renewed before 1 April 2011 and in respect of which no claims were made on or after 1 April 2011. However, we are not required to make details of those policies available in this register under FSA rules. Enquiries may be made about these policies by individual claimants, their authorised representatives, or insurers or their insurance intermediaries, with potential claims, by contacting [insert contact details]”

- 2.2 G The purpose of 2.1R is to inform users of the register that the *firm* may be potentially liable in relation to *policies* other than those on the register. However, a *firm* may include *policies* additional to those entered into, renewed, or in relation to which a claim was made, after April 2011, in the register. If it does, the statement in 2.1R may be amended as necessary to refer to the *policies* that are not included.

Amend the following as shown.

## TP 1 Transitional Provisions

...

### Employers' liability insurance: disclosure by insurers

7 R For the purposes of *ICOBS* 8.4.6R a *firm* falling within *ICOBS* 8.4.1R(2) at 6 March 2011 must ensure that the notification is:

(1) valid as at a date no earlier than 6 March 2011; and,

(2) submitted to the *FSA* no later than 6 April 2011.

8 R (1) For the purposes of *ICOBS* 8.4.4R(1)(a), *ICOBS* 8.4.4R(2)(b)(ii) and *ICOBS* 8 Annex 1, and subject to TP 13:

(a) a *firm* is not required to include information required by *ICOBS* 8 Annex 1.1.1R(1) in relation to *policies* entered into or renewed before 1 April 2012 unless the *firm* holds that information;

(b) a *firm* must make available in accordance with *ICOBS* 8.4.7R the information required by *ICOBS* 8 Annex 1.1.1R(1) and (2) no later than three *months* from the date of entry, renewal or making of the claim;

(c) a *firm* is not required to comply with *ICOBS* 8 Annex 1 Part 2 before 1 April 2011; and

(d) notwithstanding (a), a *firm* is not required to include information relating to either the HMRC Employer Reference Number or to all other employers, other than the principal employer *policyholder*, covered by the *policy*, in relation to *policies* entered into, renewed or claims made before 1 April 2012.

(2) For the purposes of *ICOBS* 8.4.4R(3)(a) a *firm* required to produce an employers' liability register under *ICOBS* 8.4.4R(1)(a) must obtain a *director's* certificate and an independent assurance report:

(a) in relation to the register as at 1 April 2012; and

(b) by 1 July 2012.

TP 8R(1) applies until 1 April 2012 and TP 8R(2) applies until 1 July 2012.

9 G The effect of TP 8R(1) and *ICOBS* 8 Annex 1.1.1R is that from 1 April 2011 until 1 April 2012, a *firm* is required to include in its employers' liability register the information required by the form in *ICOBS* 8 Annex 1.1.2R relating to *policies* entered into, renewed or in respect of which a claim is



made (subject to TP 13 below), but only to the extent that the *firm* has that information (with the exception of the HMRC Employer Reference Number and information relating to all employers covered by the *policy*, other than the principal employer *policyholder*, where information is only required in relation to *policies* entered into, renewed or claims made on or after 1 April 2012). The *firm* has a maximum of three *months* to make the information available from the date of entry, renewal or making of claim (subject to TP 13 below). From 1 April 2012 *firms* will need to include all the information in the form in *ICOBS* 8 Annex 1.1.2R for *policies* entered or renewed on or after that date. *Firms* will continue to be required to include only information that the *firm* holds for *policies* in relation to which a claim is made (subject to TP 13 below) on or after 1 April 2012 (unless those *policies* were also entered into or renewed by the *firm* on or after 1 April 2012).

- 10 R For the purposes of *ICOBS* 8.4.4R(2)(a), for a *firm* required to produce an employers' liability register under *ICOBS* 8.4.4R(1)(a) from 1 April 2011, the date of the initial version of the register must be 1 April 2011.

This rule applies until 1 April 2012.

- 11 E For the purposes of *ICOBS* 8.4.8E, a public statement by a tracing office, approved by the *directors* of the tracing office, stating that the tracing office complies in all material respects with the requirements in *ICOBS* 8.4.9R(1) to (6) may be relied upon as tending to establish that a *firm* has satisfied the requirements to use a tracing office satisfying the conditions in *ICOBS* 8.4.9R(1) to (6).

This rule applies until 1 April 2012.

- 12 R For the purposes of the condition referred to in *ICOBS* 8.4.9R(7), until a tracing office publishes its first annual report, the condition will be satisfied if the tracing office has issued a public statement, approved by the *directors* of the tracing office, stating that the tracing office complies in all material respects with the requirements in *ICOBS* 8.4.9R(1) to (6).

- 13 R For the purposes of *ICOBS* 8.4.11R2(a), 8.4.11R2(b), *ICOBS* 8 Annex 1, TP 8 and TP 9, in relation to references to claims made in relation to *policies*:

- (1) for claims received by a *firm* prior to 1 April 2011 which have not been settled as at 1 April 2011, those claims must be treated, for the purposes of the above *rules*, as having been made on or after 1 April 2011, and for the purposes of the above *rules*, the *firm* must include information in the form in *ICOBS* 8 Annex 1.1.2R, in accordance with and including the notes, held by the *firm* (with the exception of information within TP 8R(1)(d) until 1 April 2012) within three *months* of the date upon which the claim was settled, on or after 1 April 2011; and
- (2) if, as at 1 April 2011, a *firm's* systems records claims by reference to the date the claim was created in the *firm's* systems or the date upon which it was settled, then that *firm* may treat references to the date

that a claim was made as a reference to the date that the claim was created in the *firm's* systems, or if applicable to the *firm*, the date that the claim was settled.

TP 13R(2) applies until 1 April 2012.

## ICOBS Schedule 2: Notification requirements

Sch 2.1 G ~~There are no notification requirements in *ICOBS*.~~

<u>Handbook reference</u>	<u>Matters to be notified</u>	<u>Contents of notification</u>	<u>Trigger event</u>	<u>Time allowed</u>
<u><i>ICOBS</i> 8.4.6R</u>	<u>Whether or not business falling within <i>ICOBS</i> 8.4.4R(1) is being carried out</u>	<u>Statement by <i>director</i> that, to the best of the <i>director's</i> knowledge, content is true and accurate, and if relevant details of the internet address at which the employers' liability register is made available, the <i>firm's</i> contact details and the period over which the <i>firm</i> or <i>syndicate</i> member provided cover under relevant <i>policies</i>.</u>	<u><i>Firms</i> or <i>syndicate</i> members carry out contracts of insurance which are general insurance contracts</u>	<u>One month</u>
<u><i>ICOBS</i> 8.4.11R</u>	<u>Changes to the accuracy of the contents of the notification in <i>ICOBS</i> 8.4.6R(1)</u>	<u>Details of the change and of the new position</u>	<u>Changes to the accuracy of a notification made under <i>ICOBS</i> 8.4.6R</u>	<u>Within one month of the change</u>

## Annex B

## Amendments to the Supervision manual (SUP)

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

## 13A Annex 1G Application of the Handbook to Incoming EEA Firms

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>ICOBS</i>	<i>ICOBS</i> applies except to the extent necessary to be compatible with European law. <i>Guidance</i> on the territorial application of <i>ICOBS</i> is contained in <del>ICOBS</del> <u>ICOBS</u> 1 Ann 1 Part 4.	<u>ICOBS 8.4 applies except to the extent necessary to be compatible with European law. Other chapters of <i>ICOBS</i> does do not</u> apply, except to the extent necessary to be compatible with European law. <i>Guidance</i> on the territorial application of <i>ICOBS</i> is contained in <del>ICOBS</del> <u>ICOBS</u> 1 Ann 1 Part 4.
...		

**PUB REF: 002523**

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