



STATUTORY INSTRUMENTS.

S.I. No. 182 of 2012

PROPERTY SERVICES (REGULATION) ACT 2011 (PROFESSIONAL
INDEMNITY INSURANCE) REGULATIONS 2012

PROPERTY SERVICES (REGULATION) ACT 2011 (PROFESSIONAL INDEMNITY INSURANCE) REGULATIONS 2012

The Property Services Regulatory Authority in exercise of the powers conferred on it by section 95 of the Property Services (Regulation) Act 2011 (No. 40 of 2011), with the consent of the Minister for Justice and Equality, hereby makes the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Property Services (Regulation) Act 2011 (Professional Indemnity Insurance) Regulations 2012.

(2) These Regulations shall come into operation on the 30 May 2012.

Interpretation

2. In these Regulations—

“Act” means the Property Services (Regulation) Act 2011 (No. 40 of 2011);

“authorised insurer” means an insurer that holds an authorisation to carry on insurance business for the purposes of Council Directive 73/239/EEC of 24 July 1973¹ or that is otherwise entitled to carry on non-life insurance business in the State;

“insolvency event”, in relation to an authorised insurer, means—

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

¹OJ No. L 228 16.08.1973, p. 3

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 5th June, 2012.

“insured” means—

- (a) a licensee, or
- (b) each principal officer, employee or agent, or former principal officer, employee or agent, of the licensee;

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

“period of cover” means the period during which a claim under a policy of insurance is not precluded by the Statute of Limitations 1957 (No. 6 of 1957);

“period of indemnity”, in relation to a licence, means—

- (a) the period of 12 months starting on the date the licence was issued, or
- (b) any subsequent period of 12 months for which the licence has been renewed under section 35 of the Act;

“run-off cover” means a policy or policies of insurance for a licensee whose business ceases during or on expiry of a period of indemnity and there is no succeeding business, which, in the case of a single such policy or arrangement, includes the same terms and conditions as those provided under the insurance in place in respect of the relevant business or, in the case of a number of such policies or arrangements, taken together include the same terms and conditions as those provided under the insurance in place in respect of the relevant business;

“run-off period” means the period of 7 years from the end of the licensee’s last period of indemnity during which, or at the end of which, the licensee’s business ceases, and a licensee’s business shall not be deemed to have ceased for the purposes of this definition where there is a succeeding business;

“self-insured excess” means an amount that the insured is required, by the terms of any contract between the insured and the insurer, to pay to the claimant in the event of a claim;

“succeeding business” means a business that is largely similar to, or has succeeded to, the business formerly carried on by a licensee.

Licenses to whom these Regulations apply

3. These Regulations shall apply to a licensee who is—

- (a) a property services employer, or
- (b) an independent contractor.

Maintenance of professional indemnity insurance

4. (1) A licensee who provides a property service during an indemnity period shall, subject to and in accordance with these Regulations, procure and maintain in place, for the entire duration of that provision, professional indemnity insurance with a minimum scope and level of cover as set out in Regulations 5 and 6.

(2) A licensee to whom paragraph (1) applies shall be required to procure and maintain professional indemnity insurance as at and from the commencement of any period of indemnity in which the licensee carries on a business.

(3) A licensee shall provide to the Authority evidence that he or she has procured and is maintaining professional indemnity insurance in accordance with these Regulations as the Authority may from time to time require.

Scope of cover

5. The professional indemnity insurance procured and maintained by a licensee in accordance with Regulation 4(1) shall—

(a) indemnify each insured against claims in respect of any description of civil liability incurred by an insured arising from any provision of property services during the period of cover provided that—

(i) a claim in respect of such civil liability is first made against the insured during the period of indemnity, or

(ii) such civil liability arises from circumstances first notified to the insurer during the period of indemnity,

and

(b) indemnify the insured against defence costs in relation to any claim referred to in subparagraph (a) and provide that such defence costs will be met by the insurer as and when they are determined due and payable.

Minimum level of cover

6. The professional indemnity insurance procured and maintained by a licensee in accordance with Regulation 4(1) shall—

(a) provide that the amount insured for each and every claim (exclusive of defence costs) is at least twice the licensee's annual fee income (exclusive of value-added tax) in the previous fiscal year,

(b) provide a minimum cover of €500,000 with no limitation on the number of claims in any one year, and

(c) provide unlimited cover for defence costs.

Self-insured excess

7. (1) A licensee shall be permitted to agree with his or her authorised insurer a self-insured excess in respect of professional indemnity insurance to be borne by the licensee in the event of a claim, provided that the authorised insurer has agreed that, in any case where the licensee defaults in making payment of any part of such self-insured excess to a claimant when lawfully due, the authorised insurer will pay the outstanding amount directly to the claimant.

(2) Where a self-insured excess referred to in paragraph (1) is agreed between the licensee and the authorised insurer, the relevant insurance policy shall provide that that excess does not reduce or limit the liability of the insurer specified in Regulation 6.

(3) The self-insured excess referred to in paragraph (1) shall not apply to defence costs.

(4) Every licensee shall make prompt payment to a claimant, in the event of a claim being upheld against it, of the amount of any self-insured excess provided for under the policy of insurance when the same is lawfully due to the claimant.

Maintenance of insurance in run-off

8. (1) Subject to paragraph (3), where immediately prior to the commencement of a run-off period, a licensee held professional indemnity insurance with an authorised insurer, the licensee shall maintain in place run-off cover with an authorised insurer during the run-off period in respect of the licensee's former business and such cover shall be provided on the basis of the terms and conditions of the relevant policy of insurance which applied during the final period of indemnity.

(2) Where—

- (a) the licensee's business ceases during or on expiry of a period of indemnity, and
- (b) there is no succeeding business, that holds professional indemnity insurance in respect of the licensee's business,

then the licensee shall ensure that the insurance provides run-off cover for the first 7 years from the date upon which the licensee's last period of indemnity expires.

(3) The run-off cover mentioned in paragraph (1) shall provide that the cover may only be cancelled on terms to be agreed between the insurer and the licensee where—

- (a) the licensee has obtained replacement insurance with an alternative authorised insurer,
- (b) the authorised insurer under the replacement insurance referred to in subparagraph (a) has confirmed in writing to the licensee and to the

authorised insurer under the relevant run-off cover that it is providing insurance on the basis that the licensee's business being indemnified is to be treated as a continuation of the licensee's business prior to the cessation thereof and that, accordingly, it will be liable for any claims against the licensee arising from matters that occurred prior to the cessation, and

- (c) the authorised insurer under the replacement insurance referred to in subparagraph (a) has provided any required confirmations of coverage to the Authority pursuant to these Regulations.

(4) A licensee or former licensee shall provide to the Authority such evidence that the licensee or former licensee, as the case may be, has established and is maintaining run-off cover as required pursuant to paragraph (1) as the Authority may from time to time require.

Insolvency of authorised insurers and other events

9. (1) Where a licensee has procured professional indemnity insurance or run-off cover with an authorised insurer in accordance with Regulation 4 or 8 and an insolvency event or non-performance event occurs in respect of the authorised insurer, the licensee shall, as soon as reasonably practicable and in any event not later than 10 working days after the date upon which such insolvency event or non-performance event occurs (but not counting the date upon which such event occurs) establish and maintain in place professional indemnity insurance or run-off cover with an authorised insurer that is unaffected by an insolvency event or non-performance event.

(2) A licensee shall provide to the Authority, or procure that there is provided to the Authority on the licensee's behalf, confirmation in any form designated by the Authority that the licensee has procured and is maintaining professional indemnity insurance or run-off cover within 10 working days of the insolvency event or non-performance event that gives rise to the obligation to establish and maintain professional indemnity insurance or run-off cover pursuant to paragraph (1).

Retroactive cover

10. Where a licensee has procured professional indemnity insurance or run-off cover with an authorised insurer and subsequently transfers the insurance to another authorised insurer, the licensee shall ensure that the authorised insurer under the replacement insurance provides retroactive cover and accepts liability for any claims against the licensee arising from the provision of property services insured by the former insurer during the period of cover.

Provision of information to claimants

11. Where a person asserts a claim against an insured which relates to a matter within the scope of cover of the insurance, the insured shall furnish to the claimant—

- (a) details of the identity of the authorised insurer,

(b) any applicable insurance reference number, and

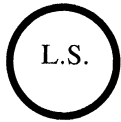
(c) the authorised insurer's contact details.

The Minister for Justice and Equality consents to the making of the foregoing Regulations.



GIVEN under my Official Seal,
30 May 2012.

ALAN SHATTER,
Minister for Justice and Equality.



GIVEN under the seal of the Property Services Regulatory Authority,
30 May 2012.

THOMAS LYNCH,
Chief Executive, Property Services Regulatory Authority.

GERALDINE CLARKE,
Chairperson, Property Services Regulatory Authority.

EXPLANATORY NOTE

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

These Regulations require providers of property services under the Property Services (Regulation) Act 2011 to maintain a prescribed level of professional indemnity insurance coverage. The Regulations only apply to licensed property services employers and independent contractors.

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