

FSA CHANGES TO ICOBS AND DISCLOSURE INSTRUMENT

The full detail of the FSA's requirements for the set up and maintenance of employers' liability registers and tracing office databases is set out in the [Handbook Notice 118 - changes made to the Insurance Conduct of Business Sourcebook \(ICOBS\)](#) and the [Employers' Liability Insurance: Disclosure by Insurers \(No 2\) Instrument 2012 \(FSA 2012/17\)](#). **The instrument comes into force on 1 April 2012.**

ELTO's commentary is set out alongside each of the FSA's key points to highlight how this may impact you and your business. It is not intended to be an exhaustive list of the regulatory instrument, so please ensure you review the FSA's documents via the links provided above.

FSA Regulations: high level summary	ELTO commentary
<p>1. Directors' certificates and reports by auditors on employers' liability registers (ELRs) are required to be submitted to the FSA within four months of the date of the ELR and they are only required to be made available to the FSA and qualifying tracing offices provided the tracing office has agreed with the firm not to disclose confidential information in the certificate and report to third parties.</p>	<p>➤ The effect of this is that a Director's certificate and auditor's report is required as at 1 April 2012 and should be with the FSA no later than 1 August 2012. The regulations also set out details as to what needs to be included in the Director's statement where the Director deems the company to be "not materially compliant".</p>
<p>2. Refusal to provide cover to an employer solely because it has not provided the tracing information requested is excluded from the best endeavours insurers must undertake to be deemed to comply with FSA requirements during the transitional period.</p>	<p>➤ There is a transitional period to 1 April 2013 where information not provided by insurers, despite making "best endeavours" to obtain it from policyholders and intermediaries will not be subject to any sanction, by the FSA. The FSA have stated that "best endeavours" to be used by an insurer to be deemed to be compliant exclude refusing an employer cover solely because it does not supply tracing information requested. The transitional provisions are set out in the instrument.</p>

FSA Regulations: high level summary	ELTO commentary
<p>3. The scope of the reports by auditors on ELRs is strictly limited to extraction from underlying records to ELRs and does not require a systems and controls assessment.</p>	<p>➤ The auditor's report should show that the insurer has provided all the information it has on its systems, not everything it should have on its systems.</p>
<p>4. Agreed-upon-procedures (AUP), in accordance with the FSA framework, are permitted as a basis for the second and third reports by auditors if directors' certificates are qualified, as well as for the first report for which AUP may be used, whether or not the certificates are qualified.</p>	
<p>5. The FSA have recognised within the definition 'claims made' that in practice it may take more than three months for an insurer to establish, or otherwise accept, that it provided cover. However, firms will be required to use reasonable endeavours to establish cover within three months or as soon as reasonably practicably after that.</p>	<p>➤ The proposed time limit requirement, to record on the ELR the policy details in respect of a claim within 3 months of receiving the claim, has been removed but there remains a requirement to use "best endeavours" to establish cover within 3 months of receiving a claim.</p>
<p>6. The FSA accepts that while there are challenges relating to the capture of employers' reference numbers (ERNs), particularly where multiples exist for an employer, the information is required to be included in the insurer's ELR if it is practicable to do so. Otherwise, the ERN that applies to the largest number of employees is required.</p>	<p>➤ All policies written after 1 April 2012 must have ERN information included in the database by 1 April 2013.</p> <p>➤ Where a company has more than one ERN, and the insurer has system constraints to record multiple ERNs on the ELR, then you are allowed to use the ERN which applies to the largest number of employees.</p>