

## The Provision of Services Regulations 2009

As a result of an UK Directive the government has recently brought into force *The Provision of Services Regulations 2009* which imposes obligations on “service providers” to provide certain information to their clients. If the service provider has an obligation to hold professional liability insurance certain information about that insurance has to be made available to clients. This note focuses upon that aspect of the Regulations only.

When dealing with claims insurers often instruct their insureds to keep their existence and/or identity a secret (as revealing the existence of Insurers tends to encourage claims). Keeping insurers’ existence or identity secret is not usually a condition of the policy of insurance and the new Regulations will make it more difficult for Insurers to keep their involvement hidden from the claimant.

All service providers have to comply with the obligations under the Regulations, save for certain business specifically listed in the Regulations. The exceptions include providers of financial services (banking, credit, insurance and re-insurance, etc).

### What are the obligations for Professionals holding Professional Indemnity Insurance?

The Regulations impose obligations on service providers to “make available” various pieces of information to their clients. This includes the provider’s name, legal status, VAT number etc. Regulation 8(1) states that where a provider is subject to a requirement to hold professional liability insurance the provider must “make available” to their client the contact details of the insurer and the territorial limits of cover.

The Regulations define “make available” as being:

- supplied by the provider to the client, or
- easily accessible to the client at the provider’s office; or
- easily accessible to the recipient electronically (ie on a website), or
- contained within a client care/retainer letter.

### How should Professionals comply with the Regulations

The obligation to make insurance details available only applies to providers who are subject to a “*requirement*” to hold professional liability insurance. We expect that this will be determined widely such that if a professional is required to hold insurance because they are a member of a professional body, rather than by law, the Regulations will bite. Many professional appointments (eg architects or engineers appointments) have a contractual “requirement” for the professional to carry insurance and we suspect this will also meet the “*requirement*” to make insurance information available. However, if the professional is not obliged to hold insurance (but does so merely as a matter of good practice) they are not obliged to comply with the insurance disclosure provisions of the Regulations.

The insurance information that must be made available is limited to providing the contact details of the insurer (we expect this would include the name of the Insurer although one could argue, strictly speaking, that does not form part of the “contact details”) and the territorial limits of the insurance. The Regulations do not oblige the making available of any other insurance information, such as the policy excess or limit of indemnity.

Interestingly, there is no specific obligation on a provider to actually provide insurance details to a client if the client requests them. Regulation 9 gives obliges the provider to give certain information if requested by the client (including the provider’s professional rules or a code of conduct if they are subject to one) but that Regulation does not mention that insurance details must be given to a client on request.

The provider is merely obliged to make the information “available”. The format of the information must be clear, unambiguous and given in good time before the conclusion of the contract or, where there is no written contract, before the service is provided. The insurance details could be simply listed on the professional firm’s website, in a client care letter or simply be made available at the professional’s office – however, given the “spirit” of the Regulations is to provide consumers with information, we anticipate that, at the very least, when insureds are asked to provide details of their insurance in accordance with the Regulations, they will have to at least point out to the client where the information is “available”.

## **What should an Insured do if asked to provide details of their Insurance pursuant to the Regulations?**

- We anticipate an increase in claimants asking for insurers’ contact details in advance of making claims. In the future, as clients will know Insurers’ contact details more claims will be forwarded to insurers directly by claimants.
- When dealing with a request for insurance details the first thing to check is whether the insured is “required” to hold insurance, or merely does so for the sake of good practice. If it is the latter there is no obligation on the insured to disclose any insurance information.
- If the insured is required to hold professional indemnity insurance then, whilst the Regulations do not appear to oblige an insured to positively state the name and territorial limit of cover upon request, we consider that the best practice would be for insureds to, at the very least, point out to the client where that information has been “made available” pursuant to the Regulations.

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