CPD and Professional Indemnity Insurance: key changes to CIOT and ATT regulations and guidance

Professional standards



23 November 2022

We set out the key changes to CIOT and ATT regulations and guidance relating to our Continuing Professional Development and Professional Indemnity Insurance Regulations.

Key Points

What is the issue?

Members are required to undertake CPD where they provide tax services or hold themselves out as a CIOT or ATT member, or an ADIT Affiliate, by use of the designations. Members in the business of providing tax services (referred to as ‘members in practice’) are required to have PII. Updated regulations and guidance apply to both CPD and PII requirements from 1 January 2023.

What does it mean to me?

Members should ensure they meet, the Professional Standards requirements relevant to their situation. Requirements are still relevant to those who may have retired or provide pro bono work, act as subcontractors or are based outside the UK.

What can I take away?

This article covers the key changes made to both CPD and PII requirements.

The last update to the Continuing Professional Development (CPD) regulations and guidance was in 2017 and represented a considerable change to our previous approach. The ‘hours’ requirement was removed and since then members have been required to perform such CPD as is appropriate to their duties. As more than five years have passed since the introduction of those regulations, it has been timely to review their operation and refresh the regulations and guidance.

The Professional Indemnity Insurance (PII) Regulations and guidance have been in place in their current form since 1 January 2013. Our exit from the EU meant that we have had to update the document to remove the out of date references.

We have also seen changes over this this period in how our members operate. With far more individuals working as subcontractors or based overseas than before, it became clear that the regulations and guidance needed to include more in relation to these kinds of activities. Those working on the update were also conscious of the current ‘hardening market’ for our members in obtaining cover.

In addition to the above, far fewer of our members now retire in the traditional sense. This is not only reflected in the fact that an increasing number of members

choose to do some consultancy work in the run up to full retirement; many also give something back to the community by providing their expertise on a pro bono basis. Of course, a number of members who are not retired are also committed to providing pro bono services.

Where individuals are holding themselves out as our members, the public will expect a high standard of work from them, even where it is provided without charge. It was therefore important to address the protection of the public, and of members, by making it clearer what we expect by way of CPD and PII cover in relation to those undertaking such voluntary work.

CPD: what remains unchanged and what is new?

The overall approach to CPD required by members remains the same:

- The rules apply to those working in tax or who hold themselves out as tax professionals through the use of the designations.
- There are no minimum hours or ‘structured’ versus ‘unstructured’ requirements.
- Members are required to perform such CPD as is appropriate to their duties.
- Compliance is checked through the Annual Return and each year a number of members are asked to submit their records.

The wording of the regulations has been updated to provide more clarity to members. In particular:

- The regulations apply to those who work providing tax services. This includes those providing complementary accounting and legal services (regulation 1.2.1).
- Those using the designations and undertaking pro bono work must undertake CPD. This includes those retired members using the designations (regulation 2.4). It follows that if a member does pro bono work and does not undertake CPD, they must not hold themselves out as a member by using the designation after their name.
- Those doing pro bono work and not using designations should still consider whether CPD would be beneficial. If it is not undertaken, then they are required to be transparent about this with those to whom they provide services.

It has also been timely to update the guidance provided to members to accompany the regulations. Much of the updated guidance reflects the results of the annual CPD checks undertaken on a selection of member records and addresses member queries arising out of the Annual Return questions.

Given that the hours requirement for CPD was removed over five years ago, references to this have now been completely removed from the guidance. We have also slimmed down the guidance and included further clarification for ATT members studying for their CIOT exams, and for members taking a career break.

What help is available to members so they can meet their CPD requirements?

Members should ensure that they review the updated regulations and guidance which are available on the CIOT website (bit.ly/3TDPi0M) and the ATT website (bit.ly/3UVX3Ah).

In many cases, members will be employed by firms that will arrange the CPD required for the individual. Those who do not have CPD provided in this way may find it helpful to look at the resources listed on the CIOT website (bit.ly/3EbmEPa) and ATT website (bit.ly/3GlHKgj). These pages include links to materials which members may find of assistance in meeting their CPD requirements. They should not be taken as a recommendation of particular providers.

CPD record forms are also available and there are links from the main CPD webpages.

PII: What remains unchanged and what is new?

The new regulations apply from 1 January 2023. Those with an annual policy with a renewal date before 1 January will need to ensure that they are aware of the updated regulations when they renew. We would not envisage this causing significant changes for most members as the overall approach remains unchanged and members in practice are still required to obtain PII. We continue to see this as an important part of protecting the clients of tax advisers and in protecting our members.

The main changes to the regulations and guidance are set out below:

1. Retired members and pro bono work

Pro bono work continues to be exempt from PII. However, in line with the changes to the CPD regulations and guidance, members have to consider whether it is beneficial to put PII in place. Where they do not do so, they must be transparent with those whom they are assisting. The definition of pro bono work was also looked at again and honoraria are no longer included in the definition.

Retired members are exempt from PII requirements (other than PII 'run off' cover) but where they undertake pro bono work they should follow the procedure outlined in the previous paragraph.

2. EU reference and excess limit update

A small amendment was required to the regulations to remove a reference to insurers being authorised in any EU state. The excess limit has also been brought in line with ICAEW requirements to assist those who are members of both ICAEW and CIOT/ATT. The excess limit is now £30,000 per principal (previously £20,000 per principal).

3. Subcontractors

When reviewing the regulations and guidance, we were aware of the increasing number of individuals who operate as subcontractors. Feedback from PII brokers indicated that we needed to tighten the PII regulations for subcontractors. Subcontractors are members in practice and all require PII under the regulations. They can claim an exemption but **only if they have written confirmation** from the contracting firm that:

- it has named the subcontractor on its own professional indemnity policy; and
- the insurer has waived its right to subrogation in relation to the subcontractor. This means they have agreed not to pursue the subcontractor if a claim is made against the firm in relation to that individual's work.

We will be contacting members to specifically follow up on these updated requirements where they indicate on their 2022 Annual Return that they were subcontractors for the year and PII was provided by the contracting firm.

4. Members based overseas

Overseas work has become more popular given the rise in remote working. On review of the regulations and guidance, we were aware that they were silent on territorial scope and the requirement on members based overseas. Amendments to the regulations now make clear that:

- The regulations apply to those based in the UK and those in any other countries providing services to clients based in the UK.
- Overseas firms which cannot obtain compliant cover must obtain the nearest equivalent.
- Overseas firms not servicing UK clients are encouraged to seek PII of an equivalent standard to that set out in the regulations.

Again, we will be following up overseas based members in practice to make them aware of these changes when reviewing the 2022 Annual Return answers.

What help is available to members so they can meet their PII requirements?

Members should ensure that they review the updated regulations and guidance which are available on the CIOT website (bit.ly/3O61zu3) and the ATT website (bit.ly/3UFWwmn).

Whilst the CIOT and ATT cannot recommend that members take out a particular PII scheme, both bodies have an arrangement with insurance providers that, by virtue of their membership, any quote provided to a member will be compliant with CIOT and ATT requirements. The relevant links are CIOT (bit.ly/3E86dTO) and ATT (bit.ly/3TFgZGP). Note that included with this information is detail about a low cost policy for those with fees of less than £5,000, including those undertaking pro bono work only.

Conclusion

For most members, it will be ‘business as usual’ in relation to CPD and PII during the forthcoming year. However, some important changes have been introduced which are of particular relevance to the retired and those doing pro bono work. In relation to PII, members based overseas or acting as subcontractors will need to take

particular care to ensure they meet the requirements of the updated regulations.

Any members with queries should contact the Professional Standards team at standards@tax.org.uk or standards@att.org.uk.