

# Part B – officials indemnity

## Section 1 – Special Definitions

### Costs and Expenses

- a) Claimants' costs and expenses which the **insured** become legally liable to pay
- b) costs incurred with the **insurer's** written consent in defending any claim for damages which may be the subject of indemnity under this part.

### Financial Loss

Loss or damage other than arising from bodily injury, illness or disease or **damage** to **property**.

### Geographical Limits

- a) The **territorial limits**
- b) elsewhere in the world in connection with temporary visits by any **member** or **employee** and normally resident in and travelling from the **territorial limits**.

### Pollution or Contamination

- a) All pollution or contamination of buildings or other structures or of water or land or the atmosphere; and
- b) all Financial Loss directly or indirectly caused by such pollution or contamination.

### Products

Goods or anything including packaging, containers, labels and instructions sold, supplied, hired out, constructed, erected, installed, treated, repaired, serviced, processed, stored, handled, transported or disposed of by the **insured** or on the **insured's** behalf in the **business**.

## Section 2 – Cover

### Section 2A – Negligent and Accidental Acts or Omissions

The **insurer** will indemnify the **insured** in respect of sums which the **insured** may become legally liable to pay as damages for Financial Loss directly caused by a negligent and accidental act or omission committed or alleged to have been committed within the Geographical Limits by an **employee** or **member** in the normal execution of their duties for the **business** for which a claim is first made against the **insured** and is notified to the **insurer** during the period of insurance.

In addition the **insurer** will pay Costs and Expenses.

#### 2A.1 Bailiffs

Any bailiff acting for the **insured** under a contract for services will be regarded as an **employee** but will not be entitled to indemnity under clause 2A.3

Provided always that:

- a) this cover will not apply where the bailiff is entitled to indemnity from any other source
- b) general condition 10 of this policy will not apply to this clause.

#### 2A.2 Court Attendance Costs

In addition to the limit of indemnity the **insurer** will pay the **insured** a daily rate of £500 for each **member**, **employee** or **volunteer** required to attend court as a witness at the **insurer's** request.

#### 2A.3 Indemnity to Other Persons

The **insurer** will also indemnify under the terms of this part at the **insured's** request any **member**, **employee** or **volunteer**.

Provided always that:

- a) the **insured** would have been entitled to indemnity had the claim been made against the **insured** but this proviso will not apply to liability attaching to any **employee** in their personal capacity which arises out of the performance by that **employee** of a statutory function under the terms of a written agreement with the **insured** under the terms of which the **insured** has agreed to provide the **employee** with an indemnity
- b) no indemnity will be provided to any person in respect of the consequences of their own fraud, dishonesty or criminal act
- c) any person claiming indemnity:
  - i) is not entitled to indemnity from any other source
  - ii) was at the time of the incident giving rise to the claim acting within the scope of their authority
  - iii) will be subject to the terms and conditions of this part in so far as they can apply
- d) the **insurer** has the sole conduct and control of any claim
- e) general condition 10 of this policy will not apply to this clause.

#### **2A.4. Outside Entity Contingency Cover**

At the **insured's** request the **insurer** will indemnify any **employee** or **member** arising from their service on the board or participation in the capacity of a governor, officer, trustee, director, committee member or other official of any not-for-profit entity other than the **insured**.

Provided always that:

- a) the service or participation by the **employee** or **member** is specifically requested by or under the specific direction of the **insured**
- b) the **insured** is legally entitled to approve the service or participation and to indemnify the **employee** or **member** in respect of it
- c) any payment will only be made by the **insurer** for an amount in excess of any indemnification or insurance coverage provided by the not-for-profit entity or afforded from any other source and to which the **employee** or **member** is entitled
- d) general condition 10 of this policy will not apply to this clause.

#### **2A.5. Ultra Vires**

The **insurer** will also indemnify the **insured** in accordance with section 2A for Financial Loss where the act or omission directly causing such Financial Loss was committed by an **employee** or **member** in the reasonable belief (judged by an objective standard) that it was made within the legal power of the **business** or authorised legal power of the **employee** or **member**.

#### **Section 2B – Elections**

In connection with the conducting of **elections** the **insurer** will indemnify the **insured** and at the **insured's** request any Returning Officer, Acting Returning Officer or Counting Officer against:

- a) reasonable legal expenses necessarily incurred in connection with the defence of any proceedings brought against the **insured** or any Returning Officer, Acting Returning Officer or Counting Officer
- b) the cost of holding another **election** in the event of the original **election** being declared invalid.

Provided always that:

- i) such proceedings or invalidation are the result of the accidental:
  - 1) contravention of any of the provisions of the Representation of the People Act 1983; or
  - 2) breach of any ministerial or other duty by the Returning Officer, Acting Returning Officer, Counting Officer or any other person employed by or officially acting for them in connection with the **election**
- ii) no indemnity is available to the **insured** or Returning Officer, Acting Returning Officer or Counting Officer from any other source.

Any amount stated in the schedule as the **excess** applicable under this part will not apply to this section.

### Section 3 – Special Extensions

Applicable only where stated in the schedule.

#### A. Data Protection Act

The **insurer** will indemnify the **insured** and at the **insured's** request any **employee** in respect of legal costs and expenses incurred with the **insurer's** written consent in the defence of any prosecution brought or made against the **insured** or any **employee** for breach or alleged breach of the provisions of the Data Protection Act 1998.

Provided always that:

- a) the breach or alleged breach arises out of the **business**
- b) the **insurer** will not be liable for:
  - i) any fines of whatsoever nature
  - ii) any costs or expenses which arise from a deliberate or intentional criminal act or omission of the person claiming indemnity.

It is a condition precedent to the **insurer's** liability that the **insured** must advise the **insurer** in writing as soon as possible of:

- 1) any circumstances of which the **insured** or any **employee** become aware which are likely to give rise to a prosecution
- 2) the receipt by the **insured** or any **employee** of a notice of intended prosecution from any person.

#### B. Consumer Protection Act 1987

The **insurer** will indemnify the **insured** in respect of all sums which the **insured** may become legally liable to pay as compensation under Section 14 (7) of the Consumer Protection Act 1987 provided always that the **insurer's** liability for all compensation payable is limited to the sum of £250,000 in respect of all claims first made against the **insured** and notified to the **insurer** during any one period of insurance.

#### C. Food Safety Act 1990

The **insurer** will indemnify the **insured** in respect of all sums which the **insured** may become legally liable to pay as compensation under Sections 9(7) and 12(10) of the Food Safety Act 1990 provided always that the **insurer's** liability for all compensation payable is limited to the sum of £250,000 in respect of all claims first made against the **insured** and notified to the **insurer** during any one period of insurance.

#### **D. Certificates of Title**

The **insurer** will indemnify the **insured** in respect of all sums which the **insured** may become legally liable to pay in connection with an indemnity given by the **insured** to the Chief Land Registrar relating to certificates of title issued by the **insured**.

### **Section 4 – Special Exclusions**

This part does not cover:

#### **1. Contractual Liability**

any claim arising directly or indirectly from any breach of contract or failure to comply with obligations arising out of a contract howsoever caused which is made by a party to that contract

#### **2. Courts Jurisdiction**

any claim made or brought:

- a) in the United States of America or Canada or territories under their jurisdiction
- b) under or in consequence of any judgment or order in or under the laws of the United States of America or Canada or territories under their jurisdiction

#### **3. Defamation or Malicious Falsehood**

losses arising from libel, slander, defamation, malicious falsehood or injurious falsehood

#### **4. Defective Work**

the cost of rectifying defective work

#### **5. Employment Benefits**

any legal liability arising directly or indirectly from breach of any obligation imposed by statute, regulation or common law concerning any health and welfare or other employee benefit programme including pensions, social benefit system or trust established or maintained for the purpose of providing a benefit to **employees** or former or prospective employees

#### **6. Land or Property Sales or Transfers**

Financial Loss in respect of land or **property** sold or transferred by the **insured** to another party where defects in the land or **property** affect the value of that land or **property**

#### **7. Liquidated or Punitive Damages**

any amount in respect of:

- a) liquidated damages, fines or penalties which attach solely because of a contract or agreement
- b) exemplary or punitive damages awarded by any court of law outside the **territorial limits**

#### **8. Maladministration, Misfeasance or Surcharge**

- a) any claim wholly or in part attributable to, based upon or caused by any matter the subject of a finding of maladministration or censure by either local authority Ombudsman or a court or tribunal of competent jurisdiction
- b) misfeasance in public office
- c) any surcharge made by the District Auditor or other competent body.

Provided always that clause a) of this exclusion will not apply in respect of any legal liability that would have attached independently of such finding

### **9. Pollution or Contamination**

legal liability arising directly or indirectly out of Pollution or Contamination other than caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the period of insurance.

All Pollution or Contamination which arises out of one incident will be deemed to have occurred at the time such incident takes place

### **10. Products**

Financial Loss arising from Products

### **11. Professional Liability, Errors and Omissions**

errors or omission in advice, design or specification provided by the **insured** but this exclusion will not apply to Financial Loss arising from:

- a) those activities which the **insured**:
  - i) has a statutory duty to perform
  - ii) manages or performs under the terms of a written contract or agreement in conjunction with any other local authority whose statutory duty those activities represent
- b) advice provided by the **insured** which the **insured** does not have a statutory duty to provide:
  - i) for which no fee is charged or received; and
  - ii) which is not given under a written contract or agreement; and
  - iii) where such advice is provided by any **employee** who is acting within the scope of their authority or remit by virtue of their job description or other official guidelines issued to them by the **insured**

### **12. Retroactive Date**

Financial Loss where the negligent act, error or omission giving rise to it occurred prior to the Retroactive Date stated in the schedule

### **13. Searches**

Financial Loss arising in connection with searches or enquiries in relation to land or **property** other than in Scotland

### **14. Statutory Compensation**

liability for compensation arising under any statute or regulations made under such statute except where:

- a) cover is provided under special extensions A, B C or D
- b) such liability would have attached to the **insured** in the absence of such statute or regulations.

## Section 5 – Special Provisions

### 1. Claims Notification

The notification to the **insurer** in writing during the period of insurance of any circumstances that might give rise to a claim under this part will constitute a claim first made against the **insured** during the period of insurance in which the notification is received even though no notification of any claim has been received from a third party.

### 2. Discharge of Liability

The **insurer** may at any time pay the maximum amount payable under this part after deduction of any sum already paid or any lower amount for which any claim can be settled and then relinquish the conduct and control and be under no further liability in respect of the claim except for the payment of Costs and Expenses incurred with the **insurer's** written consent prior to the date of such payment.

### 3. Illegal Distrain

The exception of **damage to property** appearing in the Financial Loss definition will not apply to the disposal of **property** which has been the subject of illegal distraint.

### 4. Limit of Indemnity

The limit of indemnity stated in the schedule is the **insurer's** monetary limit (other than any limit otherwise stated) and applies in the aggregate to all claims made in any one period of insurance except that any indemnity available under special extensions A, B, C and D will apply in addition.