

LLOYD'S

# Byelaw Review: Consolidating, Simplifying, Updating

Consultation Document  
July 2022

# 1 Consultation

1. The Council is given the power under Lloyd's Act 1982 to make byelaws. While Lloyd's requirements can now be found in a number of different formats (including the Principles of Doing Business), byelaws nevertheless remain the primary rule-making instrument adopted by Lloyd's to govern the operation of the market. It has been a number of years since we last looked systematically at our byelaws. While we are satisfied that the byelaws continue to operate well, there are some that have not been subject to a recent review and merit revisiting.
2. The current byelaw review aims to address known areas where our requirements are acting as a barrier to the efficient operation of the Lloyd's market or where there is scope to consolidate and merge existing requirements. We are not introducing any significant policies changes with these proposed amendments. Primarily, the intention is to remove redundancy and consolidate rules that are presently spread across a number of byelaws but could usefully be brought together. In a few places we are introducing new requirements or amending them, but these are intended to correct known difficulties.
3. The review we have undertaken at this stage is not intended to be comprehensive. There are a number of byelaws that may well benefit from a more detailed review but that is likely to require a more detailed exercise and greater market engagement. We may review those byelaws in a subsequent phase.
4. At this round, in summary, we are proposing to make the following changes –
  - (a) We are revoking the Multiple Syndicate Byelaw. We believe the rules preventing underwriters writing for two syndicates and the restrictions on reinsurance arrangements involving two or more syndicates managed by the same managing agent are too rigid. The byelaw pre-dates Lloyd's performance management framework and the introduction of the 'Principles for doing business' at Lloyd's. We believe that managing agents can manage the risks which the byelaw is concerned with without requiring Lloyd's prior agreement in each case and/or compliance with the strict conditions set out in the byelaw.
  - (b) We are amending the Underwriting Byelaw to allow us the flexibility to permit syndicates to write in excess of their capacity during an underwriting year of account. In general, we are clear that syndicates should not write above their capacity but non-aligned syndicates are not able to pre-empt mid-year and in a limited number of instances it has been clear that the inability to write more than the capacity of the syndicate has prevented the syndicate writing profitable business for members. Managing agents will not be able to write in excess of capacity without our permission and we do not expect to give permission except with good reason and where there is members' support.
  - (c) Lloyd's powers to charge fees, levies, membership subscriptions and contributions to the Central Fund are currently spread across a number of byelaws. We believe it would be helpful to bring these provisions together in a single byelaw, making our requirements clearer.

- (d) The requirements governing the New Central Fund in the New Central Fund Byelaw include a number of provisions that are now out of date and require updating. There are also a number of related provisions found in the New Central Fund & Funds and Property of the Society (Miscellaneous Provisions) Byelaw. We are proposing to consolidate the two byelaws and to update the requirements where required.
- (e) The Miscellaneous Provisions Byelaw includes the provisions that set out Lloyd's obligations for maintaining the confidentiality of information with which we are provided and also sets out the corresponding obligations of confidentiality expected of recipients of confidential information that we provide. We are expanding and updating these requirements. We are also including in the byelaw a new general power to require the provision of data in market returns. Presently, there are a number of specific provisions in other byelaws that allow us to collect data from the market but this new power puts the position on a firmer footing. We are also taking the opportunity to update various out of date references in the byelaw.
- (f) We are revoking a number of requirements and byelaws that have fallen into disuse and are redundant.
5. Before making the changes, Lloyd's is consulting on its proposed approach. A copy of this consultation document and the byelaw changes we are making can be found on Lloyd's website at: [www.lloyds.com/byelawconsultation](http://www.lloyds.com/byelawconsultation).
6. **If you wish to comment on the proposals or any aspect of the changes we are making, you are invited to send your response to Guy Holden, Solicitor, in Lloyd's Legal at [guy.holden@lloyds.com](mailto:guy.holden@lloyds.com). All responses must be received by 12 September 2022.**
7. This Consultation Document is being sent to all managing agents and members' agents, the LMA and LIIBA.

## 2 The byelaw changes explained

8. In this section we set out a more detailed explanation of the changes we are proposing.

### Revocation of the Multiple Syndicate Byelaw

9. The first change we are proposing is to revoke the Multiple Syndicate Byelaw, subject to retaining one provision (paragraph 17), which will be transferred to the Underwriting Byelaw.
10. The Multiple Syndicate Byelaw sets out provisions regulating the circumstances when underwriters employed by managing agents can underwrite on behalf of two or more syndicates or when syndicates managed by the same managing agent can buy shared reinsurance or can reinsure each other. In this, the byelaw is addressing the risk of conflict of interest that may arise for a managing agent that manages two or more syndicates. If underwriters can bind risks for two or more syndicates, there may be a risk

that they will favour one of the syndicates over the other in the selection of risks. This may particularly be a concern if an underwriter is financially incentivised to favour one syndicate over the other, for example, if the underwriter's remuneration is more heavily dependent on the performance of one syndicate rather than the other.

11. Similarly, where syndicates that are managed by the same managing agent reinsure each other or buy shared reinsurance, there is a conflict of interest risk that arises for the managing agent, for example, that it may commercially favour one syndicate over the other.
12. The Multiple Syndicate Byelaw addresses these risks by prohibiting underwriters from binding risks for two or more syndicates without Lloyd's permission. For shared reinsurance (paragraph 18) and inter-syndicate arrangements (paragraph 19), the byelaw sets out a number of highly restrictive requirements.
13. We remain of the view that the risks that the Multiple Syndicate Byelaw is addressing are important considerations to address but the byelaw dates back to 1988 and is now considerably out of line with the way we regulate similar risks under our current performance management framework. The requirements set out in the byelaw are rigid, do not allow for risk-based decisions and give little opportunity for managing agents to manage their own risk. The byelaw also only regulates the risk of conflict of interest where there are two syndicates managed by the same managing agent. There are no similar controls within our requirements governing underwriters writing for both a syndicate and a company, which is common for underwriters at managing agents that are part of a larger corporate group. The byelaw is similarly silent on reinsurance arrangements between syndicates and group companies. This distinction is historical and there is little to justify it.
14. Our requirements for inter-syndicate reinsurance and shared reinsurance have already started moving away from the strict requirements of the Multiple Syndicate Byelaw (see our requirements on outwards reinsurance set out in the ['Performance Management – Supplemental Requirements and Guidance'](#), which waive compliance with parts of the Multiple Syndicate Byelaw).
15. We are of the view that our role in giving permission to underwriters to underwrite for two or more syndicates is not necessary in the context of the existing controls we know managing agents already operate.
16. We have considered retaining the intent of the Byelaw but amending it to make it a more flexible risk-based power. On balance, however, we think that this is not a power that we need to retain. Managing agents understand the importance of managing conflict of interest and are able to do that without requiring our permission on a case by case basis. Prudential oversight of this risk can be appropriately managed as part of our broader oversight of managing agents, using other powers, if required.
17. The one provision we do intend to retain is paragraph 17 (and this will be moved to the Underwriting Byelaw). Unlike the other provisions of the Multiple Syndicate Byelaw, this paragraph sets out a broad obligation on managing agents to ensure that when effecting reinsurance they have regard to the best interests of the members of the syndicates and

that the premium and recoveries are dealt with properly. We think this requirement remains an important one and should be retained.

## Consolidation of Lloyds powers of charging

18. The requirements that give us the power to charge fees and levies, including the general power to charge for services provided by Lloyd's but also membership entrance and annual subscription fees, are currently spread across three separate byelaws: the Membership (Entrance Fees and Annual Subscriptions) Byelaw (No. 9 of 1987), the Membership Central Fund & Subscriptions (Miscellaneous Provisions) Byelaw (No.16 of 1993) and the Powers of Charging Byelaw (No. 12 of 1990). This can make our requirements quite complex to understand.
19. We are therefore proposing to bring the provisions together into a single byelaw by transferring the provisions of the Membership (Entrance Fees and Annual Subscriptions) Byelaw and the Membership Central Fund & Subscriptions (Miscellaneous Provisions) Byelaw into the Powers of Charging Byelaw. The Membership (Entrance Fees and Annual Subscriptions) Byelaw and the Membership Central Fund & Subscriptions (Miscellaneous Provisions) Byelaw can then be revoked, leaving just the one byelaw, the Powers of Charging Byelaw.
20. As part of this exercise, we are also proposing to make some changes to update the existing provisions of the merged byelaws.
21. In the case of the provisions currently found in the Membership (Entrance Fees and Annual Subscriptions) Byelaw, we propose to –
  - (a) merge the provisions setting out the consequences of non-payment, the powers to give exemptions from payment and a number of other ancillary provisions in the byelaw with those in the existing Powers of Charging Byelaw to create a single set of provisions applicable to (i) entrance fees and annual subscriptions (**Subscriptions**), and (ii) charges, fees and levies (**Charges**).
  - (b) remove the Council's power to post the name of a member in the Room as a consequence of non-payment of a Subscription. The practice of posting in the Room the names of members who do not pay their subscriptions has long ceased.
  - (c) extend the existing power of the Council to obtain information from members so that it applies to all '*members of the Lloyd's community*'<sup>1</sup>. This is to align the scope of the provision with the other provisions in the newly consolidated byelaw.
22. In the case of the provisions transferring from the Membership Central Fund & Subscriptions (Miscellaneous Provisions) Byelaw, we propose to simplify and update the 'meetings of members provisions' set out in the existing paragraph 3. In accordance with

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<sup>1</sup> Section 14(2) of Lloyd's Act 1982 states "For the purposes of this section a member of the Lloyd's community shall be – (a) a person who is – (i) a member of the Society; (ii) a Lloyd's broker; (iii) an underwriting agent; (iv) an annual subscriber; (v) an associate; (vi) a director or partner of a Lloyd's broker or an underwriting agent; (vii) a person who works for a Lloyd's broker or underwriting agent as a manager; or (b) a person who has been a member of the Lloyd's community in one or more of the capacities listed in paragraph (a) above; or (c) a person who is seeking or has sought to become a member of the Lloyd's community in one or more of the capacities listed in paragraph (a) above.

the provisions of the byelaw, Lloyd's has given an undertaking, which is set out in the Membership Agreement entered into with all members, confirming that it will not increase the annual subscription mid-year without the agreement of the members in a special meeting. The byelaw provides for how that meeting should be called but the provisions have drifted out of date and are complex so would be difficult to apply in practice. We are proposing to rationalise and significantly reduce the length of the relevant provisions by providing that such meetings are to be held in accordance with the general meeting requirements set out in the Constitutional Arrangements Byelaw (No. 2 of 2010), except as specifically modified. In doing so, we would utilise the detailed procedural provisions already contained in the Constitutional Arrangements Byelaw.

23. In relation to all three byelaws, we are proposing the removal of the interpretation sections, with any relevant definitions being transferred to the Definitions Byelaw (No. 7 of 2005).

### **Updating the New Central Fund Byelaw**

24. The New Central Fund Byelaw (No. 17 of 1996) includes a number of provisions that are now out of date. Additionally, there are related amending provisions found in the New Central Fund & Funds and Property of the Society (Miscellaneous Provisions) Byelaw (No. 2 of 2014). We are not proposing to make any substantive changes to these important byelaws, but we believe it would be sensible to consolidate them into a single byelaw and to update the requirements where required.
25. The following changes are therefore proposed –
- (a) incorporate the provisions of the New Central Fund & Funds and Property of the Society (Miscellaneous Provisions) Byelaw into the New Central Fund Byelaw. The main provisions to be incorporated relate to “the general funds of the Society”, which are defined as funds and property of the Society not forming part of the New Central Fund. These provisions deal primarily with the treatment of such funds from a regulatory capital perspective and also set out rules in relation to derivative transactions. By consolidating the requirements into the New Central Fund Byelaw, the New Central Fund & Funds and Property of the Society (Miscellaneous Provisions) Byelaw can be revoked.
  - (b) remove the metric for determining the level of the ‘callable contribution’ before a special resolution of the Council is required. Currently, the byelaw provides that the figure for each underwriting member is calculated on the basis that the aggregate amount of the callable contributions of all members for that year must be as nearly as may be equal to £200,000,000. Anything above this amount requires a special resolution of the Society. This threshold is exceeded every year now so that it no longer serves a useful purpose. To bring the approach in line with current practice, we are proposing to remove reference to the metric and instead simply require a special resolution of the Council in all cases when setting the level of the ‘callable contribution’.

- (c) remove now redundant provisions relating to refunds of special contributions made to the Central Fund for any of the years of account 1993, 1994 and 1995.
- (d) update the name of the New Central Fund Byelaw to the 'New Central Fund and Property of the Society Byelaw (No. 17 of 1996)' to reflect that it now also contains provisions relating to 'the general funds of the Society'.
- (e) remove the power of the Council to post a notice in the Room containing particulars of a failure of a member to pay a New Central Fund contribution.

## **Miscellaneous Provisions Byelaw**

- 26. We are proposing to update the Miscellaneous Provisions Byelaw to include revised confidentiality requirements for information disclosed in confidence, to specify a general power to allow the Council to require the provision of information on a person's business at Lloyd's and to update a number of out-of-date references and provisions.
- 27. As its name suggests, the Miscellaneous Provisions Byelaw includes a number of different provisions of general relevance to the operation of Lloyd's. The byelaw was created over a decade ago, consolidating a number of other existing provisions and since then a number of provisions have drifted out of date.

### **Confidentiality Provisions**

- 28. The confidentiality provisions in particular are out of line with current best practice. Lloyd's receives a large amount of confidential information and confidential data may also be provided by Lloyd's to others. Lloyd's and market participants should have confidence that where information is shared it is subject to robust terms governing the maintenance of the confidentiality of that information. The provision also needs to be clear about the circumstances when confidential data can be shared with third parties. Feedback suggests that new entrants to the market consider the strength of the confidentiality undertaking given in the byelaw to be a relevant consideration when deciding whether to do business at Lloyds.
- 29. We propose to clarify the confidentiality provisions by providing a definition of what information shared with the Society or by the Council will be treated as "confidential information". We also propose to clarify the Council's ability to share confidential information in line with current best practice, whilst also providing greater assurances over how confidential information will be treated. We propose clarifying the obligations of those who may receive confidential information from Lloyd's.

### **Power to require market returns**

- 30. We additionally propose to include a new general power by which the Council can require the provision of information relating to a person's business at Lloyd's. The requirement to produce market returns and similar reports to Lloyd's is a necessary part of running the market but presently the power is set out in a number of more specific provisions. By having a general power to require the provision of returns, it will avoid the risk of their being unintended gaps in the rules and will put the matter on a firmer footing.

### Other changes

31. We propose to update various out-dated references in the byelaw, such as to the former Financial Services Authority (FSA) (replaced by the Prudential Regulation Authority and Financial Conduct Authority) and to the Companies Act 1989 (replaced by the Companies Act 2006).

### Writing above capacity

32. Paragraph 37(a) of the Underwriting Byelaw provides that: “Every managing agent shall, in respect of every syndicate managed by it – (a) take reasonable steps to ensure that the syndicate premium income allocable to that year of account does not exceed the syndicate allocated capacity ...”. Syndicates’ set their ‘syndicate allocated capacity’ (**capacity**) at the start of each underwriting year and the effect of paragraph 37(a) is to set an upper limit on the premium that can be written by a syndicate each year<sup>2</sup>.
33. We are proposing two changes to our requirements in relation to syndicate capacity –
- (a) We propose introducing a flexibility into paragraph 37(a) of the Underwriting byelaw to allow Lloyd’s the discretion to permit non-aligned syndicates to write in excess of their capacity without pre-empting. We will use this discretion sparingly and will require confirmation of member support before granting permission to exceed capacity. At the end of the year in question, the syndicate will be expected to pre-empt to an appropriate level above planned premium or otherwise reduce its plan for the following year so that the premium written falls back below the amount of its capacity.
- (b) We propose that the definition of ‘premium income’ in the Definitions Byelaw should be amended to exclude any premium ceded by host syndicates to Speciate Purpose Arrangement syndicates (**SPAs**). The effect of this change will be that syndicates that act as ‘host’ syndicates to SPAs can ignore any premium to be ceded to their SPAs when setting their capacity, effectively delinking the capacity figure for the SPA from the capacity set for the host. This is intended to remove a difficulty that presently arises for host syndicates when setting their capacity when they have an SPA that may wish to grow mid-year beyond a level that can be accommodated by the host syndicate’s capacity.

### Discretion to exceed capacity

34. For traditional non-aligned syndicates paragraph 37(a) is an important protection as it places a cap on the ability of managing agents to grow a syndicate beyond the risk appetite of the participating members. Managing agents can only increase a syndicate’s capacity by complying with the Syndicate Pre-emption Byelaw, which includes further protections for members.

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<sup>2</sup> It should be noted that syndicate allocated capacity is calculated on a Gross Net Premium basis. The definition of syndicate allocated capacity is found in the Definitions Byelaw.

35. It can, however, arise that managing agents, with the support of members, have an opportunity to write additional business, which would exceed their capacity. The current terms of paragraph 37(a) do not give Lloyd's any discretion to permit the extra business to be written. While it is open for aligned (or semi-aligned) syndicates to increase their capacity mid-year, that option is not presently open to non-aligned syndicates<sup>3</sup>. We are therefore proposing to amend paragraph 37(a) to include a discretion to allow Lloyd's to permit syndicates to write in excess of their capacity.
36. We expect this discretion to be used sparingly and we are clear that it will not be used to undermine the present protections given to members. As already indicated, we will require confirmation of member support before granting permission and at the end of the year in question, the syndicate will be expected to pre-empt to an appropriate level or otherwise reduce its plan for the following year in line with its capacity.

### **Special Purpose Arrangement Syndicates**

37. An additional problem relating to capacity arises for syndicates that cede business to Special Purpose Arrangements. SPAs are syndicates that write a single contract of reinsurance of another syndicate at Lloyd's, where both syndicates are managed by the same managing agent. Essentially, SPAs operate as 'sidecars' to the host 'traditional' syndicate. They will typically write a fixed percentage of the host syndicate whole account or they will write a cession of a particular book of the host syndicate. The capital backer of the SPA may have an involvement in sourcing the business to the host which is ceded to the SPA.
38. There are currently seven SPAs. In all cases, the host syndicate largely serves as a distributor of business to the SPA. Presently, however, because the premium ceded to the SPA is written gross by the host, it needs to be taken into account when setting the capacity of the host. This can cause difficulties by inflating the capacity that the host syndicate has to record. Further, if the SPA wishes to pre-empt it can only do so if the host syndicate has sufficient headroom in its own capacity to take on the extra business gross or is able to pre-empt. This can mean that aligned SPAs cannot pre-empt mid-year because the host syndicate has insufficient capacity.
39. To resolve this difficulty, we propose that the definition of 'premium income' in the Definitions Byelaw should be amended to exclude any premium ceded by host syndicates to SPAs. This means any premium written by the SPA is ignored for the purposes of determining whether the host syndicate is writing within its capacity, effectively delinking the capacity figure for the SPA from the capacity set for the host. A similar mechanism already exists in our requirements for premium ceded under Qualifying Quota Share (**QQS**) arrangements, which were arrangements that in some respects operated like SPAs. Lloyd's no longer allows QQSs, which were arrangements that pre-date Solvency II (and as part of our byelaw changes we propose to remove the remaining references to QQSs in the byelaws). But the precedent for this change is there.
40. For existing managing agents with SPAs, the proposed changes will not require them to take any action. As they will no longer be required to take into account premium ceded to

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<sup>3</sup> Mid-year pre-emptions require the agreement of all members of a syndicate to accept the full amount of the pre-emption for their share. This is rarely achievable for non-aligned syndicates that have more than a handful of members.

the SPA when setting the capacity of the host syndicate, they may find that they have excess 'headroom' in the capacity of their host syndicates. It will be a matter for managing agents to decide whether to reduce that capacity or leave it unchanged.

## Revocation of byelaws

41. A number of our byelaws have fallen into disuse or are no longer required and we are revoking them. These are as follows –
  - (a) The Syndicate Premium Income (Monitoring) Regulation – the requirements set out in this regulation no longer apply and have been superseded by requirements set out in other byelaws, including the Underwriting Byelaw.
  - (b) The Members' Agents (Australia) Byelaw – the effect of the Australian Corporations Act 2001 is to override this byelaw and the Council's ruling that all Lloyd's members must be UK tax residents as of 1 January 2015 means that memberships are no longer available for Australia.
  - (c) The Transitional and Conversion Arrangements (Corporate Members) Regulation – the requirements set out in this regulation have been superseded by the Conversion and Related Arrangements Byelaw.
42. Finally, a number of provisions in the Syndicate Pre-emption Byelaw are no longer required. These provisions deal with requiring Lloyd's agreement in certain cases and the notifying of certain information. We are therefore revoking these paragraphs of the byelaw. The relevant paragraphs are: 3(3), 3(8), 4A, 5(5) and 6(8).

## Further Information

43. Copies of this consultation document and the proposed byelaw amendments can be found by visiting [www.lloyds.com/byelawconsultation](http://www.lloyds.com/byelawconsultation).
44. If you have any question regarding this consultation or wish to provide a response, please contact Guy Holden by emailing [guy.holden@lloyds.com](mailto:guy.holden@lloyds.com).