

Asbestos Victims Support Groups' Forum UK

THE FORUM'S RESPONSE TO THE REVIEW OF CERTAIN PROVISIONS WITHIN THE EMPLOYERS' LIABILITY (COMPULSORY INSURANCE) REGULATIONS 1988

The Forum

The Asbestos Victims Support Groups' Forum (the Forum) is comprised of nine asbestos victims support groups. We provide advice on benefits and compensation and support to asbestos victims and their families and campaign for improvements in benefits and compensation. Each year we visit hundreds of asbestos victims, especially sufferers of mesothelioma, a disease which is increasing and is unlikely to reach its peak for another 10 to 15 years.

We are concerned exclusively with people who suffer from long-latent diseases: it can take up to 60 years for mesothelioma to manifest itself in some cases. Many asbestos victims never receive compensation solely because EL insurance cannot be traced. We represent many hundreds of asbestos victims in opposing proposals in this review which would undermine safeguards for present and future victims of long-tailed occupational disease.

Summary

Options recommended in the review on retention and display of policy certificates would have serious, adverse effects on victims of occupational injury and disease, especially on those affected by long latent disease, now and in the future.

More could, and should be done to give the current regulations more effect.

Government should, as a matter of urgency, set up an insurer of last resort for workers suffering occupational injury or disease who are not covered by EL insurance, for whatever reason.

Regulation 4.

We support:

option i – the introduction of a penalty for failure to retain policies for 40 years.

option iii – retention of the current regulation;

option iv – creation of a database to record policies

Regulation 5.

We support:

Option iii – retention of the current regulation

Insurer of last resort

We believe it is unacceptable that injured workers should be uninsured and as a matter of urgency government should set up an insurer of last resort where EL insurance is not available for any reason.

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Regulation 4 – Retention of policy certificates for 40 years

Burden on Business?

It is conceded in the introduction to the review that the cost of storage and display of EL certificates is derived not from the cost of individual compliance, but simply because of the number of businesses involved. There is no significant cost to individual business, and therefore NO burden on them. The proposed changes to the 1998 Regulations amount to an indiscriminate, ill-considered response to the government's requirement for a 25% cost saving, with no regard to the effect they will undoubtedly have on victims of long-latent disease.

Importance of Future Tracing of Policies

It is conceded in the review that, “...it is accepted that the retention of information relating to insurance cover is important for future claims.” If the DWP think it important to retain policies then it makes no sense to abandon the current requirement to do so. The legislative requirement, despite lack of penalty and enforcement, acts as an incentive for compliance. It is disingenuous to claim that business self-interest justifies moving to a voluntary system; if self-interest is a sufficient incentive why are so many policies currently unavailable? On the contrary, a voluntary system would be a disincentive to retain policies. It would be consistent with the DWP's concern for future claims to enforce the current regulation and apply appropriate penalties.

The ABI Code of Practice

The ABI Code of Practice should not be seen as a justification for removing the requirement to retain policies. This voluntary code has been ineffective. We have been advised by many claimants' solicitors that success rates have dropped significantly and that insurers deny cover until presented with evidence, and only then concede liability for cover. If anything, the failure of the voluntary code should warn against changing the current regulation.

Central repository for policies

Much information about past policies will be lost and become, with time, more difficult to find. It is imperative, not just for speed of tracing, but for preservation of evidence of policies relating to cover many years ago, that all available records are put on a database for retrieval.

Government policy on mesothelioma

The proposal to adopt option ii conflicts with current government policy on handling mesothelioma claims. Considerable efforts have been made to improve the handling of such claims and we believe that a move to a voluntary approach on retention of policies will give the wrong message to all those who are being urged to speed up claims.

Government policy on mesothelioma reflects the serious concerns for people who suffer from very long latent diseases. It is irresponsible, and contrary to the government's current approach, to develop any policy predicated on the absence of new, future long-latent diseases. Adoption of option ii would mean that nothing has been learnt from the harsh lessons of the mesothelioma epidemic and the history of asbestos disease.

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Regulation 5 – Display of policy certificates

Sight of policy certificates has meant that employees have recalled the insurer on risk for a specific period and has, in some cases, provided evidence of insurance where certificates have not been retained and liability for insurance cover is challenged.

In some industries, for example the construction industry, it may not be feasible for an employee to ask to see an electronic copy of a policy, either because of the poor culture of industrial relations within the industry or simply lack of access to a computer on site.

Display of policy certificates acts as a useful aide memoir to avoid inadvertent failure to insure.

Display of certificates provides the opportunity for employees to report rogue employers who culpably fail to ensure. This would hardly be possible with an uncooperative employer who does not have to display a certificate on site.

Insurer of Last Resort

It is incredible that workers today may find that they are uninsured when a serious and catastrophic accident occurs, or when a serious disease manifests itself long after exposure to a toxic substance. Certainly, motorists are protected from such a catastrophe by the Motor Insurance Bureau which provides an insurance of last resort. It is an unacceptable anomaly that workers who suffer an industrial accident or an industrial disease may not be covered by insurance. As a matter of urgency, this unacceptable state of affairs should be remedied.

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