

**EXPLANATORY MEMORANDUM TO
THE EMPLOYERS' LIABILITY (COMPULSORY INSURANCE) (AMENDMENT)
REGULATIONS 2008**

2008 No. 1765

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument revokes regulations 4(4) and (5) of the Employers' Liability (Compulsory Insurance) Regulations 1998 which requires employers who hold employers' liability insurance to retain certificates for 40 years.

2.2 This instrument substitutes regulations 5(1) and (2) to retain the requirement to display employers' liability insurance certificates at each place of business but allow this to be done electronically so long as the employees covered by the insurance have reasonable access to it

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 These Regulations amend the Employers' Liability (Compulsory Insurance) General Regulations 1998 ("the 1998 Regulations").

4.2 The Regulations revoke Regulation 4(4) and (5) of the 1998 Regulations, removing the regulatory obligation on employers to keep employers' liability insurance certificates for 40 years. This change is being made as Regulation 4(4) of the 1998 Regulations cannot be enforced in practice as it carries no penalty for non-compliance. The regulation does not apply to insurance policies that pre-date its introduction on 1 January 1999 and cannot apply to businesses that have ceased trading.

4.3 Regulations 5(1) and 5(2) of the 1998 Regulations are substituted to retain the requirement for employers to display employers' liability insurance certificates but allow employers to display the certificate in an electronic format if employees have reasonable access to the document. This change is being made to reduce the cost of compliance for business as it had been identified as a major burden to those with employees sited in a number of locations.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This Statutory Instrument will revoke Regulations 4(4) and (5) of the 1998 Regulations as these regulations cannot be practically enforced as they carry no penalty for non-compliance. Introducing an effective penalty for failing to comply with the regulation would require the enforcement bodies to introduce an appropriate inspection regime. The enforcement bodies take a risk based approach to inspections for employers' liability insurance and this is done as a part of a wider inspection regime. Effective enforcement would therefore require more inspections, more inspectors and higher costs. Retaining policy information while claims can be made is good business practice and does not require regulation.

7.2 Regulation 5(1) of the 1998 Regulations requires employers to shall display one or more copies of Employers' Liability (Compulsory Insurance) policy certificates at each place of business.

7.3 This Statutory Instrument will amend Regulation 5(2) of the 1998 Regulations to allow employers to display the certificate in an electronic format if employees have reasonable access to the document.

Consultation

7.4 The Department has consulted representatives from business, the insurance industry, unions and support groups for those suffering from asbestos related diseases. While unions and support groups for those suffering from asbestos related diseases supported the retention of Regulation 4(4), businesses recognised that it could not address the problems of tracing historic insurance policies. The Department is working with stakeholders to minimise the impact of this problem. There was greater support for the changes to Regulations 5(1) and (2) as this did not significantly impact on employees but would save business costs.

Guidance and Consolidation

7.5 Revised guidance will be issued by the Health and Safety Executive 12 weeks before the regulations come into force. A consolidation exercise was undertaken with the introduction of the Employers' Liability (Compulsory Insurance) Regulations 1998. Therefore further consolidation is not appropriate at this time.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is negligible.

9. Contact

Philip Martin at the Department for Work and Pensions Tel: 0207 962 8767 or e-mail: Philip.martin1@dwp.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: DWP	Title: Impact Assessment of changes to Regulations 4 and 5 of the Employers' Liability (Compulsory Insurance) Regulations 1998	
Stage: Final	Version: June 2008	Date: 24 June 2008
Related Publications: A Review of Certain Provisions within the Employers' Liability (Compulsory Insurance) Regulations 1998 and The Government Response		

Available to view or download at:

<http://www.dwp.gov.uk/resourcecentre/ria.asp>

Contact for enquiries: Philip Martin

Telephone: 020 7962 8767

What is the problem under consideration? Why is government intervention necessary?

To reduce the administrative burden on business from compliance with Regulations 4(4) and 5(1) and (2) of the Employer's Liability (Compulsory Insurance) Regulations 1998. Regulation 4(4) requires employers retain employers' liability insurance certificates for 40 years. Regulations 5(1) and (2) required employers to display certificates at each place of business and to protect them from damage. Regulation 4(4) was not enforced in practice as it carries no sanction for non-compliance and did not apply to businesses that have ceased to trade. Businesses with multiple sites identified the requirement to display (Regulations 5(1) and (2)) at least one copy of their employer's liability insurance certificate at each of their sites as a burden.

What are the policy objectives and the intended effects?

To remove ineffective regulation and simplify compliance requirements reducing the burdens on business while maintaining protection for employees

What policy options have been considered? Please justify any preferred option.

Regulation 4(4) (Retain employers' liability insurance certificates for 40 years) – Revocation, retention, introducing a penalty for non-compliance, a database. Revocation was preferred as it meets the government commitment only to regulate when necessary. Introducing a penalty or a database were rejected due to excessive costs.

Regulation 5(1) and (2) (Display certificates at each place of business) – Revocation, retention, allowing electronic display. Allowing electronic display was preferred as it reduced compliance costs for business while retaining the protections for employees.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

William D McKenzieDate: 4 July 2008

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition) Yrs		
	£		
	Average Annual Cost (excluding one-off)		
	£	Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'	
	One-off Yrs		
	£		
	Average Annual Benefit (excluding one-off)		
	£	Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks Repeal of Regulation 4(4) will reduce burdens on business by regulation amounting to £37m, although businesses should, as a matter of best practice, continue to retain certificates which will incur similar costs; simplification of Regulation 5(1) and (2) will save business £21m calculated as 60% of the administrative burden of £34m.

Price Base Year 2005	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	GB				
On what date will the policy be implemented?	1 October 2008				
Which organisation(s) will enforce the policy?	HSE/Local Authorities				
What is the total annual cost of enforcement for these organisations?	£ N/A				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ NIL	Decrease of £ 58m	Net Impact £ -58m

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

What this measure does

This measure reduces the costs incurred by business in displaying the Employers' Liability Compulsory Insurance certificate while still retaining protection for employees. It also reduces burdens imposed on businesses by regulation from the statutory requirement to retain the certificate although we encourage them to retain records as a matter of good practice.

Background

Regulatory reform is essential to Britain's economic and social goals. Good regulation provides essential protection for citizens, consumers, workers and business against risks in society. But the Government also needs to remove regulations which are no longer relevant in today's world and look for every opportunity to simplify those that remain.

The Government is committed to reducing net administrative burdens faced by business and the third sector. The Department for Work and Pensions agreed a target of 25 per cent reductions in administrative burdens.

The Department for Work and Pensions is committed to simplification, and to reducing the administrative burdens that it imposes on business. As part of this regulatory reform, the Department has looked at the Employers' Liability Compulsory Insurance regulations 1998 which impose an administrative cost of £71m on business and the third sector by requiring them to display and subsequently retain ELCI policy certificates. [This was calculated during the Administrative Burdens Measurement Exercise using the Standard Cost Model].

These regulations require businesses to display at least one copy of the current insurance certificate at each of its premises where their employees worked. This is an enormous burden on some employers who have many sites – some of them used very infrequently.

The proposed changes to the regulations do not remove the requirement to display the current certificate of insurance. But they do increase the opportunities for employers to display the certificates by allowing electronic display of the certificate so long as the employees covered by the certificate have reasonable access to it.

Many businesses already provide electronic access to employers' liability insurance certificates in addition to physical display. The change would remove the expense of duplication for these companies without making it more difficult for employees to check the certificate.

The changes made to this regulation would save business administrative costs totalling £21m. The requirement to display the certificate remains. The penalty for non-compliance is a fine of up to £1,000.

The regulations also require business to retain certificates for forty years (from 1999 which is these regulations were introduced). The regulations carry no penalty for not doing this. In addition, the regulations do not apply to businesses that have ceased to trade. As a matter of good practice, we would expect businesses to maintain such records to ensure that they can meet the cost of any claims made against them for illness or injury at work and will issue guidance to that effect. Failure to do so could mean the legal costs and compensation being met by the business rather than the insurance provider.

The proposed repeal of the regulation requiring retention for forty years would reduce burdens imposed on business by regulation amounting to £37m although businesses should, as a matter of best practice, continue to retain certificates which will incur similar costs.

Equality Impact Assessment

Name of policy:

The Employers Liability (Compulsory Insurance) (Amendment) Regulations 2008

Name and contact details of the officer(s) responsible for the assessment:

Philip Martin
Better Regulation Unit
Department for Work and Pensions
4th Floor, The Adelphi
1-11 John Adam Street
London WC2N 6HT

Purpose and aim(s) of the proposal or change:

This measure reduces the costs incurred by business in complying with regulations 4(4). The proposed repeal of the regulation requiring retention for forty years would reduce burdens imposed on business by regulation amounting to £37m although businesses should, as a matter of best practice, continue to retain certificates which will incur similar costs. and 5(1) and (2) of the Employers Liability (Compulsory Insurance) Regulations 1998 while retaining protection for employees. The regulations relate to the display and retention of Employers' Liability Compulsory Insurance certificates.

Who will benefit mainly from this proposal or change?

Businesses will benefit through reduced compliance costs.

Equality impact of the policy

This is a deregulatory simplification measure which will benefit businesses. There is no evidence the policy discriminates directly or indirectly against people from some racial, gender or disability groups, nor can it be seen to favour one racial, gender or disability group over another. The policy has a neutral impact on equality.

Specific Impact Tests

The recommended changes are deregulatory simplification proposals. Initial filter tests have been undertaken, indicating that specific impact tests are not necessary for this proposal.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

