

# Asbestos Victims Support Groups Forum UK

## Employers Liability Compulsory Insurance Government U-turn A Burden on Asbestos Victims

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### Regulation 4(4) (Retention of policy certificates) Employers' Liability (Compulsory Insurance) Regulations 1998

Regulations were introduced in 1998 (effective from 1.1.1999) to require employers to retain employers' liability insurance records (EL records) for 40 years.

### Why Regulation?

Regulations were introduced to address the problem of long-latent disease where claimants are unable to trace employers' insurers and failed to get compensation where employers are no longer trading.

### Government reasons for revoking regulations requiring employers to retain EL records for 40 years:

1. Regulations a burden on business
2. Regulations cannot be enforced
3. Does nothing to address loss of past insurance records
4. Existing voluntary ABI tracing code and voluntary requirement to retain records for 60 years sufficient.

### Why government is wrong

1. The cost reflects the number of businesses not the cost to individual business. The government accepts that there is no burden on business: *"This burden has been estimated at such a considerable figure not for the cost of the individual compliance action but due to the number of businesses carrying them out."*<sup>1</sup>
2. Yes. It is difficult to enforce the Regulation but it is equally difficult to enforce many regulations, but there are compelling reasons to impose a legal requirement which business will take notice of.

### Central data base for insurance records

More importantly, it is necessary to also establish a central, statutory data base for insurance records, otherwise, where businesses cease trading retained records may simply be untraceable.

### Insurer of last resort

Many insurance records cannot be traced after 1972 when it became a legal requirement to hold such insurance. It is incredible that motorists are protected against uninsured drivers by an insurer of last resort, the insurance industry Motor Insurance Bureau, but workers are not similarly protected.

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<sup>1</sup> <http://www.dwp.gov.uk/consultations/2007/index.asp>

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## Cost to government

The government picks up the tab for untraceable insurers (minimal insurer of last resort) through small Pneumoconiosis etc. (Workers Compensation) Act 1979 payments. The government is paying from the public purse instead of insurers who took money selling policies. (the government has only latterly decided to stop allowing insurers to receive credit for Workers Compensation payments and instead to recover payments where claimants receive damages).

## Burden on asbestos victims

Ultimate burden is laid on asbestos victims who lose substantial compensation and rely on small payments from public money.

Winners = Insurers

Losers = government and asbestos victims

Result = a no-brainer!

3. Thousands of past insurance records are in different places so it is essential that they are recovered and lodged in a data base for retrieval.

Policies are untraceable even after the law required employers to take out employers liability insurance. This is an issue for today and tomorrow.

The HSE estimate 7000 mesothelioma deaths in next 50 years from current, not past, exposure to asbestos in buildings. Thousands of asbestos victims will be unable to trace current and future insurance.

Other long-latent diseases will arise and victims will suffer the same fate.

4. The much vaunted ABI voluntary code only traces 28% of records. This pathetic voluntary code is no substitute for regulation and it is disingenuous to suggest otherwise.

## Proposals for a voluntary database for employers liability insurance

A voluntary code for recording employers' liability insurance on a central database is totally unsatisfactory. There has to be a robust system underpinned by a statutory requirement to register the policies on a database.

It is unacceptable that there are robust systems for recording and tracing motor insurance and TV licenses but none for EL insurance.

## Conclusions

1. It is a betrayal of asbestos victims, especially mesothelioma sufferers, to remove the sanction on employers for discarding insurance records.
2. Insurance records should be registered, as vehicles and national insurance records are. This is not beyond the wit of government.

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3. Insurers took money for premiums and should be required to pay out full compensation. The insurance industry should provide insurance of last resort – not the government.
4. The government should stop using public money to bail out insurers.
5. Dying asbestos victims should not be forced to bear the burden.