

INDEX 

<b>Health and Safety Executive</b>		<b>Sector Information Minute</b>	
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Target Audience  
All Inspectors in Construction Division

## **EMPLOYERS' LIABILITY (COMPULSORY INSURANCE) REGULATIONS 1998 (ELCI)**

This SIM provides further guidance to Construction Division Inspectors on ELCI enforcement on construction sites and should be read in conjunction with OM 2001/115.

### INTRODUCTION

1 This minute provides inspectors dealing with construction with industry specific information and advice about the application and enforcement of ELCI. OM 2001/115 provides general information to inspectors and sets out HSE policy on ELCI enforcement.

### BACKGROUND

2 The Government's Pre-Budget Report in November 2002 noted the problems that many employers have faced recently with increased premiums and difficulties in obtaining cover to meet their legal obligations. Inspectors may be aware of particular concerns (typically expressed in the construction trade press) that some employers may be trading without ELCI insurance especially in so called 'high risk' trades such as scaffolders, steel erectors, roofers, demolition. On 12 December 2002, the Department of Works and Pensions announced a widespread review of the ELCI and Industrial Disablement Benefit schemes press release. Proposals for future reform are likely to emerge during 2003.

3 Having sufficient ELCI cover is a legal requirement but is also a fundamental protection for workers killed or injured at work. Ministers are concerned that this safety net should not be eroded or undermined.

4 ELCI enforcement has historically had a relatively low priority for FOD but *Revitalising* recognised the importance of the insurance system as a lever for improving health and safety standards. In response to RHS, OM 2001/115 was issued and all inspectors and WCOs were warranted to enforce the Regulations.

5 FOD's Planning Guidelines 2003/04 Annex 5 refers to 'Matters of evident concern' where inspectors are reminded to check that a certificate of Employers' Liability Compulsory Insurance is displayed.

6 This SIM sets out the current position within Construction Division.

### GUIDANCE TO INSPECTORS

7 OM 2001/115 para 7 requires inspectors to "routinely ask for sight of ELCI certificates during inspection visits". For inspectors dealing with construction this means:

- (1) checking that the ELCI certificate is displayed in the site office, or if not, asking where it is displayed;
- (2) when asking principal contractors what subcontractors they have on site and how they selected them, asking if they check their ELCI certificates;
- (3) asking the principal contractor to show them ELCI certificates for a random sample of subcontractors, eg some of those encountered on site, or to send copies if they are not available in site office files;
- (4) when pursuing the criteria used in the selection of competent contractors and subcontractors by clients, principal contractors and other contractors;
- (5) during mandatory, fatal and major injury investigations, (NB: following an accident, if there was no cover and a prosecution takes place, the lack of ELCI may be a significant factor to a court deciding whether or not to award compensation to the injured worker.);
- (6) when an inspector has reason to suspect that an employer may not have ELCI, especially in high-risk trades;
- (7) when an inspector is investigating a complaint that an employer does not have ELCI (see OM 2001/115 Annex 6).

#### DISPLAYING CERTIFICATES OF INSURANCE

8 The display of certificates of insurance is an essential step in enabling employees to check that their employer has ELCI and who the insurer is. The 1998 Regulations require employers to display one or more copies in such numbers and in such positions that they may be easily seen and read by their employees at each place of business at which they employ relevant employees.

9 A 'place of business' is any place where an employer operates and is not just the place of management activities. This is wide in interpretation and covers all transient sites. There is currently no known case law. In practice, ELCI certificates tend to be displayed at site offices even on small sites. If no certificate is on display, inspectors should bear in mind the amount of time spent by the business at a site; whether the certificate is displayed somewhere else, eg at the yard, office; if there is no yard or other identifiable place what the employer does to inform employees about ELCI details.

10 'Employer' under the Regulations is very broad, with case law that illustrates that a person is likely to be an employer if he has sufficient control. This could include agency and truly self-employed workers (further guidance on this can be found in the OM).

#### ASSESSING EMPLOYMENT STATUS

11 OM 2001/115 Annex 7 provides comprehensive advice on how to assess employment status and the evidence that should be collected. The test under the Regulations is the same as that under HSW Act, ie the degree of control exercised. The status of agency workers and the notionally self-employed may require particular attention. As ELCI cases are time barred it may be that any prosecution, for example following an accident, would be heard first and enable employment status issues to be determined in advance of more serious charges.

## FEEDBACK

12 In order for HSE to be able respond to the increasing amount of official correspondence on this subject, Construction Sector would like regular feedback on whether or not the provision of ELCI is a significant problem within the construction industry. Units should consider ways of providing the Sector with this information by, for example:

- (1) keeping simple records for a sample period of the number of times ELCI has been asked for and any action taken;
- (2) providing feedback in reflective reports;
- (3) considering including ELCI as a topic for targeted inspections of small and medium-sized enterprises especially in high-risk trades or where bogus self employment or illegal employment may be anticipated.

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[TOP](#) 