

Employers' Liability (Compulsory Insurance) Act 1969 (ELCI)

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Guidance owner

Legal Adviser's Office

Target Audience

All warranted staff who deal with ELCI legislation.

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Summary

This guidance advises staff on how to determine the appropriate action to achieve compliance with the provisions of the Employers' Liability (Compulsory Insurance) Act 1969 (ELCI). Warranted staff should note that ELCI is not a Relevant Statutory Provision (RSP) and FFI does not apply to work carried out for this aspect of any inspection or investigation.

Introduction

The Employers' Liability (Compulsory Insurance) Act 1969 (ELCI) and various amendment regulations obliges employers to insure against their liability for personal injury to their employees.

Since 1975, HSE has been the enforcement body for the Employers' Liability (Compulsory Insurance) Act 1969 (ELCI) as a result of an agency agreement between HSC and the Department of Employment (now the Department for Work and Pensions (DWP))

All HSE warranted staff are authorised to enforce ELCI, and should ask for sight of ELCI certificates during inspection visits and investigations with duty holders as required by their divisions.

HSE deals with ELCI issues on behalf of LAs. FOD will deal with all LA referrals.

Where an authorised warrant holder intends to visit LA inspected premises for the sole purposes of investigating concerns regarding non-insurance, she/he should first notify the LA – unless the LA referred the concern.

Exemptions

Insurance is not required for:

- Employees who are close relatives of the employer (s2(2)(a) Act);
- In most cases, employees not ordinarily resident in Great Britain (s2(2)(b)), but employees are covered if they have been employed for not less than 7 days on an offshore installation or for not less than 14 days in GB – see ELCI Regulations 1998 regulation 1;
- Public service employees – see s3 and ELCI Regulations 1998 regulation 9 and Schedule 2; and
- A single person limited company – see 2004 Amendment Regulations.

Action

Inspection and investigation

Since 1 October 2008 employers have flexibility in how they display their current ELCI certificate (2008 Amended Regulations, regulation 2(3)). The certificate may be made available in electronic form to each relevant employee to whom it relates, if they have reasonable access to it in that form.

Regulation 4 of the 1998 Regulations required employers to keep copies of certificates for 40 years. Under the 2008 Amendment Regulations, this requirement has been removed (2008 Amendment Regulations, regulation 2(2)). However, employers have been advised (see HSE 40), to keep a complete record of their employers' liability insurance in the case of claims from former or current employees.

Procedures on receipt of a concern

Where a concern is received, the CAT team will record it on their database and forward it to a VO / RCO to action. If the concern cannot in the first instance be dealt with by the issue of leaflets HSE 39 / HSE 40, it should be acknowledged and the following action taken:

- Send a copy of the specimen letter at Appendix 1 (or Appendix 2 for ED) to the employer (this can be done electronically, but you should ensure it has been received either by asking the dutyholder to confirm receipt of the email or via the telephone), together with a copy of the leaflet [Employers' Liability \(Compulsory Insurance\) Act 1969 – a Guide for Employers \(HSE 40\)](#).
- If the employer does not respond to the letter within 3 weeks, or in 'urgent' cases (e.g. when the concern alleges an accident), serve a notice as at Appendix 4 on the employer under cover of a letter as at Appendix 3 (this can be served electronically, but again you should ensure it has been received either by asking the dutyholder to confirm receipt of the email or via telephone) requiring the certificate or copy to be sent to a named officer. If there has been no previous letter, HSE 40 should be sent with the notice.
- If the certificate is provided, send an acknowledgement (and return the original certificate if that is received). Draw the employer's attention to the duty to display it (regulation 5 of ELCI Regulations 1998).
- If the employer does not send a current certificate, or a copy, within 3 weeks of service of the notice, send a further letter seeking an appointment for the Inspector / VO / RCO to visit the employer's premises and giving about 2 weeks' notice that he/she wishes to see the insurance policy, or a copy (ELCI Regulations 1998 regulation 7). It should be suggested that, if the time stated in the letter is inconvenient (see Appendix 6), the employer may wish to write or telephone giving an alternative time; and
- At the visit the Inspector / VO / RCO should ask to see both the certificate and the policy, or copies. If these are produced, the employer should again be reminded of the duty to either display the certificate or make it available

electronically and this should later be confirmed in writing. If neither certificate nor policy is produced, and the employer either admits having no insurance or can offer no satisfactory explanation for the absence of the documents (e.g. awaiting their delivery by insurer or broker) statements should be taken from employees with a view to prosecution.

Directors, managers etc. – action on concerns

Where the employer is a body corporate and the offence has been committed with the consent, connivance or neglect of any director, manager, secretary or other officer, that person may also be proceeded against under s.5 and is liable on conviction to a level 4 fine.

Proceedings under s.5 against directors, etc. either in place of, or as well as the body corporate, should be considered when:

- the body corporate has gone into liquidation, but the directors either have formed or are likely to form a new company; and
- Directors have wilfully or recklessly employed without insurance over a substantial period. It is rare that a body corporate will be uninsured without at least 'neglect' on the part of one or more directors. However, proceedings against a director might not be appropriate if:
 - the period of non-insurance was very short
 - they had begun to negotiate insurance but had not been accepted by an insurer.

There is no provision or liability of a director or manager for an s4 offence.

Enforcement and application of the Enforcement Management Model (EMM)

As ELCI is not a relevant statutory provision, HSWA enforcement notices cannot be used to effect change. However, the EMM should still be applied. When an initial enforcement expectation of an improvement notice is indicated through application of the Compliance and Administrative Arrangements table (Table 5.2), Inspectors should apply the local factors found in the relevant flow chart and accompanying table. The following strategic factors will be particularly relevant:

- the consequences upon vulnerable groups of employees of not having insurance; and
- the functional effect that the indicated level of enforcement will have on other duty holders.

ELCI legislation is written in such a way that whilst Inspectors have the right to ask to see a certificate during inspection, before taking enforcement action they should always demand its production by means of a notice, if necessary omitting the first enquiry letter (see Appendices 1, 2, 3 and 4). If a current certificate is physically displayed, made available in electronic form, or the employer shows one, no further action is necessary.

In some instances, we may consider it appropriate to prosecute for non-insurance on the day on which a particular accident happened. However, any delay in receiving notification of that accident limits the time in which to bring the case to court, because of the six-month time limit for laying information about a summary only offence (note: a month in statute is a calendar month unless stated otherwise [Interpretation Act 1978]). In these situations, it is acceptable to bypass the first letter of enquiry and issue a 'Notice to Produce' straight away.

- The 1998 Regulations regulation 6 states: "An employer who is required by a written notice issued by an Inspector to do so shall produce or send ...within the time specified in the notice..." Legal Adviser's opinion is that the period of time specified in the notice must be reasonable. A request to produce on a Sunday just because the time limits for bringing a prosecution was due to expire the following day would clearly not be reasonable. We do not have to send a letter of enquiry and then a notice, but it is good practice to only bypass this system and go straight to issuing a notice in circumstances where to do otherwise would mean that proceedings could not be started. In any situation where this is necessary, the reasons for the action should be recorded.
- When computing the limitation period, the day on which the offence was committed is not to be included, so the summary time period is six calendar months from the day after the date the offence was committed, e.g. where date of offence = date of accident, the six-month summary time period would start on the day after the date of accident.
- Where an offence is alleged to have been committed at some time during a period of more than one day, the six calendar months would start on the day after the last of the days in the period ([Section 75 CPIA 1996](#)) e.g. alleged offence committed on a date between 01.04.05 and 07.04.05, the six month summary time period would start on 08.04.05.

The ELCI Act makes no reference to powers to institute proceedings or to prosecute. LAO has advised that any person may therefore bring proceedings. In England and Wales, any prosecution under the Act should be conducted either by the Inspector whose name appears on the information, or by a solicitor instructed to act on behalf of that Inspector. In Scotland, proceedings will be brought by the Procurator Fiscal.

Where failure to insure is discovered at the same time as an offence under the relevant statutory provisions is being considered for prosecution, and the decision is taken to prosecute all charges together, Inspectors should lay the ELCI information as soon as possible and request that the ELCI prosecution be heard at the same time as other charges arising out of the incident itself. Alternatively, where there is

likely to be a long time before information's for other charges can be laid, operational managers may choose to prosecute the ELCI charge earlier.

Time Limits

ELCI offences are not triable either way and are, therefore, time-barred 6 months after the date of the offence. For offences under s4(2)(b) of the Act and 1998 Regulations regulation 6 (as amended by the 2008 Amendment Regulations), where there has been a breach, the date of offence is the date on which the person failed to produce the certificate upon request. There is then a period of 6 months to lay the information.

For example information refer to the Enforcement Guide - [ELCI Information](#)

Suggested action following particular types of concern

Employee has not seen certificate or insurance displayed.

Acknowledge concern; send letter (Appendix 1 or 2 for ED) to employer and if no response, send letter with notice (Appendices 3 and 4) requiring certificate, or copy, to be sent.

Employer apparently not insured at time of accident.

Acknowledge concern, advising employee that successful prosecution of employer will not assist him/her in obtaining compensation. If accident more than 6 months ago, advise employee that offence on date of accident is statute-barred. Serve notice on employer for certificate to be sent.

Employee has not received any compensation following an accident.

Advise employee that employer's liability insurance does not give automatic right to compensation and that they should consult a solicitor, if they have not done so already. Ask whether they have seen a certificate of insurance in employer's premises. If not, serve notice on employer.

Solicitor acting for employee requests information about an employer's insurer, having failed to obtain it from employer.

Advise solicitor that HSE does not keep records of employers' insurance and there is no duty for employers to make any return to HSE. Advise the Solicitor that if they believe there is / was no insurance they should raise a concern with HSE. Upon receipt of the concern, a letter requesting a copy of the insurance certificate should be sent to the employer.

Injured person, or IP's solicitor, alleges that employer was not insured at the time of accident and that either civil claim is inhibited, or damages awarded by court have not been paid.

Advise person raising the concern that if the accident was more than 6 months ago, any offence regarding insurance is statute-barred. Also advise that if HSE is able to

prove that there is still no insurance, a successful prosecution will not help with the civil claim. A Notice to send certificate should also be served on employer.

Concern alleging that the employer is in liquidation, or has ceased trading.

If firm ceased trading more than 6 months ago, there is no action that HSE can take and person raising the concern should be advised accordingly. If employer was trading within the past 6 months, investigation may be carried out with a view to proceeding against individual directors, if appropriate.

Recording and DWP returns

ELCI prosecutions and ELCI Notices to produce should be recorded on COIN (as DWP require statistical returns). General ELCI contacts and enquiries need not be recorded on COIN – other than where they are dealt with as a concern; and where failure to produce a certificate when asked results in an investigation (usually by a VO / RCO).

Application offshore

ELCI is applied offshore by regulation 21 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (SI 1995 No.738). This also changes some of the wording in the Act for use offshore. Appendix 2 should be used for the initial enquiries by Energy Division.

Contacts

Legal and Enforcement Team

Appendices

[Appendix 1: Specimen letter for first enquiry of employer \(this letter may be used by all except Energy Division \(ED\)\)](#)

[Appendix 2: Specimen letter for first inquiry of employer \(for ED use\)](#)

[Appendix 3: Letter available as a word template with ELCI notice](#)

[Appendix 4: Notice available as a word template](#)

[Appendix 5: Definitions](#)

[Appendix 6: Reasonable access – advice from DWP](#)

[Appendix 7: ELCI procedure flow chart](#)

Link URLs in this page

1. Employer's Liability (Compulsory Insurance) Act 1969 – a Guide for Employers (HSE 40)

<http://www.hse.gov.uk/pubns/hse40.html>

2. CPS Code for Crown Prosecutors

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

3. Section 75 CPIA 1996

<http://www.legislation.gov.uk/ukpga>

4. [Draft ELCI Information](#)

<http://intranet/legal/enforcement-guide-ew/pretrial/preparing-informations.htm#employerssec1>

Appendix 1:

Specimen letter for first enquiry of employer (this letter may be used by all except ED)

Dear

Employers' Liability (Compulsory Insurance) Act 1969

I am an inspector authorised under section 4(2)(b) of the Employers' Liability (Compulsory Insurance) Act 1969. Under the Act you, (if you are an employer - there are some exemptions), must take out and maintain an approved insurance policy against liability for bodily injury or disease sustained by your employees in the course of their employment. You must also display one or more copies of the certificate of insurance at each place of business at which you employ.

I have the power to inspect your policy or require production of the certificate of insurance. However, in order to demonstrate compliance, it would be helpful if you would voluntarily send me a copy of your current insurance certificate or state the reason why you do not have a policy and certificate. Your response should be sent to me at the address shown on this letter.

If you fail to reply voluntarily by the [DATE], you will receive a formal notice to produce and or a visit to inspect your policy of insurance at your place of business.

The enclosed information leaflets explain the requirements of the Act and associated regulations. If you are in any doubt about the contents of this letter or what you must do to comply please contact me by phone and I will be happy to explain.

Yours

Enclosures:	HSE 40 ELCI - Guide for Employers
	HSE 39 ELCI - Workers

Appendix 2:

Specimen letter for first enquiry of employer (for Energy Division use)

Dear

Employers' Liability (Compulsory Insurance) Act 1969

I am an Inspector authorised under section 4(2)(b) of the Employers' Liability (Compulsory Insurance) Act 1969. Under the Act you, (if you are an employer - there are some exemptions), must take out and maintain an approved insurance policy against liability for bodily injury or disease sustained by your employees in the course of their employment.

I have the power to inspect your policy or require production of the certificate of insurance. However, in order to demonstrate compliance, it would be helpful if you would voluntarily send me a copy of your current insurance certificate or state the reason why you do not have a policy and certificate. Your response should be sent to me at the address shown on this letter.

If you fail to reply voluntarily by the [DATE], you will receive a formal notice to produce and/or a visit to inspect your policy of insurance at your place of business.

The enclosed information leaflets explain the requirements of the Act and associated Regulations. If you are in any doubt about the contents of this letter or what you must do to comply please contact me by phone and I will be happy to explain.

Yours

Enclosures:	HSE 40 ELCI - Guide for Employers
	HSE 39 ELCI - Workers

Appendix 3:

Specimen letter when employer has not responded to first letter

Dear

Employers' Liability (Compulsory Insurance) Act 1969

The Employers' Liability (Compulsory Insurance) Regulations 1998 (S.I. 1998 No. 2573)

I have received no reply to my letter dated [DATE] requesting you to forward a copy of your current Certificate of Employers' Liability Insurance.

As there has been no response, I am now serving you with a written notice in accordance with Regulation 6 of The Employers' Liability (Compulsory Insurance) Regulations 1998. This requires you to produce or send to the person specified in the notice, at the address and within the time specified in the notice either the original or a copy of your current Certificate of insurance. The notice is enclosed.

Failure to comply with this requirement is an offence, punishable on summary conviction by a fine. If you wish to discuss please telephone me on the number above.

Yours

Appendix 4:

ELCI specimen notice to produce

Specimen Notice to Produce

To:

I, being a duly authorised inspector for the purposes of the Employers' Liability (Compulsory Insurance) Act 1969 and entitled to issue this notice in accordance with powers granted in Section 4(2)(b) of the Act and in Regulation 6 of the Employers' Liability (Compulsory Insurance) Regulations 1998, **require you to** produce or send to me either the original or a copy of your current certificate of insurance.

The Certificate of Insurance (or a copy) should be sent or produced to me by at the following address:

Health & Safety Executive

If the original Certificate is sent or produced it will be returned after inspection.

Signature:

Date:

Appendix 5:

Definitions

Definitions are as follows:

'Approved policy' - s.1 (3)(a). HSE does not 'approve' policies; the only effect of the word 'approved' is to invalidate for the purposes of the Act any policy with prohibited conditions that would enable the insurer to escape liability. For prohibited conditions, see ELCI Regulations 1998 reg.2

Legal Adviser has advised that policy clauses stating that cover is 'deemed to comply' with the requirements of ELCI cannot render 'approved' a policy that contains prohibited conditions.
'Authorised insurer' - s.1 (3)(b). HSE does not 'authorise' insurers. The definition is by reference to the Financial Services and Markets Act 2000. The Financial Services Authority (FSA) maintains a register of authorised insurers. You can check whether a company is authorised by searching their register on <http://www.fsa.gov.uk/>, or telephoning the FSA on 020 7066 1000.

'Amount of insurance'. Minimum £5 million pounds in respect of claims arising out of anyone occurrence (1998 Regulations, reg.3).

'Certificate of insurance'. For prescribed form, see 1998 Regulations reg.4(1) and Schedule 1.

Appendix 6:

Reasonable access - advice from DWP

DWP has provided advice from one of their legal advisers who explained that the words 'reasonable access' are intended to be read broadly, and that a court would be expected to interpret the term in this context. As each workplace is different, what is reasonable access in one workplace may not necessarily be reasonable in another workplace. All of the circumstances should be taken into account. On a practical level, it is about common sense. An employer should seek to comply with the Regulations by granting reasonable access to its employees in the context of the particular workplace. For example:

- in a workplace where employees are using workstations, they would presumably have access to an intranet site or directory where an electronic copy of the certificate is displayed. An employer's duty in those circumstances is to ensure the certificate is available for viewing and ensuring that employees know that it is there.
- in a workplace where employees do not have access to a computer as part of their job, if an employer chooses to make a certificate available in electronic form then they must also ensure that there is a computer that employees can reasonably access for the purposes of viewing the certificate.
- in a workplace with multiple sites, it would not be reasonable access if a computer was not provided on each site.
- in a workplace with thousands of employees, one computer would likely not be enough.

ELCI Procedure

