

Employers' Liability Insurance Bureau Bill

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TO

Make provision for the creation of an employers' liability insurance bureau comprising an electronic database and a fund of last resort; to make provision about employers' liability insurance; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 The scheme manager

- (1) The Secretary of State shall establish an employers' liability insurance bureau (ELIB) ("the scheme manager") as a company limited by guarantee to exercise the functions conferred on the scheme manager by or under this Act.
- (2) The Secretary of State must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising those functions. 5
- (3) The constitution of the scheme manager must provide for it to have—
 - (a) a chairman; and
 - (b) a board (which must include the chairman) whose members are the scheme manager's directors. 10
- (4) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the scheme manager (acting, in the case of the chairman, with the approval of the Secretary of State).
- (5) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the scheme manager in the operation of the compensation scheme. 15

2 The compensation scheme

- (1) The Secretary of State must by regulation establish a scheme for compensating persons in cases where personal injury or disease has been caused in the course of employment by—
 - (a) an employer which has since become insolvent, where—
 - (i) it had no employers' liability insurance, or

- (ii) the insurer of that employer cannot be traced;
 - or
 - (b) any employer who was not insured in accordance with the Employer's Liability (Compulsory Insurance) Act 1969 (c. 57).
- (2) The rules are to be known as the Employers' Liability Compensation Scheme (but are referred to in this Act as "the compensation scheme"). 5
- (3) The compensation scheme must, in particular, provide for the scheme manager—
- (a) to assess and pay full common law compensation, in accordance with the scheme, to claimants in respect of claims made in connection with employers' liability for injury or disease caused in the course of employment; and 10
 - (b) *to have power to impose levies on insurers writing employers' liability insurance, for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks).* 15
- (4) *The compensation scheme may provide for the scheme manager to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of recovering the cost (whenever incurred) of establishing the scheme.*
- (5) In making any provision of the scheme by virtue of subsection (3)(b), the Authority must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of employers' liability insurance reflects, so far as practicable, the amount of the claims made, or likely to be made, in respect of that insurer. 20
- (6) An amount payable to the scheme manager as a result of any provision of the scheme made by virtue of subsection (3)(b) or (4) may be recovered as a debt due to the scheme manager. 25
- (7) "Full common law compensation" within the meaning of (3) (a) above shall mean such compensation as has been awarded in legal proceedings or would have been awarded had such legal proceedings been pursued, after taking into account any defences thereto that were or might have been found proven. 30

3 General

- (1) The compensation scheme may, in particular, make provision—
- (a) for the establishment of different funds for meeting different kinds of claim; 35
 - (b) *for the imposition of different levies in different cases;*
 - (c) limiting the levy payable by a person in respect of a specified period;
 - (d) for repayment of the whole or part of a levy in specified circumstances;
 - (e) for a claim to be entertained only if it is made by a specified kind of claimant; 40
 - (f) for a claim to be entertained only if it falls within a specified kind of claim;
 - (g) as to the procedure to be followed in making a claim;
 - (h) for the making of interim payments before a claim is finally determined; 45
 - (i) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;

- (j) for payment to be made, in specified circumstances, to a person other than the claimant.
- (2) Different provision may be made with respect to different kinds of claim.
- (3) The scheme may provide for the determination and regulation of matters relating to the scheme by the scheme manager. 5
- (4) The scheme, or particular provisions of the scheme, may be made so as to apply only in relation to –
 - (a) activities carried on,
 - (b) claimants,
 - (c) matters arising, or 10
 - (d) events occurring,
 in specified territories, areas or localities.
- (5) The scheme may provide for the scheme manager to have power –
 - (a) in specified circumstances,
 - (b) but only if the scheme manager is satisfied that the claimant is entitled to receive a payment in respect of his claim – 15
 - (i) under a scheme which is comparable to the compensation scheme, or
 - (ii) as the result of a guarantee given by a government or other authority, 20
 - (iii) as the result of a total or partial indemnity given by an insurer under an employer's liability insurance policy,
 to make a full payment of compensation to the claimant and recover the whole or part of the amount of that payment from the other scheme or under that guarantee or under that policy. 25

4 Scheme manager's power to require information

- (1) The scheme manager may, by notice in writing given to the relevant claimant in respect of whom a claim is made under the scheme, require that person –
 - (a) to provide specified information or information of a specified description; or 30
 - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced –
 - (a) before the end of such reasonable period as may be specified; and
 - (b) in the case of information, in such manner or form as may be specified. 35
- (3) This section applies only to information and documents the provision or production of which the scheme manager considers to be necessary for the fair determination of the claim.
- (4) If a document is produced in response to a requirement imposed under this section, the scheme manager may – 40
 - (a) take copies or extracts from the document; or
 - (b) require the person producing the document to provide an explanation of the document.

- (5) If a person who is required under this section to produce a document fails to do so, the scheme manager may require the person to state, to the best of his knowledge and belief, where the document is.
- (6) A person is involved in a claim made under the scheme if he was knowingly involved in the act or omission giving rise to the claim. 5

5 Scheme manager's power to inspect information held by liquidator etc

- (1) For the purpose of assisting the scheme manager to discharge its functions in relation to a claim made in respect of an insolvent employer or insurer, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents. 10
- (2) A person inspecting a document under this section may take copies of, or extracts from, the document.
- (3) This section applies to—
- (a) any employer against whom a liability is alleged by a claimant;
 - (b) any insurer alleged to have given total or partial indemnity to any such employer under an employer's liability insurance policy; 15
 - (c) any broker who may have been concerned in the writing of insurance business between any such employer and any such insurer;
 - (d) the administrative receiver, administrator, liquidator or trustee in bankruptcy of an insolvent employer or insurer; 20
 - (e) the permanent trustee, within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66), on the estate of an insolvent employer or insurer.
- (4) This section does not apply to a liquidator, administrator or trustee in bankruptcy who is— 25
- (a) the Official Receiver;
 - (b) the Official Receiver for Northern Ireland; or
 - (c) the Accountant in Bankruptcy.
- (5) For the purpose of assisting the scheme manager to discharge its functions the scheme manager shall create and maintain an employer's liability insurance database recording particulars of insurer, insured, period of cover, policy number and policy wording of any employer's liability insurance policy identified by investigation or inquiry whether pursuant to this section or otherwise howsoever. 30

6 Rights against insurer of insolvent person etc 35

If an employer incurs a liability to which this Act applies against which he is insured under a contract of insurance, the employer's rights under the contract against the insurer in respect of the liability are transferred to and vest in the person to whom the liability is or was incurred.

7 Expenses 40

There shall be paid out of money provided by Parliament any expenses of the Secretary of State under this Act.

8 Short title

This act may be cited as the Employers' Liability Insurance Bureau Act 2009.

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