

**Health, Work and Well-being**

## Accessing Compensation

Supporting people who need to trace  
Employers' Liability Insurance –  
public consultation

February 2010

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# Glossary

These terms have the following meanings when used in this consultation document.

ABI	Association of British Insurers
CRU	Compensation Recovery Unit
DWP	Department for Work and Pensions
EEA	European Economic Area
EL	Employers' Liability
ELCI	Employers' Liability Compulsory Insurance
ELCOP	Employers' Liability Code of Practice
ELTO	Employers' Liability Tracing Office
FOI	Freedom of Information
FSA	Financial Services Authority
GB	Great Britain
HMRC	Her Majesty's Revenue and Customs
MIB	Motor Insurance Bureau
VAT	Value Added Tax

# List of consultation questions

**Question 1: Is this the correct data to be recorded or is something else needed to properly identify EL policies?**

**Question 2: Is there a better unique employer identifier than the employers' reference number provided by Her Majesty's Revenue and Customs to facilitate tracing of EL insurance policies?**

**Question 3: Which historic records would it be feasible and proportionate for the insurance industry to include in any electronic database?**

**Question 4: How should an electronic database be funded?**

**Question 5: Who should be represented on the board and what structure should such a board take?**

**Question 6: Should the coverage of an ELIB be limited to where there is a legal requirement to insure, as is the case with the MIB, or should the ELIB provide universal coverage?**

**Question 7: How should and ELIB be funded?**

**Question 8: What would be the impact on insurers and employers of establishing an ELIB?**

**Question 9: Should the level of general damages be based on amounts being awarded in the courts or on some different basis?**

**Question 10: Should the level of compensation be decided based on an individual's needs or on a fixed Tariff?**

**Question 11: Should Special Damages be incorporated within a fixed Tariff or should they be dealt with on an individual basis?**

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**Question 12: Should an ELIB cover all claims, long-tail disease claims only or just those with mesothelioma?**

**Question 13: How could we ensure an ELIB paid out in all appropriate claims and not those that would otherwise not have been paid?**

**Question 14: What level of evidence is needed to settle claims if contemporary records have been destroyed?**

**Question 15: How should an ELIB start to meet claims to ensure fairness to claimants and funding at the start of any scheme?**

**Question 16: Should an ELIB meet claims to dependants after a person has died if a claim has not previously been compromised?**

**Question 17: Should there be limitations on the time a person can take to bring a claim to the ELIB; if so, when should that time start and end?**

**Question 18: Would the introduction of an ELIB have an impact on employer ELCI compliance?**

**Question 19: What more can be done to ensure that employers which are legally obliged to obtain ELCI do so?**

**Question 20: Is there anything else, not covered by these questions, which you would like to tell us?**

**Question 21: Do you have any further information, data or analysis that would be useful for improving the quality of the analysis in the Impact Assessment , in particular:**

- The average cost of civil compensation (split by mesothelioma, long-tail diseases and other cases)
- The average legal costs of civil cases for insurers and claimants
- Forecasts of likely numbers of unsuccessful traces?

# Chapter 1 – Consultation arrangements

## Aim of the consultation

1. This consultation document sets out the Government's proposals to improve support for people who need to trace Employers' Liability Insurance policies in order to obtain compensation for an accident or industrial disease sustained in the course of their employment in Great Britain (GB). This consultation document aims to:
  - look at the support given to individuals who are unable to trace insurance records
  - inform stakeholders and the wider public of the proposals for improving the tracing of insurance records, and
  - seek responses to the specific questions contained in this consultation document (which are listed fully on page 3) and any other views that respondents wish to make about the proposals.

## Why is change needed?

2. In cases of employer negligence, the majority of individuals are able to make a claim for injury or disease directly against their current or former employer. A number, however, have difficulties in tracing the Employers' Liability (EL) Insurance policy.
3. This is because employees may be unaware that some diseases can appear decades after exposure to their cause and that they may need to bring a claim against their former employer. So at the time that they were working for the employer, they might not find out who the EL insurer is. When they are diagnosed with the disease, the records may have already been lost or destroyed.
4. Employers also may not retain out-of-date EL Insurance details, especially once their business has ceased trading.
5. To help with this problem, the Association of British Insurers (ABI) and the Lloyds Market Association have committed, since 1999, to a voluntary Code of Practice for tracing EL Insurance Policies (ELCOP). While the Tracing Service has led to some improvements, there are still some individuals who are left without help – 3210 of them in 2008.
6. To address this equity problem, there is a rationale for the Government to intervene to support individuals who are unable to trace EL insurance records for both older policies and new policies.

## Summary of the proposals

7. The Government propose two ways of supporting individuals who are unable to trace EL insurance records.
8. The first is the creation of an Employers' Liability Tracing Office (ELTO) to manage an electronic database of EL policies and to operate the existing tracing service.
9. The database should contain sufficient information to improve tracing EL policies and we are consulting on both the information to be stored as well as the feasibility of storing older records alongside new ones. How the ELTO could be funded and how it should be managed are also being consulted on.
10. The Government are also persuaded that an Employers' Liability Insurance Bureau (ELIB) should form part of the package of measures to improve the lives of those who are unable to trace an old employer or their insurer. An ELIB would be a compensation fund of last resort and would ensure that some individuals who are unable to trace EL insurance records would receive compensation.
11. We are consulting on issues around what the ELIB should cover:

*Type of accident/disease*

- All claims
- Long-tail disease claims
- Mesothelioma claims only

*Timing of claim*

- Claims where an employer/insurer cannot be traced
- Claims brought from the start of the scheme
- Claims where diagnosis is made after the start of the scheme.

12. We are also asking about the impact of an ELIB on insurers and employers, how much should be paid by way of compensation, and limitations on claiming from the ELIB. We also raise the issue that some employers may choose not to take out EL insurance if an ELIB will be paying anyway, thereby transferring costs to those honest enough to buy ELCI, and ask what more can be done to ensure that employers who are legally obliged to obtain ELCI do so.

## Who will be affected by the proposals?

13. The main groups affected are insurers, and employees who have had an accident at work or been diagnosed with a disease caused by work and are unable to trace the insurer(s). Employers/ former employers may also be affected.

## Consultation

14. This consultation is being conducted in accordance with the Government's Code of Practice on Written Consultations (the criteria for which are set out in Annex A).
15. The consultation will run for 12 weeks from today, in line with the Code, ending on **5 May 2010**.

## Responding to the consultation document

16. Comments are invited from all interested parties and not just from those to whom the document has been sent. Please feel free to pass this consultation document to any other interested parties.
17. Please send your consultation responses to:

By post:            Robert Towers  
                         M0301  
                         Durham House  
                         Washington  
                         Tyne and Wear  
                         NE38 7SF

Email:             [elci.consult@dwp.gsi.gov.uk](mailto:elci.consult@dwp.gsi.gov.uk)

Please ensure your response reaches us by **5 May 2010**.

18. When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We will acknowledge your response.
19. If you have any technical queries please contact the following:

By post:            Peter Schutterlin  
                         Health, Work and Well-being Directorate  
                         Department for Work and Pensions  
                         2<sup>nd</sup> Floor  
                         Caxton House  
                         Tothill Street  
                         London  
                         SW1H 9NA

Email:             [elci.consult@dwp.gsi.gov.uk](mailto:elci.consult@dwp.gsi.gov.uk)

Phone:             020 7449 5578

## Freedom of information

20. The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.
21. All information contained in your response may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

## The consultation criteria

22. The consultation is being conducted in line with the [Government Code of Practice on Consultation](#). The seven consultation criteria are:
  - **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
  - **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
  - **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
  - **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
  - **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
  - **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
  - **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

## Feedback on this consultation

23. We value your feedback on how well we consult. If you have any comments on the process of this consultation, for example, how it could be improved, but not about the issues raised, please contact our Consultation Coordinator:

Roger Pugh  
DWP Consultation Coordinator  
1<sup>st</sup> floor, Crown House  
2, Ferensway, Hull HU2 8NF  
01482 609571  
[roger.pugh@dwp.gsi.gov.uk](mailto:roger.pugh@dwp.gsi.gov.uk)

## Chapter 2 – Background

24. The Employers' Liability (Compulsory Insurance) Act 1969 requires employers carrying on business in Great Britain to insure their liability to their employees for bodily injury or disease sustained in the course of their employment in Great Britain<sup>1</sup>. Some employers, including government departments and local authorities, are exempt. There is a penalty of up to £2,500 for failure to insure on any day. The Act came into effect on 1 January 1972 and although prior to that, Employers' Liability insurance was not compulsory, in practice many employers arranged cover.
25. Employers' Liability Compulsory Insurance (ELCI) provides security:
  - to firms against compensation costs which could lead to financial difficulty; and
  - to employees as compensation will be available even where firms become insolvent.
26. It supports the right of employees who suffer bodily injury or disease during the course of their employment in Great Britain to be fairly compensated and provides an employers' responsibility to fund the costs of their negligence so the "polluter pays".
27. ELCI covers both accidents at work and industrial diseases, which may develop many years after exposure to the agent that caused the disease.
28. The Government have been concerned that, all too often, people who develop industrial diseases discover that their former employer is no longer in business and they cannot trace their Employers' Liability (EL) insurance. These people can miss out on the civil compensation that they deserve through no fault of their own. Often it is a matter of lost or destroyed records. This is a simple problem but with sometimes devastating results.
29. This consultation document covers proposals to improve the process for tracking and tracing employment and insurance records, as well as providing greater support to individuals who are unable to trace such records.

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<sup>1</sup> A separate scheme applies in Northern Ireland.

## Chapter 3 – Scope of the problem

30. It has been estimated that there are 1.2 million business enterprises with one or more employees in operation at any one time in the UK<sup>2</sup>. Around 6% of enterprises do not survive their first year of operation and 36% do not survive the first three years<sup>3</sup>. Others may become insolvent after many years of trading.
31. Every year, insurers pay out £1.5 billion<sup>4</sup> to around 186,000 successful EL claims<sup>5</sup>. The majority of claimants are able to make a claim for injury or disease directly against their current or former employer.
32. Not all illnesses arise immediately, however, and employees need reassurance that they can continue to make legitimate claims as illnesses arise, even many years later. Diseases that manifest symptoms years after exposure to the agent that caused the disease are known as long-tail diseases. People who develop these diseases need to be able to trace old EL insurance policies. But tracing an insolvent employer and their insurer, particularly if the employment was brief or many years previous, can be a difficult and daunting task.
33. That is why, in November 1999, we launched the Code of Practice for tracing Employers' Liability Insurance Policies (ELCOP)<sup>6</sup> in conjunction with the insurance industry. Under the Code, the insurance industry runs an online Tracing Service to help such employees find the relevant policy.
34. In signing up to the ELCOP the insurance industry committed itself to following certain procedures and meeting set standards when dealing with enquiries from employees or their representatives. In order to do this, each insurer agreed to keep the historical data that they still have and to undertake to record and maintain all current and future policies for a period of 60 years in a form that facilitates searches.
35. The ELCOP has two purposes: to help employees and employers needing to trace policies taken out in the past and to ensure that insurers keep future records in ways that make tracing policies much easier.
36. The ELCOP is a search of last resort after the employee's representative has made efforts to locate the EL insurance by other more direct means. It is important to remember that most EL insurers are identified without resort to the ELCOP.
37. Even where the employer has ceased trading, many people are still able to identify and make a claim directly against the relevant insurer. It has been estimated that only around 4% of EL claimants and their representatives need to

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<sup>2</sup> Source: Department for Business and Innovation (<http://stats.berr.gov.uk/ed/sme/smestats2007.xls>). Figure related to 2007.

<sup>3</sup> Source: Office for National Statistics, Business Demography 2007 (<http://www.statistics.gov.uk/pdfdir/bd1108.pdf>). Please note that the proportions are based on VAT-registered enterprises. The 1.2 million enterprises include both VAT and non-registered VAT enterprises.

<sup>4</sup> Average gross claims incurred per year over last five years, ABI statistics, 2008.

<sup>5</sup> Source: Compensation Recovery Unit. Average over 5 year period 2003/04 to 2007/08.

<sup>6</sup> Employers' Liability Code of Practice at <http://www.dwp.gov.uk/docs/codedocument.pdf>

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use the ELCOP to identify an insurer to claim against, usually in cases where the claimant is suffering from a long-tail disease and the exposure took place a long time ago<sup>7</sup>.

38. The 2008 annual review of the ELCOP showed that, of 13098 enquiries made, 5878 (45%)<sup>8</sup> were successful. But several enquiries may be made on behalf of one person's claim if, for example, there are several employers or insurance policies to be located. If these results are reduced down to individual claimants, the annual review showed that, of 7775 people bringing claims, 4565 (59%) individuals who would not have been able to do so without the ELCOP were able to pursue compensation.
39. Although the ELCOP has been operating since November 1999, it has not always been possible to capture data on policies which had lapsed earlier, and some records had already been destroyed when the ELCOP started. So the database which each insurer has at present is not necessarily a complete record of the policies they have issued. Progressively it should become a complete record of relevant policies. Until that time, there will be searches that are unsuccessful.
40. Regular reviews and refinement have delivered improvements to ELCOP since 1999. These include:
  - a clearer enquiry form;
  - a new internal matching facility cross checking previous successful searches;
  - the inclusion of non-ABI members in the automated Tracing Service;
  - a telephone help line to deal with queries and support new users;
  - training for solicitors on how to use the Tracing Service;
  - manually filtering incomplete enquiries before they are sent to insurers;
  - establishing a protocol between brokers and insurers to ensure all relevant information to facilitate searches is provided by brokers; and
  - sending immediate responses when an enquiry for an employer has previously successfully been searched for.
41. It is clear, therefore, that the ELCOP has led to some welcome improvements in successful traces from 25% in 1999-2000<sup>9</sup> to 45% in 2008. But that still means that 3210 or around 40% of the people who needed to use the ELCOP in 2008 are unable to trace an insurance policy, leaving them without compensation. It is particularly disappointing that the success rates for policies written post 1999 – when the ELCOP started – are nowhere near the 100% rate that was expected. This is not acceptable and more needs to be done to improve tracing rates.

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<sup>7</sup> Analysis based on survey conducted by ABI members, in which they assessed a representative sample of successful EL claims from 2006/07, ABI statistics, 2008.

<sup>8</sup> Source: Code of Practice Review Statement 2008

<sup>9</sup> Source: Code of Practice Review Statement 1999-2000. The original review year ran from 1 November - 31 October, but was changed to 1 January - 31 December in 2007. The 2008 review is the first to feature the new calendar year arrangement.

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42. Some people will be able to get help from the lump-sum payment schemes run by the Government<sup>10</sup>, but the amounts paid normally fall well short of the levels individuals would be entitled to in civil damages.
43. The Government are keen to support everyone who needs to trace EL Insurance and cannot accept that 40% of the people who need to use the ELCOP should be left without compensation. The Government are determined to do more. To achieve this, the Government propose the actions considered in the next chapter.

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<sup>10</sup> The Pneumoconiosis etc (Workers' Compensation) Act 1979, and the new Mesothelioma Scheme introduced by the Child Maintenance and Other Payments Act 2008.

# Chapter 4 – Proposed actions

## Employers’ Liability Tracing Office including an electronic database

- 44. We believe that an essential first step to improve EL tracing is the establishment of an electronic database of EL policies that can be searched by claimants and their representatives. We have already had positive discussions with stakeholders on setting up such a system – for which we are very grateful – and will now seek to work with them to implement the database.
- 45. We envisage an electronic database that would eventually provide a complete record of all new EL policies issued that should be easily accessible to those who need to trace such policies.
- 46. The electronic EL database set within an Employers’ Liability Tracing Office (ELTO) would be populated by details of EL insurance and accessed by claimants filling out an enquiry form on an ELTO website with the employer’s name and details, a description of the disease (or injury caused), and the dates during which they were exposed to the cause of the disease (or the date of the accident when the injury occurred). The ELTO would check the enquiry details against a database of EL policies, and send back any relevant match.
- 47. As increasing numbers of EL insurance details are recorded, a database should eventually provide a complete record of all new EL insurance issued and should be easily accessible to those who need to trace EL insurance policies in the future.
- 48. We suggest that the following data be recorded to facilitate easy tracing:

Employer information	Insurer Information
Unique identifier	Insurer name
Name	Policy number
Address	Policy inception date
Postcode	Policy end date
Subsidiary names	Firm Reference Number (FRN)
Trading names	

**Question 1: Is this the correct data to be recorded or is something else needed to properly identify EL policies?**

- 49. In order to ensure that each record is easily available, a unique identifier for each employer would be needed and provided on the enquiry form. It has been suggested that this unique identifier could be the employer’s reference number provided by Her Majesty’s Revenue and Customs (HMRC) as this is printed

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every year on an employee's P60. Keeping a copy of their P60 will enable an employee to use the employer's unique identifier to search the ELTO database. Where the employee does not have a record of their employer's reference, HMRC can provide an employment history in writing upon request from the employee or their authorised representative and this could include the employer's reference to enable an enquiry to be made.

50. Having a unique identifier, easily accessible to all employees and having a database that recognises that identifier, should make tracing of EL insurance quick and easy.

### **Question 2: Is there a better unique employer identifier than the employer's reference number provided by Her Majesty's Revenue and Customs to facilitate tracing of EL insurance policies?**

51. In order to keep a level playing field among EL insurance providers, so that all EL insurance records are available for tracing, there would need to be an element of compulsion to ensure that all writers of EL insurance provide tracing information.
52. To achieve this, either primary legislation would be needed, or changes to Financial Services Authority (FSA) rules could be made to require all insurers that write EL insurance to publish relevant policy details. Insurers could also be permitted to submit the details to a database instead of publishing them on condition that the insurer and the database continue to satisfy certain requirements.
53. However, FSA rules could not compel insurers to submit data to the ELTO database and this may mean that the tracing information data is available from several sources. Nevertheless, FSA rules could be instituted until primary legislation is in place. FSA is minded to consult on such proposals.
54. One drawback to an EL database is that, as some historic records have been lost or destroyed, the database would not be a complete record until some time in the future. However, there are some historic records that it may be possible to easily put on the database, such as those against which successful traces have already been made.

### **Question 3: Which historic records would it be feasible and proportionate for the insurance industry to include in any electronic database?**

55. An electronic database could be funded either by a levy on insurers or through access charge or a combination of both. Insurers would be able to use a database when determining who, out of several possible insurers, would be responsible for paying out in cases such as mesothelioma where any one insurer must initially pay out and then recoup relevant shares from other negligent insurers. So, it could be argued that, as insurers will benefit in addition to those needing to trace policies, they should fund it. Charging for access to a database would mean that these charges eventually end up as costs for the

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insurer to pay alongside any civil damages. So charging for access means insurers also pay when they pay the costs associated with successful claims. Costs to insurers are likely to be reflected in time through higher EL premiums; this will represent an increased cost to business. Estimated costs of setting up and running the database can be found in the impact assessment in Annex C2.

**Question 4: How should an electronic database be funded?**

- 56. Our intention is that the ELTO would be managed by some form of Board. As experts, some insurer presence will be needed on the Board and ought to be balanced by the presence of a mix of other stakeholders. Members of the Review Body of the ELCOP may wish to be represented on such a Board.
- 57. The members of the ELCOP currently are:

<b>Review Body Members</b>
Department for Work and Pensions (Chair) Association of British Insurers Association of Personal Injury Lawyers Confederation of British Industry Forum of Insurance Lawyers Lloyd’s Market Association Trade Union Congress British Insurance Brokers Association
<b>Associated Review Body Members</b> (Observers and/or Contributors of market information to the Review Body)
Financial Services Compensation Scheme International Underwriting Association Zurich Insurance

**Question 5: Who should be represented on the board and what structure should such a board take?**

**Employers' Liability Insurance Bureau**

- 58. While we are confident that a database will ensure that in future more people can obtain civil damages for industrial disease, we know from experience that it may still be very difficult to trace historic policies. In addition, some employers may not have obtained ELCI when they should have done so. These issues are especially critical for those individuals suffering from long-tail diseases such as mesothelioma. We want to see more done to ensure that individuals who are unable to trace insurers are given better support.
- 59. There has been strong support from stakeholders and parliamentarians for the idea of establishing an Employers' Liability Insurance Bureau (ELIB) to resolve this problem. Arguments have been made suggesting that as drivers are compensated by the Motor Insurance Bureau (MIB) where they are involved in

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an accident with an uninsured driver, so injured workers who had no control over the recording of EL policies should have, at the very least, protection when they are injured or made ill at work.

60. Having considered this carefully, the Government are persuaded that an ELIB should form part of the package of measures to improve the lives of those who, for whatever reason and through no fault of their own, have been injured or made ill as a result of their previous employment and who are unable to trace an old employer or their insurer. The ELIB would be the compensator of last resort if all other efforts to trace an employer or insurer have failed.
61. An ELIB could be loosely based on the MIB whose obligations are linked to the compulsory insurance requirement of the Road Traffic Act, so the protection provided is limited to where there is a legal requirement to insure. As such an ELIB would only pay out for individuals employed in businesses where EL insurance is compulsory. EL is not required for certain businesses though, such as some family-run businesses or public organisations and under the MIB model an ELIB would not pay out for employees of such businesses and organisations.

### **Question 6: Should the coverage of an ELIB be limited to where there is a legal requirement to insure, as is the case with the MIB, or should the ELIB provide universal coverage?**

62. Clearly the funding of an ELIB is an important factor in its design. One option would be for the insurance industry to provide the funding. The argument for this is that the industry has, in most cases, taken the premiums for policies that are now not being traced. The industry should therefore fund the full costs of an ELIB, including the set up and running costs.
63. If the ELIB were funded by the industry, ultimately, these charges would fall on all businesses that buy compulsory EL insurance - through increased insurance premiums. To make this option work, an insurer would only be allowed to operate in the UK EL market if they belong to the ELIB and paid a share of its costs based on their current share of the EL market.

### **Question 7: How should an ELIB be funded?**

### **Question 8: What would be the impact on insurers and employers of establishing an ELIB?**

64. The amount of general damages (for pain, suffering and loss of amenity) could be assessed based on figures being awarded by the courts or could be based on a different fixed level, and laid down in a Book of Quantum that would contain a range of compensation figures for particular injuries. In addition, claimants could be entitled to Special Damages to cover, for example, loss of earnings, medical expenses and other vouched out of pocket expenses.

**Question 9: Should the level of general damages be based on amounts being awarded in the courts or on some different basis?**

**Question 10: Should the level of compensation be decided based on an individual's needs or on a fixed Tariff?**

**Question 11: Should Special Damages be incorporated within a fixed Tariff or should they be dealt with on an individual basis?**

65. The estimated costs of funding compensation through an ELIB are detailed in the impact assessment in Annex C.
66. Many EL claims are for accidents and the claims are made quickly after the incident, which means that the employer and insurer are more recent and therefore more easily identifiable. Because industrial diseases can occur many years after an exposure to an agent that caused the disease, the insurer may be more difficult to trace. One way to limit the costs of an ELIB and to ensure that employers are not tempted to avoid EL insurance in the belief that ELIB would cover any liabilities, would be to limit the coverage of an ELIB to long-tail diseases only – for example, those arising more than five years after a particular employment ceased – or to certain defined conditions.
67. Mesothelioma is a particularly unpleasant disease. It is a cancer of the lining of the lungs or abdomen, and is associated almost exclusively with asbestos; it is invariably fatal, and the time between diagnosis and death is on average about 9 months. Mesothelioma sufferers also are particularly likely to struggle to access compensation. Of some 800 mesothelioma claimants accessing the ELCOP, some 390 (48%) are unable to trace an insurer<sup>11</sup>. To ensure that more people with mesothelioma are able to get the compensation they deserve, an ELIB could be set up just for them.

**Question 12: Should an ELIB cover all claims, long-tail disease claims only or just those with mesothelioma?**

68. An ELIB would need to meet claims based on very old, sometimes non-existent, or unevenly balanced evidence. This is because, if an employer or insurer cannot be traced, there will be no records of whether the employer was negligent in causing the accident or disease, or whether there had been contributory negligence on the claimant's behalf. Insurers currently find it difficult to refuse to pay these cases where there is little or no evidence about the employment. But Insurers could end up paying for some claims that they might not otherwise have paid if an insurance policy with exclusions cannot be traced and the ELIB pays.

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<sup>11</sup> ABI statistics, 2008.

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**Question 13: How could we ensure an ELIB paid out in all appropriate claims and not those that would otherwise not have been paid?**

**Question 14: What level of evidence is needed to settle claims if contemporary records have been destroyed?**

69. Administratively, an ELIB could meet claims as follows:

- All claims where an insurer or employer cannot be traced, regardless of the timeframe
- All claims brought from the start of the scheme
- All claims where a diagnosis is made after the start of the scheme.

70. Allowing all claims where an insurer or employer cannot be traced would provide wider benefits but might encourage claims which had previously been refused, particularly very old claims where documentation might be lost. Allowing all claims brought from the start of the scheme would mean the ELIB could meet all unmet incidents from the past, but the initial peak in claims could lead to delays in awards and immediate disproportionate funding costs. Allowing all claims made where a diagnosis is made after the start of the scheme would allow the Bureau time to settle in but would leave those whose condition had been diagnosed before the scheme started with no compensation.

**Question 15: How should an ELIB start to meet claims to ensure fairness to claimants and funding at the start of any scheme?**

71. Claims for civil damages can be made by the person in life or by a dependant after that person has died, providing the claim has not been compromised (settled). Awards under the government schemes are also made to dependants providing an award has not previously been made to the person in life.

**Question 16: Should an ELIB meet claims to dependants after a person has died if a claim has not previously been compromised?**

72. The Statute of Limitations provides a time limit during which claims for civil damages must be brought. Actions for damages in most personal injury claims must be brought within three years of the date when the cause of action accrued (usually when the damage is suffered). The Limitation Act 1980 gives the court a discretion to disapply the limitation period in respect of claims for personal injuries when it considers it just and equitable to do so. Statutes of limitation seek to hold a balance between the interests of claimants in having maximum opportunity to pursue their legal claims, and the interests of defendants in not having to defend excessively old proceedings.

73. It would not be appropriate for there to be no time limits on claiming as the Government are keen that people are able to access the compensation they are

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entitled to as soon as possible. It would also be inappropriate for someone to wait until records had been destroyed before bringing a claim.

### **Question 17: Should there be limitations on the time a person can take to bring a claim to the ELIB; if so, when should that time start and end?**

74. Some stakeholders have suggested that introducing an ELIB could potentially lead to unintended consequences:
- A greater number of employers may choose not to take out EL insurance, transferring costs to those honest enough to buy ELCI;
  - It may make it easier for employers to persuade employees to accept the lack of EL insurance.
75. As far as the first is concerned, this may not be a high risk because if the Bureau was focused on long-tail diseases such as mesothelioma (where the real problem lies) and not the whole range of risks covered by ELCI policies, there would be a continuing imperative for employers to insure. In any event, the proposed database could provide a ready means of monitoring compliance, depending on the precise arrangements for access to the data.
76. On the second point, employees would need to be persuaded to collude in not having insurance cover based on the prospect that the Bureau would definitely be intact scores of years into the future to be able to meet any industrial diseases that might then occur.
77. In England, Scotland and Wales, the Health and Safety Executive enforces the legal requirement for businesses to maintain insurance and to display a valid certificate. The Health and Safety Executive undertakes enforcement activity during general inspections and through its workplace contact officers, working time officers, and compliance regime. However, it would not be possible to inspect the estimated 1.3 million business enterprises in operation at any one time in the UK<sup>12</sup> with any degree of regularity without substantially increasing the number of inspections carried out.

### **Question 18: Would the introduction of an ELIB have an impact on employer ELCI compliance?**

### **Question 19: What more can be done to ensure that employers which are legally obliged to obtain ELCI do so?**

78. The MIB functions under two separate agreements between government and the motor insurance industry, one for uninsured drivers and one for untraced drivers. An ELIB could be set up by primary legislation or, with the agreement of the insurance industry, under agreements similar to the MIB.

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<sup>12</sup> Source: Department for Business and Innovation (<http://stats.berr.gov.uk/ed/sme/sme-stats2007.xls>). Figure related to 2007.

## Other

79. You may also have something else, not covered by the specific questions asked, that you would like to tell us about.

**Question 20: Is there anything else, not covered by these questions, which you would like to tell us?**

**Question 21: Do you have any further information, data or analysis that would be useful for improving the quality of the analysis in the Impact Assessment, in particular:**

- **The average cost of civil compensation (split by mesothelioma, long-tail diseases and other cases)**
- **The average legal costs of civil cases for insurers and claimants**
- **Forecasts of likely numbers of unsuccessful traces?**

## Chapter 5 – Next steps

80. The Government are committed to ensuring that people who are injured at work and who need to trace EL insurance policies in order to access compensation can do so and has already begun discussions with stakeholders to achieve this.
81. In particular, the Government has already had positive discussions on the proposal to establish a Tracing Office. We will seek to work with the ABI and others to drive this forward, taking into account the consultation responses.
82. The Government will consider fully the responses to this consultation before determining the next steps towards the introduction of an ELIB.
83. Once we have considered the responses we will publish a summary of what has been said and our plans for taking this work forwards.

# Annex A

## Government's Code of Practice on consultation

This consultation is being conducted in line with the Government Code of Practice on Consultation (<http://www.berr.gov.uk/files/file47158.pdf>) and its seven consultation criteria:

- 1. When to consult**  
Formal consultation should take place at a stage when there is scope to influence the outcome.
- 2. Duration of consultation exercises**  
Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- 3. Clarity of scope and impact**  
Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the process.
- 4. Accessibility of consultation exercises**  
Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- 5. The burden of consultation**  
Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- 6. Responsiveness of consultation exercises**  
Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- 7. Capacity to consult**  
Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

# Annex B

## Impact Assessment

This Impact Assessment has been produced for the purposes of a consultation exercise. It is, therefore, not final. All costs and benefits must therefore be treated as indicative. The views of stakeholders and the general public are invited. The Impact Assessment covers the Employers' Liability Tracing Office (ELTO) and sets out a number of potential models for an Employers' Liability Insurance Bureau (ELIB). Other options are possible. A final Impact Assessment will be produced once responses to the consultation have been received and considered, and final proposals have been decided.

<b>Impact Assessment Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Department for Work and Pensions</b>	<b>Title:</b> <b>Impact Assessment – Accessing compensation: supporting people who need to trace Employers' Liability Insurance</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1	<b>Date:</b> January 2010
<b>Related Publications:</b> Public consultation – Accessing compensation: supporting people who need to trace Employers' Liability Insurance		

**Available to view or download at:**

<http://www.dwp.gov.uk/consultations/2010/>

**Contact for enquiries:** Amy Lee

**Telephone:** 020 7449 5717

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

Employers' Liability (EL) Compulsory Insurance insures employers for the costs of compensation for those employees who are injured or made ill at work through the fault of the employer. Every year, a small number of employees discover that their former employer is no longer in business and they cannot trace their Employers' Liability (EL) insurance or former employer(s). To address this, the Government, together with the insurance industry launched the EL Code of Practice (ELCOP) in 1999 to help employees and employers needing to trace policies taken out in the past and to ensure that insurers keep future records in ways that make tracing policies much easier. This has led to some improvements but more could be done. In 2008, 3,210 claimants were unable to trace EL insurance records. Unsuccessful traces relate to both older policies and to policies taken out post-1999. This indicates that the Code is not fully effective and that there is a rationale for the Government to intervene to address this inequity where some employees receive compensation while others do not due to no fault of their own.

**What are the policy objectives and the intended effects?**

The policy objectives are to:

- improve the tracking and tracing of employment and EL insurance records; and
- support individuals who are unable to trace such records.

The intended effects are for insurers to keep records of all new EL policies and to improve the tracing of old and existing policies.

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

1. Do nothing - keep Employers' Liability Code of Practice.
2. Employers' Liability Tracing Office (ELTO) including an electronic database - to manage a central electronic database of EL policies. A regulatory requirement for all EL insurers to record and upload new EL policies onto the database.
3. Employers' Liability Insurance Bureau (ELIB) - to have all the functions of an ELTO and be a compensation fund of last resort.

The preferred option is option 3 as it meets all the policy objectives set out above.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The earliest date that the proposals could be implemented is April 2011. These would be reviewed on an annual basis. However, the full costs and benefits could take up to 40 years to be realised due to the lag between exposure and diagnosis of some long-tail industrial diseases.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option: 2</b>	<b>Description: Employers' Liability Tracing Office including an electronic database</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' <b>Claimants</b> : increase in legal costs for civil claims due to more successful traces (£0.2m); <b>Insurance industry</b> : one-off costs in setting up database and adapting systems (£3.7m); legal costs (£0.5m), ongoing running and recording costs (£1.7m) and increase in compensation (£0.8m – this is a transfer from insurers to claimants/government through compensation and recovery of benefits respectively) (note that funding options for the database are being consulted on though costs are likely to eventually fall to insurers alongside any civil damages).
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 3.7m</b>	10	
	<b>Average Annual Cost</b> (excluding one-off)		
<b>£ 2.4m</b>		<b>Total Cost (PV)</b>	<b>£ 21m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Estimate of costs to intermediaries (e.g. insurance brokers) are not available.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' <b>Claimants</b> : increase in successful traces and compensation (£0.7m – this is a transfer from insurers); <b>Insurance industry</b> : time saving from no longer having to search own databases to respond to enquiries relating the new EL policies (£0.9m); <b>Government/taxpayer</b> : increase in recoveries for benefits already paid (£0.1m – this is a transfer from insurers).
	<b>One-off</b>	<b>Yrs</b>	
	<b>£</b>	10	
	<b>Average Annual Benefit</b> (excluding one-off)		
<b>£ 0.9m</b>		<b>Total Benefit (PV)</b>	<b>£6m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' The key non-monetised benefits are the equity effects of redistributing resources to individuals who through no fault of their own are unable to trace an EL policy/employer(s). The same weighting has been given to the costs of compensation to insurers and the gain to individuals in the Impact Assessment. Equity arguments support a higher weighting for gains to individuals but these cannot be quantified. A central database over time could also be used to check employers' compliance in purchasing EL policy thus making it easier and possibly cheaper for government to enforce the policy.			

**Key Assumptions/Sensitivities/Risks** Number of individuals who would have been unable to trace the EL policy/employer(s) in the absence of the central database that could now receive compensation (based on historical enquiries to Tracing Office; year 1 = 40 rising to 290 in year 10).

Price Base Year 09/10	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ (15m) plus non-monetised distributional benefits described above</b>
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What is the geographic coverage of the policy/option?	GB								
On what date will the policy be implemented?	April 2011								
Which organisation(s) will enforce the policy?	FSA								
What is the total annual cost of enforcement for these organisations?	No additional cost								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	N/A								
What is the value of the proposed offsetting measure per year?	£ Nil								
What is the value of changes in greenhouse gas emissions?	£ Nil								
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> <tr> <td colspan="4" style="text-align: center; padding: 5px;">Not yet determined</td> </tr> </table>	Micro	Small	Medium	Large	Not yet determined			
Micro	Small	Medium	Large						
Not yet determined									
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> </tr> </table>	No	No	No	No				
No	No	No	No						

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease £	<b>Net Impact</b> Not yet determined

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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## Summary: Analysis & Evidence

<b>Policy Option: 3 (i)</b>	<b>Description: Employers' Liability Insurance Bureau - All claims brought in the last three years where an EL policy/employer(s) could not be traced</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' ELTO one-off cost of £3.7m and average annual cost of £2.4m plus: <b>Claimants:</b> legal/admin costs (£5.2m); <b>Insurance industry:</b> legal/admin costs (£16.5m) and increase in compensation (£60.4m – this is a transfer from insurers to claimants/ government through compensation and recovery of benefits respectively).				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 5px;">One-off (Transition) <b>Yrs</b></td> <td style="width: 30%;"></td> </tr> <tr> <td style="padding: 5px;">£ 3.7m</td> <td></td> </tr> </table>		One-off (Transition) <b>Yrs</b>		£ 3.7m	
	One-off (Transition) <b>Yrs</b>					
	£ 3.7m					
Average Annual Cost (excluding one-off)						
£ 24.1m						
<b>Total Cost (PV)</b>		<b>£ 202m</b>				
Other <b>key non-monetised costs</b> by 'main affected groups' Cost of setting up and running an ELIB has not been estimated. These are difficult to estimate as they will depend very much on the structure and how an ELIB functions. Estimate of costs to intermediaries (e.g. insurance brokers) are not available.						

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' ELTO average annual benefit of £0.9m plus: <b>Claimants:</b> compensation received from ELTO (£57.3m – this is a transfer from insurers); <b>Government/taxpayer:</b> increase in recoveries (£3.1m – this is a transfer from insurers)				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 5px;">One-off <b>Yrs</b></td> <td style="width: 30%;"></td> </tr> <tr> <td style="padding: 5px;">£</td> <td></td> </tr> </table>		One-off <b>Yrs</b>		£	
	One-off <b>Yrs</b>					
	£					
Average Annual Benefit (excluding one-off)						
£ 0.9m						
<b>Total Benefit (PV)</b>		<b>£ 6m</b>				
Other <b>key non-monetised benefits</b> by 'main affected groups' The key non-monetised benefits are the equity effects of redistributing resources to individuals who through no fault of their own are unable to trace an EL policy/employer(s). The same weighting has been given to the costs of compensation to insurers and the gain to individuals in the impact assessment. Equity arguments support a higher weighting for gains to individuals but these cannot be quantified. A central database over time could also be used to check employers' compliance in purchasing EL policy thus making it easier and possibly cheaper for government to enforce the policy.						

**Key Assumptions/Sensitivities/Risks** ELIB would operate in a similar way to civil cases e.g. pay out similar amounts to appropriate claims only. Number of individuals who would receive compensation from the ELIB, year 1 = approx 7,000; year 2-10 – average of 2,000 per year (based on historical enquiries to Tracing Office).

Price Base Year 09/10	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ (196) plus non-monetised distributional benefits described above</b>
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What is the geographic coverage of the policy/option?	GB								
On what date will the policy be implemented?	April 2011								
Which organisation(s) will enforce the policy?	Not yet determined								
What is the total annual cost of enforcement for these organisations?	Not yet determined								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	N/A								
What is the value of the proposed offsetting measure per year?	£ Nil								
What is the value of changes in greenhouse gas emissions?	£ Nil								
Will the proposal have a significant impact on competition?	No								
Annual cost (£-£) per organisation (excluding one-off)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;">Micro</td> <td style="width: 25%; padding: 5px;">Small</td> <td style="width: 25%; padding: 5px;">Medium</td> <td style="width: 25%; padding: 5px;">Large</td> </tr> <tr> <td colspan="4" style="text-align: center; padding: 5px;">Not yet determined</td> </tr> </table>	Micro	Small	Medium	Large	Not yet determined			
Micro	Small	Medium	Large						
Not yet determined									
Are any of these organisations exempt?	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;">No</td> </tr> </table>	No	No	No	No				
No	No	No	No						

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)	(Increase - Decrease)
Increase of £                      Decrease    £	<b>Net Impact</b> Not yet determined

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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## Summary: Analysis & Evidence

<b>Policy Option: 3 (ii)</b>	<b>Description: Employers' Liability Insurance Bureau – Mesothelioma claims brought in the last three years where an EL policy/employer(s) could not be traced</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'  ELTO one-off cost of £3.7m and average annual cost of £2.4m plus:  <b>Claimants:</b> legal/admin costs (£2.7m); <b>Insurance industry:</b> legal/admin costs (£8.6m) and an increase in compensation (£48.5m - this is a transfer from insurers to claimants/ government through compensation and recovery of benefits respectively).
	<b>One-off</b> (Transition) <span style="float: right;"><b>Yrs</b></span>	
	<b>£ 3.7m</b>	
	<b>Average Annual Cost</b> (excluding one-off)	
<b>£ 13.7m</b>	<b>Total Cost (PV)</b>	<b>£ 115m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Cost of setting up and running an ELIB has not been estimated. These are difficult to estimate as they will depend very much on the structure and how an ELIB functions. Estimate of costs to intermediaries (e.g. insurance brokers) are not available.		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'  ELTO average annual benefit of £0.9m plus:  <b>Claimants:</b> compensation received from ELTO (£46.2m – this is a transfer from insurers); <b>Government/taxpayer:</b> increase in recoveries (£2.3m – this is a transfer from insurers)
	<b>One-off</b> <span style="float: right;"><b>Yrs</b></span>	
	<b>£</b>	
	<b>Average Annual Benefit</b> (excluding one-off)	
<b>£ 0.9m</b>	<b>Total Benefit (PV)</b>	<b>£ 6m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' The key non-monetised benefits are the equity effects of redistributing resources to individuals who through no fault of their own are unable to trace an EL policy/employer(s). The same weighting has been given to the costs of compensation to insurers and the gain to individuals in the impact assessment. Equity arguments support a higher weighting for gains to individuals but these cannot be quantified. A central database over time could also be used to check employers' compliance in purchasing EL policy thus making it easier and possibly cheaper for government to enforce the policy.		

**Key Assumptions/Sensitivities/Risks** ELIB would operate in a similar way to civil cases e.g. pay out similar amounts to appropriate claims only. Number of individuals who would receive compensation from the ELIB, year 1 = approx 1,000; year 2-10 – average of 300 per year (based on historical enquiries to Tracing Office).

Price Base Year 09/10	Time Period Years 10	<b>Net Benefit Range</b> (NPV) <b>£</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£ (109)</b> plus non-monetised distributional benefits described above
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What is the geographic coverage of the policy/option?	GB								
On what date will the policy be implemented?	April 2011								
Which organisation(s) will enforce the policy?	Not yet determined								
What is the total annual cost of enforcement for these organisations?	Not yet determined								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	N/A								
What is the value of the proposed offsetting measure per year?	£ Nil								
What is the value of changes in greenhouse gas emissions?	£ Nil								
Will the proposal have a significant impact on competition?	No								
Annual cost (£-£) per organisation (excluding one-off)	<table border="1" 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> <tr> <td colspan="4" style="text-align: center;">Not yet determined</td> </tr> </table>	Micro	Small	Medium	Large	Not yet determined			
Micro	Small	Medium	Large						
Not yet determined									
Are any of these organisations exempt?	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> </tr> </table>	No	No	No	No				
No	No	No	No						

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)	(Increase - Decrease)
Increase of £                      Decrease    £	<b>Net Impact</b> Not yet determined

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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## Summary: Analysis & Evidence

<b>Policy Option: 3 (iii)</b>	<b>Description: Employers' Liability Insurance Bureau – All claims brought from the start of the scheme where an EL policy/employer(s) could not be traced</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'  ELTO one-off cost of £3.7m and average annual cost of £2.4m plus:  <b>Claimants:</b> legal/admin costs (£4.2m); <b>Insurance industry:</b> legal/admin costs (£13.4m) and increase in compensation (£49.3m - this is a transfer from insurers to claimants/ government through compensation and recovery of benefits respectively).
	<b>One-off</b> (Transition) <span style="float: right;"><b>Yrs</b></span>	
	£ 3.7m	
	<b>Average Annual Cost</b> (excluding one-off)	
£ 20.0m	<b>Total Cost (PV)</b> <b>£ 167m</b>	
Other <b>key non-monetised costs</b> by 'main affected groups' Cost of setting up and running an ELIB has not been estimated. These are difficult to estimate as they will depend very much on the structure and how an ELIB functions. Estimate of costs to intermediaries (e.g. insurance brokers) are not available.		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'  ELTO average annual benefit of £0.9m plus:  <b>Claimants:</b> compensation received from ELTO (£46.8m – this is a transfer from insurers); <b>Government/taxpayer:</b> increase in recoveries (£2.5m – this is a transfer from insurers)
	<b>One-off</b> <span style="float: right;"><b>Yrs</b></span>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
£ 0.9m	<b>Total Benefit (PV)</b> <b>£ 6m</b>	
Other <b>key non-monetised benefits</b> by 'main affected groups' The key non-monetised benefits are the equity effects of redistributing resources to individuals who through no fault of their own are unable to trace an EL policy/employer(s). The same weighting has been given to the costs of compensation to insurers and the gain to individuals in the impact assessment. Equity arguments support a higher weighting for gains to individuals but these cannot be quantified. A central database over time could also be used to check employers' compliance in purchasing EL policy thus making it easier and possibly cheaper for government to enforce the policy.		

**Key Assumptions/Sensitivities/Risks** ELIB would operate in a similar way to civil cases e.g. pay out similar amounts to appropriate claims only. Number of individuals who would receive compensation from the ELIB, years 1-10 – average of 2,000 per year (based on historical enquiries to Tracing Office).

Price Base Year 09/10	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ (161m)</b> plus non-monetised distributional benefits described above
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What is the geographic coverage of the policy/option?	GB								
On what date will the policy be implemented?	April 2011								
Which organisation(s) will enforce the policy?	Not yet determined								
What is the total annual cost of enforcement for these organisations?	Not yet determined								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	N/A								
What is the value of the proposed offsetting measure per year?	£ Nil								
What is the value of changes in greenhouse gas emissions?	£ Nil								
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%; background-color: #ffffcc;">Micro</td> <td style="width: 25%; background-color: #ffffcc;">Small</td> <td style="width: 25%; background-color: #ffffcc;">Medium</td> <td style="width: 25%; background-color: #ffffcc;">Large</td> </tr> <tr> <td colspan="4" style="text-align: center;">Not yet determined</td> </tr> </table>	Micro	Small	Medium	Large	Not yet determined			
Micro	Small	Medium	Large						
Not yet determined									
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> </tr> </table>	No	No	No	No				
No	No	No	No						

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)	(Increase - Decrease)
Increase of £                      Decrease    £	<b>Net Impact</b> Not yet determined

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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## Summary: Analysis & Evidence

<b>Policy Option: 3 (iv)</b>	<b>Description: Employers' Liability Insurance Bureau – Mesothelioma claims brought from the start of the scheme where an EL policy/employer(s) could not be traced</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'  ELTO one-off cost of £3.7m and average annual cost of £2.4m plus:  <b>Claimants:</b> legal/admin costs (£2.2m); <b>Insurance industry:</b> legal/admin costs (£7.0m) and increase in compensation (£39.7m - this is a transfer from insurers to claimants/ government through compensation and recovery of benefits respectively).
	<b>One-off</b> (Transition) <span style="float: right;"><b>Yrs</b></span>	
	<b>£ 3.7m</b>	
	<b>Average Annual Cost</b> (excluding one-off)	
<b>£ 11.6m</b>	<b>Total Cost (PV)</b>	<b>£ 98m</b>
<b>Other key non-monetised costs</b> by 'main affected groups' Cost of setting up and running an ELIB has not been estimated. These are difficult to estimate as they will depend very much on the structure and how an ELIB functions. Estimate of costs to intermediaries (e.g. insurance brokers) are not available.		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'  ELTO average annual benefit of £0.9m plus:  <b>Claimants:</b> compensation received from ELTO (£37.8m - this is a transfer from insurers); <b>Government/taxpayer:</b> increase in recoveries (£1.9m – this is a transfer from insurers)
	<b>One-off</b> <span style="float: right;"><b>Yrs</b></span>	
	<b>£</b>	
	<b>Average Annual Benefit</b> (excluding one-off)	
<b>£ 0.9m</b>	<b>Total Benefit (PV)</b>	<b>£ 6m</b>
<b>Other key non-monetised benefits</b> by 'main affected groups' The key non-monetised benefits are the equity effects of redistributing resources to individuals who through no fault of their own are unable to trace an EL policy/employer(s). The same weighting has been given to the costs of compensation to insurers and the gain to individuals in the impact assessment. Equity arguments support a higher weighting for gains to individuals but these cannot be quantified. A central database over time could also be used to check employers' compliance in purchasing EL policy thus making it easier and possibly cheaper for government to enforce the policy.		

**Key Assumptions/Sensitivities/Risks** ELIB would operate in a similar way to civil cases e.g. pay out similar amounts to appropriate claims only. Number of individuals who would receive compensation from the ELIB, years 1-10 – average of 300 per year (based on historical enquiries to Tracing Office).

Price Base Year 09/10	Time Period Years 10	<b>Net Benefit Range</b> (NPV) <b>£</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£ (92m)</b> plus non-monetised distributional benefits described above
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What is the geographic coverage of the policy/option?	GB								
On what date will the policy be implemented?	April 2011								
Which organisation(s) will enforce the policy?	Not yet determined								
What is the total annual cost of enforcement for these organisations?	Not yet determined								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	N/A								
What is the value of the proposed offsetting measure per year?	£ Nil								
What is the value of changes in greenhouse gas emissions?	£ Nil								
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> <tr> <td colspan="4" style="text-align: center;">Not yet determined</td> </tr> </table>	Micro	Small	Medium	Large	Not yet determined			
Micro	Small	Medium	Large						
Not yet determined									
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> </tr> </table>	No	No	No	No				
No	No	No	No						

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease £	<b>Net Impact</b> Not yet determined

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

### BACKGROUND

1. Employers' Liability (EL) Compulsory Insurance insures employers for the costs of compensation for those employees who are injured or made ill at work through the fault of the employer. It provides greater security to firms against costs which could otherwise result in financial difficulty and to employees that resources will be available for compensation even where firms have become insolvent. It supports the right of employees injured through their employers' negligence to be fairly compensated – 'access to justice', and the responsibility of employers to fund the costs of their negligence – 'polluter pays'. Under the Employers' Liability (Compulsory Insurance) Act 1969, it became compulsory from 1972 for employers to insure against liability for negligence which could result in workplace injury, illness or disease.
2. Workplace injuries have fallen substantially in the last five years. In 2008/09, 180 fatal and 133,900 other injuries were reported to the Health and Safety Executive compared with 223 and 154,600 respectively for 2004/05<sup>13</sup>. Workers diagnosed with certain work-related diseases also appear to have fallen. Figures from the Department for Work and Pensions' Industrial Injuries Disablement Benefit (IIDB) Scheme show that newly identified cases of prescribed industrial diseases fell by 12% from 6,900 five years ago to 6,100 in 2008/09<sup>14</sup>.
3. In cases of employer negligence, the majority of individuals are able to make a claim for injury or disease directly against their current or former employer. Each year around 130,000 EL claims are made with diseases making up an estimated one-third of claims<sup>15</sup>.
4. A number of individuals, however, have difficulties in tracing the EL policy/employer(s) where the employer is no longer in business. This can be a problem particularly for individuals with an occupational disease where they were exposed to the agent that caused the disease some time ago such as asbestos-related diseases<sup>16</sup>. Mesothelioma is an example of a disease which is associated almost exclusively with asbestos. It is a cancer of the lining of the lungs or abdomen and is almost always fatal. The timing between diagnosis and death is on average 9 months with onset typically 30 to 50 years after first exposure.
5. Since 1999, the Association of British Insurers (ABI) and the Lloyds Market Association have committed to a voluntary Code of Practice for tracing EL Insurance Policies (ELCOP). Under the Code, insurer commit to:
  - Retain, and do their best to search, EL policy records that exist, and
  - Retain future policy records for 60 years in ways that will make it easier to answer future enquiries from employees and their representatives.
6. As part of the commitment to search existing records, the ABI set up the EL Tracing Service. This enables claimants to search for historic EL records via the ABI as a last resort if they have been unable to trace the relevant insurer through other routes.

<sup>13</sup> Reporting of Injuries, Diseases and Dangerous Occurrences Regulations. Source: Health and Safety Executive.

<sup>14</sup> Based on successful claims for Industrial Injuries Disablement Benefit, DWP.

<sup>15</sup> Source: Compensation Recovery Unit. Average over 5 year period 2004/05 to 2008/09. The figure of two thirds on accident claims is based on DWP (2003) Review of ELCI: First Stage Report.

<sup>16</sup> EL insurance is written on a 'claims incurred' basis. This means that if an employee suffers a workplace accident or disease and their employer is found to have been negligent, then the insurer that was holding cover at the time of the event giving rise to the claim is liable. This can be distinguished from a 'claims made basis' where the liable insurer is the provider of cover at the time the claim is made.

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Table 1 below shows the number of enquiries to the Tracing Service since 1999 and success rates for each year. It is believed that the majority of enquiries relate to diseases.

**Table 1: Enquiries to the EL Tracing Service**

Review Period*	Number of enquiries	Successful traces	Unsuccessful traces	Success rate
1999-2000	1,062	262	800	25%
2000-2001	2,239	896	1,343	40%
2001-2002	3,753	1,576	2,177	42%
2002-2003	6,992	1,861	5,131	27%
2003-2004	6,299	1,700	4,599	27%
2004-2005	7,326	1,700	5,626	23%
2005-2006	6,658	1,851	4,807	28%
2006-2007	9,639	3,376	6,263	35%
2008	13,098	5,878	7,220	45%

\* Figures in each year relate to 1st November to 31st October (the review year). Figures for 2007 are annualised figures covering the 14 months from 1<sup>st</sup> November 2006 to 31 December 2007. This is to accommodate the new reporting year from 2008 to correspond with the calendar year.

Source: Code of Practice for Tracing Employer' Liability Insurance Policies: ABI/LMA report for 2008.

7. It is clear that the Tracing Service has led to some improvements. Success rates have increased in recent years from 23% in 2004/05 to 45% in 2008 though this is against a backdrop of rising enquiries so numbers of unsuccessful traces have increased. In 2008, 7,220 enquiries relating to 3,210 claimants were unsuccessful<sup>17</sup>. That is around 4% of all potential EL claims in that year<sup>18</sup>. Similarly, in 2006/07, there were 6,263 unsuccessful enquiries relating to around 4,100 claimants, again 4% of all potential EL claims in that year<sup>19</sup>. Each year, some individuals due to no fault of their own are left without compensation from their former employer/insurer. Some will be able to get help from the Government through the IIDB Scheme or the lump-sum scheme (Pneumoconiosis etc (Workers' Compensation) Act 1979) but others will be left with no compensation at all.
8. Unsuccessful traces relate to both older policies and to policies post-1999, following the introduction of the ELCOP as shown in table 2. When ELCOP started, some records had already been lost or destroyed so success rates for pre-1999 policies are likely to always remain below 100%. However, data shows that the success rates for post-1999 policies are not substantially higher than those for the period 1972-1999 despite a commitment made as part of ELCOP to retain future policy records for 60 years. In 2008, almost 15% of the unsuccessful non-mesothelioma enquiries relate to post-1999 policies. This suggests that the Code is not fully effective in retaining and/or search for records and that more should be done.

<sup>17</sup> Several enquiries may be made on behalf of one person's claim if, for example, there are several employers or insurance policies to be located. Source: Code of practice for Tracing Employer' Liability Insurance Policies: ABI/LMA report for 2008.

<sup>18</sup> 87,200 and 87,000 claims were notified in 2007/8 and 2008/09 respectively or an estimated 87,100 for the calendar year 2008 (source: Compensation Recovery Unit). 4% calculated by comparing 3,210 unsuccessful claimants against 90,310 potential EL claims (3,210 unsuccessful claimants plus 87,100 claims notified).

<sup>19</sup> 118,700 and 98,500 claims were notified in 2005/06 and 2006/07 respectively or an estimated 98,700 for the review period 06/07 (source: Compensation Recovery Unit). 4% calculated by comparing 4,114 unsuccessful claimants to 94,424 potential EL claims (4,114 plus 98,700 claims notified). In the 2006/07 review period covering 14 months, 4,800 claimants could not trace an EL policy or an estimated 4,100 claimants for 12 months.

**Table 2: Enquiries to Tracing Service by period of exposure**

Year	Period of exposure	Enquiries	Successful traces	Unsuccessful traces	Success rate
2005/06	Pre-1972	1,809	268	1,541	15%
	Post 1972	4,849	1,583	3,266	33%
2006/07*	Pre-1972	2,676	659	2,017	25%
	1972-1999	5,278	2,055	3,223	39%
	Post-1999	928	383	545	41%
2008 (Non-meso only)**	Pre-1972	1,817	701	1,116	39%
	1972-1999	6,566	3,015	3,551	46%
	Post-1999	1,637	814	823	50%

\* Figures for enquiries made in March-December 2007.

\*\* The 2008 figures relate to non-mesothelioma enquiries only.

Source: Code of practice for Tracing Employer' Liability Insurance Policies: ABI/LMA report various years.

## **RATIONALE FOR GOVERNMENT INTERVENTION**

9. The problem of tracing EL insurance is predominantly caused by imperfect information between employers/former employers, insurers, and employees who have had an accident at work or been diagnosed with a disease caused by work.
10. Employers may not retain out-of-date ELCI certificates especially once their business has ceased trading. There may be a number of reasons for this: (i) since 1<sup>st</sup> October 2008, there is no legal requirement for them to do so; (ii) they may not be aware that some diseases can appear decades after exposure to their cause and that former employees may decide to make a claim against them for the period they were exposed to the agents that caused their illness; and (iii) once the business has ceased trading, employers are no longer required to meet the costs of any claims so there are no benefits to them of retaining the ELCI certificate. The latter is known as an externality problem. There is a divergence between private and social benefit of retaining the ELCI certificate.
11. Turning to employees, they may also be unaware that some diseases can appear decades after exposure to their cause and that they may decide to make a claim against their former employer(s). So at the time that they were working for the employer(s), they do not make any effort to find out who the EL insurer is. When they are diagnosed with the disease, the records may have already been lost or destroyed.
12. Similar issues apply to insurers. There is no legal requirement for insurers to retain out-of-date records. However, as outlined in the background section, the ELCOP, which is a form of self-regulation, was introduced in 1999 and insurers made a commitment to retain records for 60 years though this does not appear to be fully effective. There is still imperfect information on all EL policies. Given all these issues, there is a rationale for the government to intervene to address the imperfect information problems and to ensure that there is a complete record of all EL policies going forward and to improve tracing of older policies.
13. In addition to this, there is a rationale for the government to intervene to support individuals who are unable to trace EL insurance records for both older policies and new policies. For individuals who have had an accident at work or been diagnosed with a disease caused by work, some are able to trace the EL insurers and are able to pursue compensation where appropriate. Others, however, in a similar situation due to no fault of their own discover that their former employer is no longer in business and

## Accessing Compensation

they cannot trace their EL insurance. So, there is an equity problem and a rationale for the government to intervene.

## POLICY OBJECTIVES

14. Based on the above market failures and inequity problems, the policy objectives are to:

- Improve the tracking and tracing of employment and EL insurance records for both past and new policies; and
- Support individuals who are unable to trace such records.

## SECTORS AND GROUPS AFFECTED

15. The main groups affected are insurers and employees who have had an accident at work or been diagnosed with a disease caused by work and are unable to trace the insurer(s). Employers / former employers may also be affected.

16. Employees who are unable to trace the insurer(s) are generally people who develop long-tail diseases, some time many years after exposure to the agent that caused the disease such as asbestos-related diseases. Workplace exposure to asbestos tends to be greater within industries associated with heavy industrial use of asbestos in the past, for example, shipbuilding, construction, steel, railway engineering and the insulation industry. In addition, these industries tend to be associated with certain geographical areas, such as the North East. However, workplace exposure to asbestos may also have occurred across a wider range of occupations and industries.

## OPTIONS

### Option 1 – Do nothing: keep the Employers' Liability Code Of Practice (ELCOP)

17. Insurers will continue to operate under the ELCOP. They will search records to the best of their ability in response to enquiries from claimants and keep their own future records in an easily searchable format for 60 years. The ABI will continue to run an EL Tracing Service.

18. It is clear that, while the ELCOP has led to some welcome improvements in successful traces from 25% in 1999-2000<sup>20</sup> to 45% in 2008, that still means that 3210 or around 40% of the people who need to use the ELCOP are unable to trace an insurance policy, leaving them without compensation. This is not acceptable and the Government are determined to do more. To achieve this, the Government propose the actions considered in Options 2 and 3.

### Option 2 – Employers' Liability Tracing Office (ELTO) including an electronic database

19. Create an ELTO to manage a central electronic database of EL policies and to operate the existing tracing service. A regulatory requirement would be introduced for all EL insurers to record and upload new EL policies onto the central electronic database. Historic EL policies may also be added if any new claims are made against them. The database should improve tracing EL policies. How the ELTO will be funded is being consulted on. For the purposes of this Impact Assessment, it has been assumed that the ELTO will be funded by the insurance industry though these costs may eventually be passed onto businesses through higher premiums. Even if a charge is levied for access to the database, it is likely that a large proportion of the charges could

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<sup>20</sup> Source: Code of Practice Review Statement 1999-2000. The original review year ran from 1 November - 31 October, but was changed to 1 January - 31 December in 2007. The 2008 review is the first to feature the new calendar year arrangement.

## Accessing Compensation

eventually end up as costs for the insurer (businesses) to pay alongside any civil damages for successful claims

20. An ELTO on its own does not meet both policy objectives set out above. It does not offer any support to individuals who are unable to trace EL policies so some individuals due to no fault of their own will be left with no compensation from their employer(s) or the insurance company.

### Option 3 – Employers’ Liability Insurance Bureau (ELIB)

21. An ELIB would have all the functions of an ELTO and be a compensation fund of last resort. Under this option, some individuals who are unable to trace EL insurance records could receive compensation from the ELIB. There are different sub-options or models the compensation fund could cover:

#### *Type of accident/disease*

- a) All claims
- b) All long-tail disease claims (including mesothelioma claims)
- c) Mesothelioma claims only

#### *Timing of claim*

- d) Claims where an insurer/employer(s) cannot be traced
- e) Claims brought from the start of the scheme
- f) Claims where diagnosis is made after the start of the scheme

22. Option 3, an ELIB with all the functions of an ELTO and a compensation fund of last resort, is the preferred option as it meets both the policy objectives of improving the tracking and tracing of employment and EL insurance records for both past and new policies and it offers support to individuals who are unable to trace such records.

## **COSTS AND BENEFITS**

23. It is assumed that the proposals could be implemented from April 2011 due to the need for changes to existing rules. Due to the limited and incomplete datasets, it is extremely difficult to accurately forecast the future number of enquiries to the Tracing Service, success rates and the number of people that could be left without compensation. As a result, historical figures have been used where possible. The costs and benefits are considered over a ten-year period (2010/11 to 2019/20). The full costs and benefits could take up to 40 years to be realised due to the lag between exposure and diagnosis of some long-tail industrial diseases. There is, however, insufficient data to consider the costs and benefits over a 40-year period.

### **Option 1 - Do nothing: keep the ELCOP**

24. This option has no additional benefits or costs and is used as the baseline for comparison with other options.

### **Option 2 – ELTO including an electronic database**

25. The introduction of a new regulatory requirement for all EL insurers to record and upload new EL policies onto a central database from April 2011 should result in a complete record and 100% successful traces for new policies. Some individuals who would have been unable to trace the EL policy in the absence of the central database may now receive compensation. The table summarises the costs and benefits for the different groups for the ten-year period 2010/11 to 2019/20 in present value terms. Further details can be found in the technical annex.

**Table 3: Summary of costs and benefits to different groups under option 2  
(2011/12 to 2019/20 present value)**

Group	Benefits	Costs	Net benefits/costs
Claimants	Increase in successful traces and compensation through civil claims (£5m after deducting for recoveries from government for benefits already paid).	Legal fees for those successful at tracing an EL policy but fail when they pursue a civil claim (£1m).	Net benefit of £4m.
Insurers	Time saving for individual insurers from no longer having to search their own databases to respond to enquiries relating to new EL policies (£6m).	Setting up central electronic database (£2m) and running costs (£5m). (Note that funding options for the database are being consulted on. It could be funded either by a levy on insurers or through access charges. Charging for access is likely to mean that the majority of these charges eventually end up as costs for insurers to pay alongside any civil damages. So for the purposes of the Impact Assessment, these costs are assumed to fall to the insurance industry).	Net cost of £19m.  Net cost of £16m excluding one-off set-up costs.
		Adapting systems to record and transfer information to database (£2m) and ongoing costs of recording and providing data (£7m). Intermediaries will incur costs but no estimates are available).	
		Increase in compensation due to additional numbers of successful traces (£6m) and increase in legal costs (£4m).	
Government/ taxpayer	Increase in successful traces and compensation through civil claims results in greater recoveries for benefits already paid (<£1m).		Net benefit of <£1m.
	Central database could over time be used to check employers' compliance in purchasing ELCI thus making it easier and possibly cheaper for government to enforce the policy.		

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Economy	Time saving for insurers (£6m).	Start-up and running costs of central database; system adaptations and ongoing costs of recording and providing data to database; legal costs to claimants and insurers (£21m).	<p>Net cost of £15m.</p> <p>Net cost of £11m excluding one-off set-up costs.</p> <p>Note that the value of the compensation is a transfer within the economy and is not an economic cost or benefit.</p>
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26. Creating an ELTO to manage a central electronic database of EL policies could generate a net benefit for individuals. Some individuals who would have been unable to trace the EL policies in the absence of the central database would be able to receive compensation. The net benefit to individuals is estimated at £4m over the ten-year period. There would be a net cost for insurers as they will incur costs in setting-up and running the central database, as well as adapting their systems to transfer and record all new EL policy details. Further, they may pay out additional amounts in compensation and incur additional legal fees. They could, however, save time and resources from no longer having to search their own databases to respond to enquiries relating to new EL policies. Government is also expected to benefit from extra recovery of benefits already paid for the additional successful traces of EL policies. The net benefit to government is estimated to be less than £1m over ten years.

27. Overall, there is a net cost to the economy of this policy option. This net cost is incurred in order to redistribute money from insurers to individuals who have had an accident at work or been diagnosed with a disease caused by work. The cost of compensation incurred by insurers is valued at the same amount as the benefit that accrues to individuals. It might be argued that the benefit to individuals should be more heavily weighted for distributional reason. The impact of a policy, programme or project on an individual's well-being may vary according to his or her income. The rationale being that an extra pound would give more benefit to a person who is deprived than to someone who is well off. In economics, this concept is known as the 'diminishing marginal utility of additional consumption'. So the loss to insurers may be less than the gain to individuals in this case as the latter are less well-off. Distributional impacts have not been taken into account in this impact assessment due to the difficulties in determining distributional weights.

### Option 3 – Employers' Liability Insurance Bureau

28. Within this option there are various sub-options or models which are being consulted on. The sub-options considered here are:

- (i) All claims brought in the last three years where an EL policy/employer(s) could not be traced.
- (ii) Mesothelioma claims brought in the last three years where an EL policy/employer(s) could not be traced.
- (iii) All claims brought from the start of the scheme (11/12).
- (iv) Mesothelioma claims brought from the start of the scheme.

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29. For sub-options (i) and (ii), a time-limit has been used for ease of calculation. The consultation does consider allowing all historical claims where an EL policy/employer(s) cannot be traced. The cost of this would be significantly higher.
30. The consultation considers all claims where a diagnosis is made after the start of the scheme. There is insufficient data to estimate the costs and benefits of this though it can be assumed that these will be slightly lower than those in options (iii) to (iv). There is also insufficient data to estimate costs and benefits for options which consider 'long-tail diseases' only. There is no clear definition for this so it is not possible to estimate average compensation amounts, for example.
31. For each of the sub-options, it is assumed that the ELIB would meet claims to dependants after a person has died if a claim has not previously been compromised (settled). If this was not the case then costs and benefits could be lower. It is further assumed that the ELIB would operate in a similar way to the civil cases:
- The ELIB would pay out in all appropriate claims only so the success rates are the same as those for civil cases (76%).
  - Legal costs (if any or administrative costs) are similar to civil cases.
  - Compensation amounts are similar to civil cases.
32. An ELIB would have all the costs and benefits of an ELTO outlined in option 2 above plus some additional costs and benefits associated with being the compensation fund of last resort. These include the costs of setting up and running the Bureau, the compensation paid by the Bureau and the associated legal costs (if any). These are difficult to estimate as they would depend very much on the structure and how the Bureau functions. For these reasons, the set up and running costs have not been estimated. The table below summarises the potential cost of the compensation paid by the ELIB and legal costs for the different sub-options. These assume the costs of the ELIB are met by the insurance industry. However, the consultation asks whether there are alternative options for funding.

**Table 4: Summary of compensation paid by the ELIB and legal costs (2011/12 to 2019/20 present value)**

<b>Sub-option</b>	<b>Claimants</b> <i>(compensation minus recoveries)</i>	<b>Insurers</b> <i>(compensation)</i>	<b>Government</b> <i>(additional recoveries made)</i>	<b>Economy</b> <i>(legal costs)</i>
(i) All claims in last 3 years	£480m Legal cost: £44m	£506m Legal cost: £138m	£26m	£182m
(ii) Meso. claims in last 3 years	£387m Legal cost: £23m	£407m Legal cost: £72m	£20m	£95m
(iii) All claims from start of scheme	£389m Legal cost: £35m	£410m Legal cost: £111m	£21m	£146m
(iv) Meso. claims from start of scheme	£314m Legal cost: £18m	£330m Legal cost: £58m	£16m	£77m

33. Total compensation is lowest for option (iv) covering mesothelioma claims brought from the start of the scheme only. Insurers would pay out an additional £330m in the ten years with £314m going to individuals and £16m going to government for benefits already paid. Total compensation is highest for option (i) covering all claims brought in

## Accessing Compensation

the last three years where an EL policy/employer(s) could not be traced. Insurers would pay out an additional £506m in the ten years with £480m going to individuals and £26m going to government for benefits already paid.

34. Table 5 below provides the total net costs/benefits for the different parties of an ELIB (sum of tables 3 and 4):

**Table 5: Total net costs/benefits to different groups under option 3**  
(2011/12 to 2019/20 present value) £m

<b>Sub-option</b>	<b>Claimants</b> <i>Net benefit</i>	<b>Insurers</b> <i>Net cost</i>	<b>Government</b> <i>Net benefit</i>	<b>Economy</b> <i>Net cost</i>
(i) All claims in last 3 years	441	663	26	196
(ii) Meso. claims in last 3 years	369	498	20	109
(iii) All claims from start of scheme	358	540	21	161
(iv) Meso. claims from start of scheme	300	408	16	92

35. Similar to the ELTO, a net benefit is expected for claimants and government and a net cost is expected for insurers and the economy as a whole in each of the options considered for an ELIB. The most costly option is, of course, option (i) covering all claims brought in the last three years where an EL policy/employer(s) could not be traced. The net cost to the economy is estimated at £196m over the ten year period and approximately 31,000 individuals are expected to receive payment from the ELIB over the ten years. The option with the lowest cost is option (iv) covering mesothelioma claims only brought from the start of the scheme. The net cost to the economy is estimated at £92m over the ten year period with approximately 3,000 individuals receiving payment from the ELIB over the ten year period.

## Summary

36. Both the ELTO and the ELIB have net economic costs to society. Costs need to be incurred in order to address the existing or potential future inequity where certain individuals are/maybe unable to trace EL insurance records due to no fault of their own. Looking at the main groups affected, both options have a net cost for insurers and a net benefit for individuals and government as income is redistributed from insurers to individuals in the form of additional compensation that would not previously have occurred and to government for benefits already paid. Costs to insurers may ultimately be passed onto businesses through higher insurance premiums. This has not been taken into account in the impact assessment.

37. Option 3 is the most comprehensive option. Although the impact assessment suggests that this option has a higher net cost to the economy as a whole, the equity effects of redistributing resources to individuals who through no fault of their own are unable to trace an EL policy/employer(s) have not been taken into account. The same weighting has been given to the costs of compensation to insurers and the gain to individuals in the impact assessment. Equity arguments support a higher weighting for gains to individuals but these cannot be quantified. Gains to individuals are substantially greater in option 3 as an ELIB would be a compensation fund of last resort.

## **SPECIFIC IMPACT TESTS**

### **Competition Assessment**

38. Under option 3, the preferred option, insurers are likely to incur additional costs. Insurers may pass on some or all of the increase in costs in the form of higher EL insurance premiums. It is difficult to determine at this stage whether and how competition in the ELCI market would be affected. This would be dependent on the funding arrangements.

### **Small Firms Impact Test**

39. As referred to in the competition assessment above, insurers are likely to incur additional costs which may have an effect on EL insurance premiums. This may have an effect on small firms that are required to take out ELCI. It is not possible to estimate the size of the impact at this stage. This would be dependent on a number of factors including the funding arrangements, and if and what proportion of the costs are passed on in the form of higher premiums.

40. Note that almost three quarters of businesses are sole proprietorships and partnerships comprising only the self employed owner manager(s) and companies comprising only an employee director so these businesses would be unaffected as long as the employee also owns 50% or more of the issued share capital in the business. Family businesses which are not incorporated as limited companies are also exempt from ELCI.

### **Legal Aid**

41. With the exception of clinical negligence cases, personal injury cases are generally not eligible for legal aid. Therefore, any increase in successful traces under options 2 and 3 and subsequent claims for compensation would be primarily through Conditional Fee Agreements, and would be no impact on legal aid.

### **Sustainable Development, Carbon Assessment, Other Environment**

42. It is not expected that the options under consideration would have any impact in these areas.

### **Health impact assessment**

43. It is not expected that the options under consideration would have any impact on health or health inequalities.

### **Race equality, Sexual orientation, Religion or belief**

44. No information is available on race, sexual orientation, religion or belief of those unable to trace EL insurance records. However, it is anticipated that there would be no major impact on these.

### **Disability equality**

45. Option 3, the preferred option, is likely to impact disproportionately on disabled people but in a positive way. Those unable to trace an EL policy/employer(s) are predominantly individuals with mesothelioma or some other long-tail disease. An ELTO

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should increase the numbers of successful traces of EL policies to enable civil cases to be pursued and compensation to be awarded where appropriate. The ELIB would also seek to compensate those unable to trace an EL policy/employer(s).

## Gender equality

46. No information is available on the gender of those unable to trace EL insurance records. However, workplace accidents and occupation exposure to diseases affect primarily men. Statistics for EL claims notified to the Compensation Recovery Unit in 2008/09 show that 73% of claims were been made by men and 27% by women. Data on the IIDB scheme also show that in the quarter to March 2009, 95% of new disease claims for certain prescribed diseases were made by men<sup>21</sup>. While most cases affect men, treatment of cases affecting women is not expected to be different from those for men.

## Age equality

47. No information is available on the age of those unable to trace EL insurance records. Those unable to trace an EL policy/employer(s) are predominantly individuals with mesothelioma or some other long-tail disease. Due to the, often, long lag between exposure and diagnosis of these diseases, it is likely that older people would be affected by the policy options considered but in a positive way. This is supported by data on the IIDB scheme which shows that in the quarter to March 2009, nearly 60% of new disease claims for certain prescribed diseases were made by those over pension age<sup>22</sup>.

## Human rights

48. The options considered are not expected to have any impact on human rights.

## Rural Proofing

49. The options considered are not expected to have any impact on rural communities.

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<sup>21</sup> Source: DWP admin data ([http://research.dwp.gov.uk/asd/asd1/iidb/iidb\\_quarterly\\_mar09.xls](http://research.dwp.gov.uk/asd/asd1/iidb/iidb_quarterly_mar09.xls)).

<sup>22</sup> Source: DWP admin data ([http://research.dwp.gov.uk/asd/asd1/iidb/iidb\\_quarterly\\_mar09.xls](http://research.dwp.gov.uk/asd/asd1/iidb/iidb_quarterly_mar09.xls)).

## 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	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexes

### TECHNICAL ANNEX

#### OPTION 2: ELTO INCLUDING AN ELECTRONIC DATABASE

1. Details of the additional costs and benefits to different group of the ELTO are outlined below.

##### *Claimants*

##### Benefits

2. The introduction of a new regulatory requirement for all EL insurers to record and upload new EL policies onto a central database from April 2011 should result in a complete record and 100% successful traces for new policies. Some individuals who would have been unable to trace the EL policy in the absence of the central database would now receive compensation.
3. In 2008, 1,637 non-mesothelioma enquiries were made relating to policies in place in the ten years since the ELCOP was introduced (1999-2008). Half of these (which relates to an estimated 420 claimants) were unsuccessful in tracing an EL policy. If an ELTO had been in place since 1999 instead of an ELCOP, it may be assumed that these individuals would have managed to trace an EL policy, and some would have gone on to receive compensation through a civil claim<sup>23</sup>. The value of the compensation is estimated at £1m after deducting for recoveries that government would have made for benefits already paid to individuals<sup>24</sup>. This is assumed to be the benefit to individuals as a result of the ELTO, 10 years after its introduction (2010/11). In years 1-9, enquiries and additional numbers of individuals successful at tracing an EL policy are assumed to increase from a starting level of zero up to the year 10 level at a constant rate. The total increase in compensation to individuals over the ten year period is estimated at £5m (present value) (note that this is a transfer from insurers to individuals and not a benefit for the economy as a whole).

##### Costs

4. There is a small cost to individuals who are successful in tracing an EL policy but fail when they pursue a civil case (legal costs of those who are successful are borne by losing party i.e. insurer). They would have to bear the costs of the successful party i.e. insurer and their own legal fees<sup>25</sup>. This is estimated at £1m over the ten year period (present value).

##### Net benefit

5. The net benefit to claimants is estimated at £4m over the ten-year period (present value).

<sup>23</sup> Estimated success rate of civil claims notified is 76% (average for 2002/03 to 2006/7). Source: Compensation Recovery Unit.

<sup>24</sup> ABI report 2008: Every year insurers pay out £1.5bn in EL claims (including legal fees) (average gross claims per year over 5 yrs) to around 186,000 claims (average number of claims settled over 5 years). It is estimated that legal costs represent 40% of total claims costs for EL (source: DWP Review of ELCI, First Stage Report). Estimated payment per successful claim is therefore  $(£1.5bn \times 60\%) / 186,000 = £4800$  minus an estimated £300 recovered by government for benefits already paid. Value of compensation  $£1m = 420 \text{ claimants} \times £4,500 \times 76\% \text{ success rate}$ .

<sup>25</sup> In Conditional Fee Agreements ('no win, no fee'), claimants would not have to bear their own legal fees. They may also not have to bear the legal fees of the successful party if they have 'after the event' insurance. However, for simplicity, it is assumed that they bear these costs. Legal costs are assumed to be the same as those paid in insurers (£3,200).

### *Insurers*

#### Benefits

6. There would be some cost savings for insurers. Currently when an enquiry is made to the Tracing Service, details of the enquiry are sent to all insurers who each spend an estimated 1-2 hours tracing the EL policy. In the future, the ELTO will be used as first resort for all EL policies. Only where pre-April 2011 policies cannot be found in the central database would the enquiry be passed onto individual insurers. Over time as the database becomes more comprehensive, enquiries to individual insurers would decrease. The estimated cost saving is £6m over the ten year period (present value)<sup>26</sup>.

#### Costs

7. The ABI and Lloyds Market Association (LMA) estimate the cost of setting up the ELTO and developing the central electronic database to be around £1.7m. Running costs are estimated at £700,000 per year thereafter (£5m over ten years (present value)). Funding options for the database are being consulted on though. It could be funded either by a levy on insurers or through access charges. Charging for access is likely to mean that the majority of these charges eventually end up as costs for insurers to pay alongside any civil damages. So for the purposes of the Impact Assessment, these costs are assumed to fall to the insurance industry.
8. EL insurers would also incur costs in adapting their systems so that they can record and transfer the required EL policy information to ELTO. These costs are estimated by ABI and LMA to be in excess of £2m. Ongoing costs of recording and providing the data are estimated at between £500,000 to £1m per year (£7m over ten years (present value) assuming £1m per year). Intermediaries such as brokers would also incur costs but no estimates are available.
9. There would be an increase in compensation due to additional numbers of successful traces. As per paragraph 2 above, this is estimated at £6m over the ten years (present value) - £5m of this is transferred from insurers to claimants and less than £1m is transferred to government for benefits already paid. In addition to the compensation, insurers would bear legal costs estimated at £4m over the ten years<sup>27</sup>.
10. In total, the additional cost of introducing an ELTO to insurers is estimated at £4m for set-up costs (present value) and on-going costs of £22m over the ten years for additional compensation, legal costs and running costs of database. It should be noted that although the additional costs are borne by the insurance industry, it is possible that they may pass the costs onto employers through higher premiums for ELCI.

#### Net cost

11. The net cost to the insurance industry over the ten-year period including start-up costs is estimated at £19m (present value).

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<sup>26</sup> Time saving assumed to be one hour on the conservative side per enquiry per insurer signed up to ELCOP (approx 80). One hour valued at £13, the total cost of a Pensions/Admin Clerk (source Annual Survey of Hourly Earnings, 2009, uplifted by 30% to account for oncosts).

<sup>27</sup> It is estimated that legal costs represent 40% of total claims costs for EL. Source: DWP Review of ELCI, First Stage Report.

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### *Government/taxpayer*

#### Benefits

12. Increases in successful traces and civil compensation for individuals would result in greater recoveries for government. This is estimated to be less than £1m over the ten years (present value) (note that this is a transfer from insurers to government and not a benefit for the economy as a whole).
13. Another potential benefit for government of the central database is that it could over time be used to check employers' compliance in purchasing ELCI thus making it easier and possibly cheaper for government to enforce the policy. This benefit has not been estimated.

### *Economy*

#### Benefits

14. The main benefit to the economy is the time saving for insurers estimated at £6m over the ten years (present value).

#### Costs

15. The costs to the economy include the start-up and running costs of the electronic database, system adaptations, ongoing costs of recording and providing data and legal costs to claimants and insurers. This is estimated at a total of £21m over the ten years (present value).

#### Net cost

16. Overall, there is a net cost to the economy of £15m over the ten-year period (present value). Excluding start-up costs, the net cost is £11m. As noted above, the value of compensation is a transfer within the economy from insurers to claimants/government and is not an economic cost or benefit.

## **OPTION 3: ELIB**

17. An ELIB would have all the costs and benefits of an ELTO outlined in option 2 above plus some additional costs and benefits associated with being the compensation fund of last resort. These include the costs of setting up and running the Bureau, the compensation paid by the Bureau and the associated legal costs (if any). These are difficult to estimate as they will depend very much on the structure and how the Bureau functions. For these reasons, the set up and running costs have not been estimated. The methodology and assumptions used to estimate the potential cost of the compensation paid by the ELIB and legal costs for the different sub-options are outlined follow.

#### Mesothelioma claims

18. Mesothelioma claims to the ELIB are based on numbers of unsuccessful traces in 2008 (387 claimants). This is assumed to be constant over the ten year period under consideration. This is likely to be an under-estimate in the first part of the next ten years but an over-estimate in the latter part as mesothelioma deaths are forecast to rise until 2016 before gradually falling. For option (iv), mesothelioma

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claims is assumed to equal 1,161 in year 1 (386 x 3), then 387 for each year thereafter.

19. Compensation is estimated to be paid to 76% of these cases (294 cases) (success rate for current civil cases) at approximately £130,000 per case<sup>28</sup>. Legal/administrative costs are assumed to be 15% of total claims cost<sup>29</sup>. Government assumed to recover approximately £6,500 per case<sup>30</sup>.

### All claims

20. Total claims to the ELIB are based on numbers of unsuccessful traces (3,210 claimants). This is assumed to be constant over the ten year period under consideration.
21. Compensation is estimated to be paid to 76% of these cases (success rate for current civil cases). Compensation, legal/administrative costs and government recoveries for mesothelioma cases are assumed to be the same as those outlined above. For all other cases, compensation is estimated at £4,800 per case<sup>31</sup>. Legal/administrative costs are assumed to be 40% of total claims cost<sup>32</sup>. Government assumed to recover approximately £300 per case<sup>33</sup>.

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<sup>28</sup> UK Asbestos Working Party Update 2008.

<sup>29</sup> £24,000; source: UK Asbestos Working Party Update 2008.

<sup>30</sup> Average 1979 Act payment in 2008/9 = £18,500 (source: DWP admin data). Government recovers on approximately 35% of mesothelioma cases (£18,500 x 35% = £6,500).

<sup>31</sup> See footnote 23.

<sup>32</sup> See footnote 23.

<sup>33</sup> See footnote 23.

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