

02 December 2004

Ms Amanda O'Neill
Department of Enterprise, Trade and Investment
Room 44
Netherleigh
Massey Avenue
Belfast
BT4 2JP
Northern Ireland

Dear Ms O'Neill,

Department of Enterprise, Trade and Investment (DETINI): Proposals to remove the requirement for Employers' Liability Compulsory Insurance (ELCI) from limited companies that employ only their owner – Partial Regulatory Impact Assessment

APIL welcomes the opportunity to respond to the recent Department of Enterprise, Trade and Investment (DETINI) consultation and Partial Regulatory Impact Assessment (RIA) on 'proposals to remove the requirement for Employers' Liability Compulsory Insurance (ELCI) from limited companies that employ only their owner' in Northern Ireland. APIL has already responded in relation to the introduction of such a scheme in Great Britain – please see enclosed a copy of APIL's response – and feels the points made in the included response are equally applicable to Northern Ireland.

APIL believes that the removal of the compulsory requirement to purchase ELCI cover by incorporated owners/sole employees will leave both employees and employers vulnerable and without much needed protection. While a large percentage of the 35,000-plus small businesses in Northern Ireland which consist of a sole owner/sole employee who work on their own, there are

instances where an owner has various other people working under his direction and control who could be considered employees. While these workers may be sub-contractors for tax purposes – i.e. not legally an employee – the fact that the owner provides the materials and tools necessary for the work, and also dictates the work to be done, will mean that a duty of care is owed to these ‘employees’.

APIL is concerned about the effect the removal of ELCI will have on casual workers, specifically self-employed sub-contractors in high risk industries such as construction. The removal of the ELCI requirement will have a disastrous impact on the ability of ‘subbies’ (a labourer who has the tax status of a sub-contractor) to get fair and just compensation. In terms of the potential scale of the problem, the National Audit Office has stated that *“around a third of workers [in the construction industry] are allegedly self employed the highest proportion of any sector of the United Kingdom’s economy”*¹. While it has not been possible to obtain figures for Northern Ireland, the number of deaths and injuries for self-employed workers in the construction industry has increased by 42 per cent between 1997/98 and 2002/03 in Great Britain, compared to only a six per cent increase for employed workers in the same time period. It is not inconceivable that similar, if not higher, figures are present in the Northern Ireland jurisdiction.

APIL is encouraged by the DETINI’s recognition that *“[t]he degree to which [the removal of ELCI] would present a significant additional risk [to employees] is something [the DETINI] wish to explore as part of this consultation”*. APIL considers, however, that by leaving it up to these incorporated owners/sole employees to check *“existing guidance”*, and to make sure that they have EL insurance when hiring seasonal or casual workers, is a dangerous precedent to set. APIL believes this will not only result in injured workers being unable to claim, but also businesses being unsure about their liability in respect of the people working under their guidance and supervision.

¹ National Audit Office report (HC 531) – *‘Health and Safety Executive: Improving health and safety in the construction industry’* (12 May 2004) – Executive Summary, page 2

The intention behind making employers' liability insurance compulsory was to protect innocent workers against their employer's negligence. Removing the requirement for ELCI for firms of any type would put at risk the very people that the act originally was meant to protect.

The clear impression given by the DETINI is that the £250 per year per incorporated owner/sole employee (Association of British Insurers (ABI) estimate) which will be saved by abolishing ELCI is a significant justification for the lack of financial restitution a worker will receive when he is seriously injured by his employer. The figure of £250 seems a high price to pay to leave casual workers high and dry in the event of an accident. Is it right that an injured person is denied compensation so that a company can save themselves an amount that is less than a year's car insurance in many cases?

Within the Northern Ireland jurisdiction there are further implications of removing ELCI in relation to paramilitary organisations and money laundering. Anecdotal evidence suggests that racketeering by paramilitary organisations is prevalent within the construction industry and the removal of ELCI could facilitate this practice. For instance, a paramilitary organisation could threaten an employer with injury to his workers if it does not receive £5000. A possible means of providing this money, without involving external authorities, is for an employed 'subbie' to submit a false personal injury claim. Whereas previously the money for this claim would have to be provided by the insurance company – due to the compulsory ELCI policy – the employer now has to pay for this compensation out of his own pocket. This money would, in turn, be given to the paramilitary organisation. This payment would subsequently be recorded by the employer as a personal injury payment, and with no third-party scrutiny it is unlikely it would – or could – be identified as an illegal payment.

A similar tactic could also be used for tax avoidance purposes. In this instance the employer would pay the damages for a false personal injury claim directly

to the 'subbie' without the need for the false claimant to declare it to the Inland Revenue².

Furthermore, this RIA was a real opportunity to address the fundamental issue of how to record compulsory EL insurance. Insurers should be compelled to give details of a company's EL policies to a central database or agency in order to see who is operating without insurance. For example, an Employers' Insurance Bureau (EIB) along the same lines as the current Motor Insurance Bureau (MIB) could easily be established.

In addition, APIL believes that such a database would allow solicitors to locate insurance providers in cases where the original employer may have gone out of business. For example, the recent local cases involving asbestos related illnesses contracted by employees while working at the Harlan & Wolff shipyards in Belfast has highlighted the need for such a database. In order for such information to be effective, however, the database should be promoted to local solicitors and/or local solicitors should be able to gain access to the database.

This Employers' Insurance Bureau (EIB) would also act as an insurer of last resort, and enable employees injured by an uninsured company to seek redress.

If you have any questions or queries concerning this letter or APIL's response, please do not hesitate to contact me on 0115 938 8710.

Best regards

Yours sincerely

Stephen Gray
APIL Northern Ireland Co-ordinator

² Personal injury awards are not taxed.