What does the Deregulation Act 2015 mean for personal injury lawyers?

27/05/2015

Personal Injury analysis: The Deregulation Act 2015 (DA 2015) has ushered in a myriad of changes, but what do personal injury lawyers need to be aware of? Katherine Deal, barrister at 3 Hare Court, outlines the key changes and the likely impact for personal injury lawyers.

Original news

Deregulation Act 2015, LNB News 27/03/2015 164

What do personal injury lawyers need to know about DA 2015?

DA 2015 received Royal Assent on 26 March 2015. Some of its provisions have already passed into law. Perhaps fittingly for an Act whose purpose is to cut out red tape and simplify regulatory processes, it passed into law with minimal fanfare despite affecting areas as wide-ranging as written guilty pleas in the magistrate's court, tenancy deposits and the sale of liqueur chocolates to children. Although much of DA 2015 will pass forever unremarked by most personal injury practitioners, there are a few provisions which should not go entirely unnoticed.

Road traffic

The Road Traffic Act 1988 (RTA 1988), and particularly ss 148, 151 and 152, are amended and simplified in a number of respects with effect from 30 June 2015:

- insurance certificates still need to be delivered, but the policy is effective from inception with or without delivery
- there is no longer any need to return a certificate or make a statutory declaration if the policy is cancelled midway through--although many insurers have long since attempted to simplify the process by reducing the effort required to a simple, one line email, DA 2015 reduces that burden still further, as well as decriminalising it
- an insurer who has cancelled but not retrieved a policy is able to avoid liability without the need to issue declaratory proceedings (although will remain an Article 75 (the Uninsured Drivers' Agreement) insurer unless and until the relevant art has been amended)

These changes will have the effect of simplifying for insurers the procedures needed to escape contractual or statutory liability. An insurer which has immediately updated the Motor Insurance Database should be able to minimise the likelihood of being the statutory insurer even after the policy is cancelled. This may induce insurers to cancel the contract for rather more minor breaches than is currently the case, since the cancellation will take effect even if the policy is not returned. However, if the contractual cancellation was not entirely in accordance with the policy, RTA 1988, s 151 liability will continue--potentially leading to the unedifying spectacle of competing insurers arguing it out to establish who, if anyone, should be regarded as on cover.

Health and safety

By DA 2015, s 1 the Health and Safety at Work etc Act 1974, the cornerstone of much employer's liability litigation is amended in one major area.

DA 2015, s 3, which imposed a general duty on employers and the self-employed to persons other than employees, will be amended so that the self-employed are only under a duty if they conduct an undertaking of a prescribed description. The type of undertaking affected will be described in regulations, which have not yet been drawn up. So, depending on the undertaking run, many self-employed individuals will cease to be potentially liable for the health and safety of non-employees.

Fatal accidents

It is quite clear that the provisions of the Data Protection Act 1998 only extend to the living (see DA 2015, s 7). So those looking to bring claims on behalf of deceased parties have been unable to use those provisions to obtain personal data.

DA 2015, s 85 now gives HMRC the statutory power (not duty) to disclose information to claimants under the fatal accidents legislation or to the personal representatives of a deceased person who suffered personal injuries before death. It will avoid the need for a court order and may assist early resolution of claims if all of the relevant financial information can be obtained at an early stage.

This is likely to be of particular assistance in mesothelioma claims, where HMRC records can be important in identifying past employers as prospective defendants. It is perhaps an unusual case where the relevant claimant is unable to identify a single employer (since a single employer is all that is needed following the entry into effect of the Compensation Act 2006, s 3) but those rare cases will benefit. Indeed, since the requirement for a claimant to have suffered a personal injury before death is not limited to situations where that personal injury is the cause of death, it may also assist in other occupational illness claims where a prospective claimant is only aware of the damage many years later at an advanced age and dies before steps can be taken to litigate.

The power may also be utilised by the diffuse mesothelioma payment scheme (run by the Department for Work and Pensions), which has been taking applications for a little over a year and which can make payments to sufferers or their estates/dependents where no employer has been identified. It is quite possible that the power may be used to identify a potential past employer and shift the risk from the payment scheme back to the relevant insurers.

DA 2015, s 85 does not apply to fatal accidents legislation of other jurisdictions outside the UK. So the dependents of an Englishman who died in an accident in Germany who seeks to bring the claim in England based on provisions of German fatal accidents legislation would not, at this stage at least, be able to persuade HMRC to divulge the relevant information.

What action should lawyers be taking at this stage?

DA 2015 is unlikely to have much, if any, effect on cases which have already commenced. However, some passing familiarity with at least some of the changes may be useful to personal injury practitioners in the longer term.

Interviewed by Evelyn Reid.

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