

## 1989 No. 84

## ROAD TRAFFIC AND VEHICLES

**Motor Vehicles (Compulsory Insurance) Regulations  
(Northern Ireland) 1989**

*Made* . . . . . 14th March 1989

*Coming into operation* . . . . . 24th April 1989

The Department of the Environment, being a department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to compulsory insurance in respect of, and other means of providing for, civil liability in relation to motor vehicles and trailers, in exercise of the powers conferred by that section and of all other powers enabling it in that behalf, makes the following Regulations:

*Citation and commencement*

1. These Regulations may be cited as the Motor Vehicles (Compulsory Insurance) Regulations (Northern Ireland) 1989 and shall come into operation on 24th April 1989.

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations, “the Order of 1981” means the Road Traffic (Northern Ireland) Order 1981(d).

*Cover to be provided by the policy*

3.—(1) Article 92 of the Order of 1981 (requirements in respect of policies of insurance) shall be amended in accordance with paragraphs (2) to (4).

(2) In sub-paragraph (1)(b) of that Article (policy to cover liability in respect of death or bodily injury), after the words “death of or bodily injury to any person” insert the words “or damage to property”.

(3) For paragraph (2) of that Article (liabilities not required to be covered by the policy) substitute the following paragraph—

“(2) The policy shall not be required—

- (a) to cover liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of the insured or in respect of bodily injury or damage to property

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(a) S.I. 1972/1811

(b) 1972 c. 68

(c) 1954 c. 33 (N.I.)

(d) S.I. 1981/154 (N.I. 1)

sustained by such a person arising out of and in the course of his employment;

- (b) to provide insurance for more than £250,000 in respect of all such liabilities as may be incurred in respect of damage to property caused by, or arising out of, any one accident involving the vehicle;
- (c) to cover liability in respect of damage to the vehicle;
- (d) to cover liability in respect of damage to goods carried for hire or reward in or on the vehicle or in or on any trailer (whether or not coupled) drawn by the vehicle;
- (e) to cover any liability of a person in respect of damage to property in his custody or under his control; or
- (f) to cover any contractual liability.”

(4) In paragraph (5) of that Article (definition of “policy of insurance”), after the word “note” insert the words “and the expression “accident” includes two or more causally related accidents”.

(5) In consequence of paragraph (3), Article 103(2) of the Order of 1981 (which empowers the Department to make regulations for the purposes of Article 92(2)(b) of that Order) shall cease to have effect.

#### *Duty of insurers, etc., to satisfy judgments*

4. For Article 98 of the Order of 1981 (rights of third-parties against insurers) substitute the following Articles—

*“Duty of insurers or persons giving security to satisfy judgment against persons insured or secured against third-party risks*

98.—(1) This Article applies where, after—

- (a) a certificate of insurance has been delivered under Article 92(4) to the person by whom a policy has been effected, or
- (b) a certificate of security has been issued under Article 93(2) to the person to whom a security has been given,

a judgment to which this paragraph applies is obtained.

(2) Paragraph (1) applies to judgments relating to a liability with respect to any matter where liability with respect to that matter is required to be covered by a policy of insurance under Article 92 and either—

- (a) it is a liability covered by the terms of the policy or security to which the certificate relates, and the judgment is obtained against any person who is insured by the policy or whose liability is covered by the security, as the case may be; or
- (b) it is a liability, other than an excluded liability, which would be so covered if the policy insured all persons or, as the case may be, the security covered the liability of all persons, and the judgment is obtained against any person other than one who is insured by the policy or, as the case may be, whose liability is covered by the security.

(3) In deciding for the purposes of paragraph (2) whether a liability is or would be covered by the terms of a policy or security, so much of the

policy or security as purports to restrict, as the case may be, the insurance of the persons insured by the policy or the operation of the security by reference to the holding by the driver of the vehicle of a licence authorising him to drive it shall be treated as of no effect.

(4) In sub-paragraph (2)(b), “excluded liability” means a liability in respect of the death of, bodily injury to, or damage to the property of any person who, at the time of the use which gave rise to the liability, was allowing himself to be carried in or upon the vehicle and knew or had reason to believe that the vehicle had been stolen or unlawfully taken, not being a person who—

- (a) did not know and had no reason to believe that the vehicle had been stolen or unlawfully taken until after the commencement of his journey; and
- (b) could not reasonably have been expected to have alighted from the vehicle.

In this paragraph the reference to a person being carried in or upon a vehicle includes a reference to a person entering or getting on to, or alighting from, the vehicle.

(5) Notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy or security, he shall, subject to the provisions of this Article, pay to the persons entitled to the benefit of the judgment—

- (a) as regards liability in respect of death or bodily injury, any sum payable under the judgment in respect of the liability, together with any sum which is payable in respect of interest on that sum;
- (b) as regards liability in respect of damage to property, any sum required to be paid under paragraph (6); and
- (c) any amount payable in respect of costs.

(6) This paragraph requires—

- (a) where the total of any amounts paid, payable or likely to be payable under the policy or security in respect of damage to property caused by, or arising out of, the accident in question does not exceed £250,000, the payment of any sum payable under the judgment in respect of the liability, together with any sum which is payable in respect of interest on that sum;
- (b) where that total exceeds £250,000, the payment of either—
  - (i) such proportion of any sum payable under the judgment in respect of the liability as £250,000 bears to that total, together with the same proportion of any sum which is payable in respect of interest on that sum; or
  - (ii) the difference between the total of any amounts already paid under the policy or security in respect of such damage and £250,000 together with such proportion of any sum which is payable in respect of interest on any sum payable under the judgment in respect of the liability as the difference bears to that sum,

whichever is less, unless not less than £250,000 has already been paid under the policy or security in respect of such damage (in which case nothing is payable).

(7) Where an insurer becomes liable under this Article to pay an amount in respect of a liability of a person who is insured by a policy or whose liability is covered by a security, he shall be entitled to recover from that person—

- (a) that amount, in a case where he became liable to pay it by virtue only of paragraph (3); or
- (b) in a case where that amount exceeds the amount for which he would, apart from the provisions of this Article, be liable under the policy or security in respect of that liability, the excess.

(8) Where an insurer becomes liable under this Article to pay an amount in respect of a liability of a person who is not insured by a policy or whose liability is not covered by a security, he shall be entitled to recover the amount from that person or from any person who—

- (a) is insured by the policy, or whose liability is covered by the security, by the terms of which the liability would be covered if the policy insured all persons or, as the case may be, the security covered the liability of all persons; and
- (b) caused or permitted the use of the vehicle which gave rise to the liability.

(9) In this Article and Article 98A—

“insurer” includes a person giving a security;

“liability covered by the terms of the policy or security” means a liability which is covered by the policy or security or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy or security; and

“material” means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions.

#### *Exceptions to Article 98*

98A.—(1) No sum shall be payable by an insurer under Article 98—

- (a) in respect of any judgment unless, before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings;
- (b) in respect of any judgment so long as enforcement of the judgment is stayed pending an appeal; or
- (c) in connection with any liability if, before the happening of the event which was the cause of the death or bodily injury or damage to property giving rise to the liability, the policy or security was cancelled by mutual consent or by virtue of any provision contained in it, and also either before or after the happening of that event but before the expiration of the period of 14 days from the taking effect of the cancellation of the policy or security—

- (i) the certificate was surrendered to the insurer; or
- (ii) the insurer has commenced proceedings under this Order in respect of the failure to surrender the certificate.

(2) Subject to paragraph (3), no sum shall be payable by an insurer under Article 98 if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration—

- (a) that, apart from any provision contained in the policy or security, he is entitled to avoid it on the ground that it was obtained—
  - (i) by the non-disclosure of a material fact; or
  - (ii) by a representation of fact which was false in some material particular; or
- (b) if he has avoided the policy or security on that ground, that he was entitled so to do apart from any provision contained in it.

(3) An insurer who has obtained such a declaration as is mentioned in paragraph (2) in an action shall not by reason of that become entitled to the benefit of that paragraph as respects any judgment obtained in proceedings commenced before the commencement of that action unless before, or within 7 days after, the commencement of that action he has given notice of it to the person who is the plaintiff in those proceedings specifying the non-disclosure or false representation on which he proposes to rely.

(4) A person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party to it.”

*Nuclear risks: consequential amendment*

5. In section 21(5) of the Nuclear Installations Act 1965(a) (compulsory motor insurance etc. not required to cover injury for which there is liability under certain provisions of that Act), after the words “injury to any person” insert the words “, or damage to the property of any person,”.

*Definition of ‘normally based’*

6. In regulation 2(2)(a) of the European Communities (Motor Vehicles: Compulsory Insurance) (Northern Ireland) Regulations 1973(b), for the words “in which the vehicle is registered” substitute “of which the vehicle bears a registration plate”.

Sealed with the Official Seal of the Department of the Environment on  
14th March 1989.

(L.S.)

*Trevor Pearson*

Assistant Secretary

(a) 1965 c. 57

(b) S.R. & O. (N.I.) 1973 No. 448

*(This note is not part of the Regulations.)*

These Regulations implement the Second Council Directive 84/5/EEC of 30th December 1983 (O.J. No. L8, 11.1.84, p. 17) on the approximation of the laws of member States relating to insurance against civil liability in respect of the use of motor vehicles ("the Council Directive").

Regulations 3 and 4 make amendments to Part VIII of the Road Traffic (Northern Ireland) Order 1981 ("the 1981 Order").

Regulation 3 amends Article 92 of the 1981 Order (requirements in respect of policies) so that, to comply with Part VIII of the 1981 Order, a policy must provide insurance against damage to property caused by or arising out of the use of the vehicle as well as insurance against liability in respect of death or bodily injury. Certain exemptions from insurance against liability for property damage are given; in particular a policy is not required to provide insurance for more than £250,000 in respect of damage to property arising out of any one accident. "Accident" is defined to include two or more causally related accidents.

Regulation 4 replaces Article 98 of the 1981 Order (rights of third-parties against insurers) with a new Article 98 and Article 98A. The principal provisions of the new Article 98 are as follows:

- (1) An insurer is bound to satisfy a judgment which relates to a liability required to be covered by a policy under Article 92 of the 1981 Order even if the judgment is obtained against a person not insured by the policy (paragraph (5)) subject to certain exceptions in the case of vehicles stolen or unlawfully taken (paragraph (2)(b) and (4)). In these circumstances the insurer issuing the policy has rights of recovery against the user or an insured person who caused or permitted the use of the vehicle (paragraph (8)).
- (2) For the purpose of the requirement of an insurer to satisfy a judgment, any provision of the policy which restricts the insurance by reference to the holding of a licence to drive a vehicle is to be disregarded (paragraph (3)). In these circumstances, the insurer has the right of recovery against the insured person (paragraph (7)).
- (3) In the case of damage to property, if the amount of the judgment is less than £250,000, the insurer is required to pay that sum and if the amount of the judgment is more than £250,000, the insurer need only satisfy a proportion of the judgment (paragraph (6)).

Article 98A provides that an insurer is not required under Article 98 to satisfy a judgment in certain circumstances such as where the insurer did not have notice of the bringing of proceedings or where the policy or security had been cancelled and the certificate had been surrendered (or proceedings brought in respect of the failure to surrender the certificate).

Regulation 5 makes a consequential amendment to the Nuclear Installations Act 1965.

Regulation 6 amends the definition of “normally based” in regulation 2 of the European Communities (Motor Vehicles: Compulsory Insurance) (Northern Ireland) Regulations 1973 in accordance with Article 4 of the Council Directive.