

EXPLANATORY MEMORANDUM TO
THE MOTOR VEHICLES (COMPULSORY INSURANCE) REGULATIONS 2007

2007 No. 1426

1. This explanatory memorandum has been prepared by The Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These regulations are made as a requirement of Directive 2005/14/EC relating to insurance against civil liability in respect of the use of motor vehicles (the “fifth Motor Insurance Directive”, OJ No L149, 11.6.05, p14).

2.2 The regulations adjust the minimum level of insurance cover that users of motor vehicles must have to cover their liability to third parties for damage to property. The new minimum level will rise from £250,000 to £1,000,000.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 4.1 The European Motor Insurance Directives (“MIDs”) set out a range of requirements for Motor Insurance. Amongst other things the Directives specify the minimum levels of cover that users of motor vehicles must have to cover their liability to third parties for damage to property or for personal injury.

4.2 The 2nd Motor Insurance Directive 84/5/EEC (OJ No L8, 11.1.84, p17) (“2nd MID”) sets out minimum levels of compulsory insurance for personal injury of 350,000 ECU per victim or 500,000 ECU per single claim in certain specified circumstances. For property damage the 2nd MID requires minimum cover of 100,000 ECU per claim, whatever the number of victims.

4.3 The domestic legislation which sets out the provisions relating to third-party risks is contained in Part VI of the Road Traffic Act 1988 (the “RTA 1988”). Currently these provide for unlimited cover for personal injury or death (section 145(3)(a) of the RTA 1988); and cover for up to £250,000 for property damage (section 145(4)(b) of the RTA 1988).

- 4.4 Member States are required to implement the fifth Motor Insurance Directive by 11 June 2007. Amongst various changes, the Directive updates the requirements for minimum cover in the 2nd MID to take account of inflation, but also increased in real terms, to improve the protection of victims as follows:
- (1) for personal injury, a minimum amount of cover of 1,000,000 Euros per victim or 5,000,000 Euros per claim, whatever the number of victims,
 - (2) for property damage, 1,000,000 Euros per claim, whatever the number of victims.
- 4.5 The updated requirements in respect of personal injury are already met in Great Britain (section 145(3)(a) of the RTA 1988). However in respect of property damage the new minimum level is higher than the current levels contained in the RTA 1988, which therefore need to be revised.
- 4.6 The updated requirement for a minimum level of cover for property damage of 1,000,000 Euros equates at current exchange rate levels (Feb 2007 -1.5077 Euros / £) to approximately £663,261 per claim. The current requirement set out in section 145(4)(b) of the RTA 1988 is £250,000 in respect of damage to property caused by, or arising out of, any one accident involving the vehicle .
- 4.7 In order to ensure compliance with this updated requirement, in light of possible currency fluctuation, the regulations provide for the sum of £1 million to be substituted for the sum of £250,000 in respect of the minimum level of insurance cover that users of motor vehicles must have to cover their liability to third parties for damage to property .
- 4.8 The fifth Motor Insurance Directive requires the European Commission to review the minimum levels of cover every five years and to adjust the levels as appropriate. The Department will monitor these reviews and adjust future levels of cover to take account of these reviews and any other representations received.
- 4.9 This instrument only implements one item out of several in the fifth Motor Insurance Directive as the rest of the requirements contained in the Directive have either been implemented already, will be implemented elsewhere or do not require implementation, as set out in the Transposition Note.

5. Territorial Extent and Application

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

- 6.1 Dr Stephen Ladyman, Minister of State for Transport, has made the following statement regarding Human Rights:

“In my view the provisions of the Motor Vehicles (Compulsory Insurance) Regulations 2007 are compatible with the Convention rights.”

7. Policy background

- 7.1 The fifth Motor Insurance Directive requires a minimum level of cover in the case of damage to property of Euros 1,000,000 per claim. At current Euro/£ exchange rates this equates to approximately £663,261 per claim.
- 7.2 It is understood that the majority of motor insurance policies already have cover at much higher levels than the new minimum levels. For these policies (the vast majority of motor insurance policies) the new levels should have no effect on the premiums paid.
- 7.3 However, there are believed to be a small number of policies – essentially covering the use of high risk vehicles such as fuel tankers, dangerous chemical transporters and similar, where the cover for property damage is at the current minimum level. For these policies, the minimum level of cover will need to be increased. It is assumed that this may lead to a small increase in the premium paid.
- 7.4 The Department issued a consultation letter on 23 February 2007 in respect of the new minimum levels of insurance cover that users of motor vehicles must have to cover their liability to third parties for damage to property. In view of the fact that the consultation dealt with just one issue principally of interest to industry stakeholders it was considered that a shorter consultation period in this instance would be acceptable and the consultation period was therefore for eight weeks instead of twelve weeks. The consultation letter set out two options, as follows:

Option 1 - to allow for a degree of fluctuation in the Euro / £ exchange rate the first option was to set a level slightly above the minimum level. The proposed new level under this option was £1,000,000 per claim. .

or

Option 2 – to provide a degree of longer term consistency for the insurance industry a higher level of minimum cover was proposed. By having a higher level of cover the opportunity for automatic increases, in the short to medium term, should be minimised. The level of cover proposed for this option was £1,500,000 per claim.

- 7.5 The Government proposed that option 1 should be adopted. It was the simplest and, by stipulating £1,000,000, it would, we hoped, provide some stability for the insurance industry against revisions in the short term.
- 7.6 The public consultation which was carried out ended on 20 April 2007. From a total of 33 consultees we received responses from 9 organisations. Two

organisations declined to comment; the responses from the remaining 7 were as follows.

- 7.7 Five organisations supported option 1. In addition, although the Freight Transport Association (the FTA) chose option 1 from the choices given, they were only lukewarm in their support.
- 7.8 In order to level the playing field and to offer the same level of compensation to accident victims across Europe, the FTA would have preferred UK transport operators to be subject to EUR 1 million and to accept adjustments necessitated by changing exchange rates. The FTA's proposal was rejected because the fluctuating exchange rates would have removed any certainty as to the precise amount of level of cover required and necessitated numerous adjustments.
- 7.9 The British Insurance Brokers Association (BIBA) preferred option 2 on the basis that it would offer better protection and the automatic increases under the fifth Motor Insurance Directive would not breach the £1,500,000 limit for some time.
- 7.10 No organisation expected any additional costs apart from a possible rise in insurance premiums.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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REGULATORY IMPACT ASSESSMENT

1. Minimum levels of cover for motor Insurance

In our consultation document of 23 February 2007 we proposed the following options to implement the new requirements of the 5th Motor Insurance Directive. These changes would take effect from 11 June 2007.

Option 1

To allow for a degree of fluctuation in the Euro / £ exchange rate the first option was to set a level slightly above the minimum level which the current exchange rate would require. The proposed new minimum level of cover for property damage in the UK with this option was £1,000,000 per claim. This was the preferred option.

Option 2

To provide a degree of longer term consistency for the Insurance industry a higher level of minimum cover was proposed. By having a higher level of cover the necessity for automatic increases, in the short to medium term, should have been minimised. The level of cover proposed for this option was £1,500,000 per claim.

A public consultation was carried out which ended on 20 April 2007. From a total of 33 consultees we received responses from 9 organisations. The attachment at Annex A shows a list of consultees; those who responded are indicated by an asterisk. Two organisations declined to comment; the responses from the remaining 7 were as follows.

Five of the organisations who responded supported option 1. Although the Freight Transport Association (the FTA) chose option 1 from the choices given, they were only lukewarm in their support.

In order to level the playing field and to offer the same level of compensation to accident victims across Europe, the FTA would have preferred UK transport operators to be subject to EUR 1 million and to accept adjustments necessitated by changing exchange rates.

BIBA preferred option 2 on the basis that it would offer better protection and the automatic increases under the fifth Directive would not breach the £1,500,000 limit for some time.

No organisation expected any additional costs apart from a possible rise in insurance premiums.

2. Purpose and intended effect of measure

The objective is to implement new minimum levels of cover for all motor insurance policies as required by the 5th Motor Insurance Directive.

The background

Part VI of the Road Traffic Act 1988 sets out current levels of cover for motor insurance policies in Great Britain. Section 145 requires that for personal injury there is unlimited liability. For property damage liability is limited to £250,000. The 5th Motor Insurance Directive raises the minimum level of cover required to 1,000,000 EUR per claim (equating to approximately £663,261 at current Euro / £ exchange rates).

Risk assessment

The risk of doing nothing is that Great Britain will not have implemented mandatory requirements specified in a European Directive and will be at risk of Infraction proceedings.

3. Options

The only options are the choice of the level of minimum cover requirement for motor Insurance.

Benefits and costs

4. Benefits

- [Economic and Social](#)

The effect of this measure is to increase the minimum level of cover required in a motor insurance policy for property damage. It is believed that the majority of motor insurance policies already have cover for property damage well in excess of the minimum levels and that there are only a relatively few policies which currently only give cover at the minimum levels. The main benefit is that the new levels will mean that claimants will, in appropriate circumstances, be able to get improved compensation.

- [Environmental](#)

Not applicable, other than indirectly those associated with road traffic accidents.

[Issues of equity and fairness – None.](#)

5. Costs

- [Economic](#)

The Department understands that the majority of motor insurance policies give cover at well above the proposed minimum level. It is further understood that only a relatively small number of policies of insurance covering the use of high risk vehicles may give cover only at the minimum level. It is these specialist high risk policies that will need to have their minimum cover levels increased. It is not known what, if any premium increases would arise as a result of an increase to minimum levels of cover but as there is no obvious change to the risk then only minimal premium increases should be expected.

- [Environmental – None.](#)

- [Social – None](#)

Not applicable.

6. Consultation with small business: the small firms impact test.

Not applicable.

7. Competition assessment.

Not applicable

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8. Monitoring and review.

The 5th Motor Insurance Directive requires the European Commission to review (and sets out the review mechanism) the minimum levels of cover every five years and to adjust the levels as appropriate. The Department will monitor these reviews and adjust future UK levels of cover to take account of these reviews and any other representations received.

9. Application to the United Kingdom

These regulations will apply in Great Britain. Application in Northern Ireland is a matter for consideration by the Department for Environment, Northern Ireland.

10. Summary and recommendation

Directive 2005/14 requires, amongst other things, that the minimum levels of cover for motor insurance be increased in respect of property damage. We recommend that regulations should be made to apply this in Great Britain.

Ministerial declaration

“I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.”

S.J. Ladyman

Signed by Stephen Ladyman MP

Minister of State

Department for Transport
10th May 2007.

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ANNEX A

Minimum Levels of Insurance Cover - List of Consultees in Great Britain (Respondents asterisked).

Association of British Insurers (ABI)

Association of Car Fleet Operators

Association of Chief Police Officers (ACPO)

Association of Chief Police Officers (Scotland)*

The Automobile Association*

British Independent Motor Trades Association

British Insurance Brokers Association (BIBA)*

British Vehicle Rental and Leasing Association

Chartered Institute of Transport

Department for Constitutional Affairs

Department of Environment (Northern Ireland)

Deposited Papers Clerk - House of Commons

Finance & Leasing Association (FLA)*

Freight Transport Association*

Green Flag Ltd

H M Treasury

Independent Garage Association

The Law Society

House of Commons Library

The Magistrates Association

Motor Accidents Solicitors Society (MASS)*

Motor Insurers' Bureau

The Motorists Forum

RAC

Retail Motor Industry Federation

Road Haulage Association

Royal Scottish Automobile Club

The Royal Society for the prevention of Accidents (RoSPA)*

The Scottish Executive

Scotland Office

Scottish Motor Trades Association*

Scottish Police Federation*

Society of Motor Manufacturers and Traders

DEPARTMENT for TRANSPORT

TRANSPOSITION TABLE

DIRECTIVE 2005/14/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of the 11 May 2005 amending Council Directives 72/166 EEC, 84/5 EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles.

These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure coherence in the area to which they apply.

Articles	Objectives	Implementation	Responsibility
Article 1	Amends Articles 1, 2 and 4 of Directive 72/ 166/ EEC.		
Article 1.1	Clarifies the definition of the territory in which the vehicle is normally based, and provides for cases in which a vehicle involved in an accident bears no registration plate or a fraudulent registration plate.	No need for further implementation. This is covered by the terms of the Untraced Drivers Agreement (this is an agreement between the Secretary of State for Transport and the MIB dated 7 th February 2003) and the Uninsured Drivers Agreement (this is an agreement between the Secretary of State for the Environment, Transport and the Regions and the Motor Insurers' Bureau (MIB) dated 13 th August 1999).	Motor Insurers' Bureau (MIB)
Article 1.2	Clarifies the rules on	No further implementation	Home Secretary

	checking foreign vehicles to help ensure that they are correctly insured.	needed. The police have a general power to stop vehicles (section 163 of the Road Traffic Act 1988). How this power is exercised is an operational matter for each individual police force. However, the general practice is that vehicles are not stopped by the police or other enforcement authorities unless there is specific reason to do so.	
Article 1.3	Extends the obligations of Member States in respect of vehicles operated by persons derogating from the provisions of Article 3 of Directive 72/166/EEC which sets out a general need for motor insurance cover in their own territory. It requires obligations in respect of such vehicles to be placed on the guarantee fund provided in the Member State where the vehicle is normally based.	No further implementation needed because there are no such derogations in Great Britain.	Secretary of State for Transport
Article 1.4	Deletes reference from Articles 6 and 7(1) to the non-European territory of a Member State.	No further implementation needed as this provision removes an earlier requirement which was not relevant to Great Britain.	Secretary of State for Transport
Article 2	Replaces Article 1 of Directive 84/5/EEC to update the minimum amount of insurance cover which must be required by Member States for the use of a motor vehicle.		
Article 2 [2(a)]	Amends the minimum level of insurance cover that users of motor vehicles must have in the case of personal injury to EUR 1,000,000 per	No further implementation needed because section 145 (3)(a) of the Road Traffic Act 1988 requires unlimited insurance cover in respect of death or bodily injury	Secretary of State for Transport

	victim or EUR 5,000,000 per claim, whatever the number of victims.	to any person.	
Article 2[2(b)]	Amends the minimum level of insurance cover that users of motor vehicles must have in the case of damage to property to EUR 1,000,000 per claim whatever the number of victims.	<p>Section 145(4)(b) of the Road Traffic Act 1988 qualifies section (3)(a) in respect of damage to property, where it sets a required amount of up to £250,000 cover. This amount needs to be amended to reflect the new level required by the Directive.</p> <p>Regulation 2 amends section 145(4)(b) of the Road Traffic Act 1988 by increasing the minimum level of insurance cover that users of motor vehicles must have to cover their liability to third parties for damage to property from £250,000 to £1,000,000. Regulation 2 also makes consequential amendments to section 151(6) of the Road Traffic Act 1988.</p>	Secretary of State for Transport
Article 2 [(3)]	Provides for five-yearly review of the amounts referred to in Article 2 [2].	The Department will monitor these reviews and adjust, by way of amendment regulations, future levels of cover to take account of these reviews and any other representations received.	Secretary of State for Transport
Article 2[(4-7)]	Provides for the existence of a compensation body and sets out ground rules according to which that body must operate. These provisions largely replicate existing provisions in Directive 84/5/EEC with changes to the amounts required to be covered and certain other minor changes.	<p>A compensation body already exists in Great Britain and Northern Ireland. This is known as the Motor Insurers' Bureau (the "MIB").</p> <p>The ground rules according to which the MIB operates are set out in the MIBs Untraced and Uninsured Drivers agreements with the Secretary of State. These will be amended to take account of the revisions required under Directive 2005/14/EC.</p>	Secretary of State for Transport and Motor Insurers' Bureau

Article 3 amends Directive 88/357/EEC			
Article 3	Deletes a provision in Directive 88/357/EEC (which in turn was inserted by Article 6 of Directive (90/618/EEC) (OJ No L330, 29.11.90, p44)	No further implementation needed because this deletes a provision which previously prevented Member States from allowing claims representatives to take up the business of direct insurance. This is permissive and does not in itself impose an obligation.	Chancellor of the Exchequer; Financial Services Authority (FSA)
Article 4 amends Directive 90/232/EEC			
Article 4(1)	Prohibits insurance policies from excluding from cover passengers who knew (or should have known) that the driver was under the influence of drink or drugs.	No further implementation is needed as no such exclusions are provided for under section 143 (use of motor vehicles to be insured or secured against third-party risks) and section 145 (requirements in respect of policies of insurance) of the Road Traffic Act 1988 and consequently would not be lawful.	Secretary of State for Transport
Article 4(2)	Requires that personal injury and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads in motor accidents should be covered and that they should be	No further implementation needed as provision regarding personal injury or damage suffered by such persons is covered by section 145(3)(a) and 4(b) of the Road Traffic Act 1988.	Secretary of State for Transport and Lord Chancellor (in respect of the GB civil liability regime).

	entitled to compensation for such damage.		
Article 4(3)	Provides explicitly for insurance cover in all Member States of the Community throughout the duration of the insurance contract, and without the payment of any additional premium.	No need for further implementation because this accords with current practice in Great Britain, as set out in section 145 (3)(b) of the Road Traffic Act 1988.	Secretary of State for Transport
Article 4(4) [new 4a1 and 4a2]	Provides that with respect to a vehicle dispatched from one Member State to another, the risk will be borne in the Member State of destination, which will be liable for compensation in respect of uninsured vehicles.	The Council of Bureaux is currently considering this requirement. Once that consideration is completed this requirement will be implemented in Great Britain by the MIB.	Motor Insurers' Bureau
Article 4 (4) – [new article 4b]	Provides for a right of policyholders to request at any time a statement relating to their third party liability claims.	No need for further implementation because the use of the “no claims discount statement” in Great Britain conforms to this requirement.	Financial Services Authority
Article 4 (4) – [new article 4c]	Forbids insurance companies from relying upon excesses against an injured party (that is, from not paying the first £x of any claim).	No further implementation is needed because use of excesses against the injured party is not provided for in Part VI of the Road Traffic Act 1988.	Secretary of State for Transport
Article 4 (4) – [new article 4d]	Provides for a direct right of action by the injured party against the insurance undertaking, without having to operate through an intermediary.	No need for further implementation because this requirement has been implemented by the European Communities (Rights against Insurers) Regulations 2002 (SI 2002/3061) (regulation 3).	Secretary of State for Transport and the Lord Chancellor

<p>Article 4 (4) – [new article 4e]</p>	<p>Extends to any kind of motor vehicle accident the “reasoned offer” procedure established by Directive 2000/ 26/ EC – the fourth Motor Insurance Directive.</p>	<p>The first paragraph of this article relates to the provisions in article 4(6) of the fourth Motor Insurance Directive (Directive 2000/26/EC). These provisions were fully implemented in 2002 by the Financial Services Authority (FSA) and HM Treasury. Specifically:</p> <p>The FSA through rules and guidance made under sections 138, 156 and 157(1) of the Financial Services and Markets Act 2000 (the “FSA”) and the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706) (regulation 2).</p> <p>And HM Treasury through the exercise of their powers under sections 150(3) and 417(1) of the FSMA and regulation 3 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706) (regulation 3) to ensure that non-private persons may sue for contravention of the FSA rule requiring the payment of interest.</p> <p>The second paragraph of this article applies the provisions of article 4(6) of the fourth Motor Insurance Directive to the National Insurer’s Bureau. The National Insurers’ Bureau in the UK is the Green Card Bureau operated by the Motor Insurer’s Bureau (MIB).</p> <p>The applicable requirements are contained in the Agreement between Compensation bodies and Guarantee funds made by the Comité Européen Des Assurances to which the MIB in the UK is a signatory.</p>	<p>Secretary of State for Transport and the Motor Insurers’ Bureau</p>
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Article 4 (5)	Extends information provisions obligations to any traffic accident.	No further implementation required because this requirement has already been implemented by the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 (SI 2003/37) (regulations 3 and 4).	Secretary of State for Transport
Article 5(1)	Introduces a new recital expressing the intention that injured parties may sue the civil liability insurer in their country of domicile.	No further implementation needed because this is merely a clarification of existing practice.	Secretary of State for Transport /Lord Chancellor
Article 5(2)	Clarifies the status of a claims representative and the applicability of other EU law to such representatives.	No further implementation needed because this requirement has been implemented by Chapter 7, section 6.7(g) of the Financial Services Authority (FSA) Insurance Conduct of Business Sourcebook, which is legally binding upon all firms regulated by the FSA.	Financial Services Authority
Article 5(3)	Deletes reference to Green Card information.	No further implementation is needed because this requirement merely conforms to existing practice. Green Cards are not needed within the European Union.	Secretary of State for Transport/ Motor Insurers' Bureau
Article 5(4)	Requires action to be taken by Member States to make available "in due time" to victims, insurers and their legal representatives the basic data needed to settle claims. Provides for a central repository in each	Separate information about relevant insurers is available through the Motor Insurers' Information Centre which is the information centre established in accordance with article 5.1 of Directive 2000/26/EC (OJ L181, 20.7.00, p65) (the fourth Motor	Secretary of State for Transport, Home Office, and Motor Insurers' Bureau

	<p>Member State and for electronic media.</p>	<p>Insurance Directive). This requirement was implemented by the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 (SI 2003/37) (regulations 3 and 4).</p> <p>With regard to accident information, all police forces record such data manually and make the data available on request to any party involved in an accident. A project is currently being developed to enable police nationwide to record and access road traffic collision data via software applications.</p>	
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