

**EXPLANATORY MEMORANDUM TO**  
**THE MOTOR VEHICLES (COMPULSORY INSURANCE) (MISCELLANEOUS**  
**AMENDMENTS) REGULATIONS 2019**

**2019 No. 1047**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument makes legislative changes in three areas. Firstly, it will remove the options of a deposit or security under s144(1) and s146 of the Road Traffic Act 1988 (RTA) as alternatives to conventional motor insurance. Secondly, it will amend s152 of the RTA so insurers can no longer rely on having voided a policy after an accident (if a policyholder deliberately misrepresented information when their policy was purchased, e.g. age or driving record) to deny compensation under the RTA to third party victims. It will also make an equivalent change to Article 98A of the Road Traffic (Northern Ireland) Order 1981 (RTO). Thirdly, it makes a minor amendment to clarify the Statutory Off Road Notification (SORN) procedure (under which a vehicle need not have Road Tax or insurance if it is declared off road).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments, the Select Committee on Statutory Instruments or the Sifting Committees*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is Great Britain, except for Regulation 7 and Regulation 8(3) and (4) where the territorial extent is Northern Ireland.
- 4.2 The territorial application of this instrument is Great Britain, except for Regulation 7 and Regulation 8(3) and (4) where the territorial application is Northern Ireland.

**5. European Convention on Human Rights**

- 5.1 The Minister of State for Transport Michael Ellis has made the following statement regarding Human Rights:

“In my view the provisions of the Motor Vehicles (Compulsory Insurance) (Miscellaneous Amendments) Regulations 2019 are compatible with the Convention rights.”

## 6. Legislative Context

There are three separate changes being made by these Regulations:

### *Removal of Deposits and Securities under s144 (1) and s146 of the RTA.*

- 6.1 These alternatives to conventional motor insurance are being removed because the deposits and securities regimes may not be compatible with EU law, place an unfair burden on premium paying motorists and may not be sufficient to meet all third-party liabilities. Therefore, those who presently have a deposit or a security will be required to purchase mandatory motor insurance for third party risks.

### *Amendment to s152 of the RTA and Article 98A of the RTO.*

- 6.2 In the RoadPeace Judicial Review (Roadpeace v Secretary of State for Transport (2017) EWCH 2725) we informed the court that we would amend s152 of the RTA because it is incompatible with EU law. This concerns an insurer's ability to rely on having voided a policy after an accident (if a policyholder deliberately misrepresented information when their policy was purchased, e.g. age or driving record) to deny compensation under the RTA to third party victims.

- 6.3 Article 98A of the RTO contains an equivalent provision to s152 RTA and this provision is therefore also incompatible with EU law. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Northern Ireland Assembly without the consent of the legislature concerned. Motor insurance, insofar as it relates to road traffic is a devolved matter in Northern Ireland and to the extent that the provisions of Regulation 7 fall within the legislative competence of the Northern Ireland Assembly, legislative consent would normally be sought. However, in the absence of the Northern Ireland Executive and a sitting Assembly, it is not possible to obtain a Legislative Consent Motion. The Government has engaged with the Northern Ireland Department for Infrastructure in the preparation of Regulations 7 and 8(3) and (4) and agreed to make changes to Article 98A RTO to ensure that this provision will be compatible with EU law.

### *Amendment to the Motor Vehicles (Insurance Requirements) Regulations 2011 (2011 Regulations) concerning the Statutory Off Road Notification (SORN) procedure.*

- 6.4 A technical minor amendment is being made concerning the Statutory Off Road Notification (SORN) procedure (under which a vehicle need not have Road Tax or insurance if it is declared off road). In 2013 regulations provided that a SORN declaration can be made for an indefinite period and not need annual renewal. However, a consequential amendment was not made to the 2011 Regulations to reflect this change.

## 7. Policy background

*What is being done and why?*

*Removal of Deposits and Securities under s144 (1) and s146 of the RTA 1988.*

### *Current position*

- 7.1 A Motorist is required to have compulsory motor insurance if he uses a vehicle on a road or public place without an insurance policy *or security* in respect of third party risks. Unlike insurance, a security can also be given *by a body of persons in the business of giving securities*. This body needs to apply to the Secretary of State and then deposit £15,000 with the Accountant General of the Senior Courts in respect of that business. The security-giver is required to make good any failure by the person specified in the security, to discharge any liability which would be required to be covered by a policy of insurance, but the amounts secured need not exceed £25,000 (in the case of public service vehicles) and £5,000 (in other cases).
- 7.2 Another exception to motor insurance relating to third party liability concerns a vehicle owned by a person who has deposited £500,000 with the Accountant General of the Senior Courts. Unlike a security, which must comply with Part VI RTA (on compulsory insurance or security against third-party risks), a deposit provides the depositor with a complete exemption from the requirement to comply with this. The depositor would, therefore, be required to satisfy any negligence from his own resources.
- 7.3 Only a small number of organisations have made a deposit or taken out a security.

*Reason for the change*

*Fairness for motorists*

- 7.4 Insurers are subject to authorisation, ongoing solvency requirements and contribute to the Financial Services Compensation Scheme (FSCS) through a levy. In the unlikely event that an insurer becomes insolvent, the FSCS ensures claims are paid and any third party victims are fully compensated. However, security givers (which need only deposit £15,000 and do not have to secure more than the prescribed limits) are not required to be insurers. Therefore, they will not be subject to the same stringent regulatory oversight resulting in an increased risk that they will be unable to pay out in the event of a claim concerning a vehicle in relation to which a security is given. Therefore, the provisions potentially place an unfair burden on premium paying motorists, given that these premiums fund the Motor Insurers' Bureau (MIB), who would step in under the Uninsured Drivers Agreement between the MIB and the Secretary of State for Transport to compensate victims should a security-giver (which is not an insurer) be unable to pay out in the event of a serious motor accident.

*Inadequate protection for third parties*

- 7.5 A depositor's £500,000 deposit may not be sufficient to meet all third party liabilities which arise from the use of the vehicles subject to the deposit, which, in the case of a serious personal injury claim, may total many millions of pounds so a victim might not be fully compensated. In the case of a business, the deposit could be used to exempt a significant number of vehicles from the requirement to hold compulsory insurance. If the depositor is unable to meet a third party claim, the MIB would not compensate the victim as the vehicle would be exempt from the insurance requirement and therefore not within scope of the Uninsured Drivers Agreement. As a result, a third party victim could suffer a significant shortfall in compensation.

*Risk that both schemes are contrary to EU law*

- 7.6 The Motor Insurance Directive (2009/103/EC) (the “Directive”) requires a Member State to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance. The Directive requires compulsory insurance in respect of third party liabilities of approximately £1.2 million property damage, and £6 million personal injury. Neither a security of £25,000 or £5,000 (as the case may be), nor a deposit of £500,000 offer protection at the required level. The Directive envisages an insurance policy being provided by an ‘insurance undertaking’, such undertakings being subject to specific authorisation and regulation. Securities and deposits need not be provided or made by an insurance undertaking.
- 7.7 These Regulations will come into force on 1 November 2019 but those with an existing deposit or security will be allowed a transitional period of up to two years (until 1 November 2021) to put their affairs in order and purchase compulsory third party insurance cover for accidents caused by their vehicles. Any accident that occurs prior to compulsory insurance cover being place will continue to be covered by the security or deposit. As is the case now, once a company takes out insurance they can have their deposit or security funds returned from the Accountant General of the Senior Courts when they have shown they are able to meet outstanding liabilities. Keeping the law as it is stands concerning the return of the deposit or security funds allows us the ability to consider on a case by case basis whether each deposit or security giver can offer suitable protection for victims (rather than a fixed three year period cut off which we proposed in the consultation). In practice, this may be earlier than three years or later.

*Amendment to s152 of the RTA 1988 and Article 98A of the RTO.*

- 7.8 In the RoadPeace Judicial Review (Roadpeace v Secretary of State for Transport (2017) EWCH 2725) we conceded that s152 (2) of the RTA concerning an insurer’s right to deny compensation under the RTA (in cases of misrepresentation of information by the policyholder at the time of purchase, such as driving record or age) is incompatible with the EU Motor Insurance Directive (2009/103/EC). This was as a result of the Court of Justice of the European Union (CJEU) Judgment in 2017, Fidelidade-Companhia de Seguros SA v Caisse Suisse de Compensation C-287/16
- 7.9 We informed the Court that we would amend the law. The amendment will mean that insurers will no longer be able to rely on having voided an insurance policy (when an insurer identifies either non-disclosure or misrepresentation by the policy holder when the contract of insurance was concluded, for example if the policy holder provided false information about their age, address or the main driver) after an accident to deny compensation under the RTA to third party victims. The insurer will still be able to rely on having voided a policy prior to an accident.
- 7.10 This will have limited practical effect because in such cases now, if a policy is voided, whilst an insurer could avoid payment of compensation under the RTA or the RTO as the case may be, the insurer would still pay third party claims under the GB or NI Uninsured Drivers Agreement. This is because under the MIB’s Articles of Association with its members, the insurer would be required to pay such claims in place of MIB, under the GB or NI Uninsured Drivers’ Agreement (except in rare circumstances where an exemption could apply). The insurer can then recover the amount paid from the policyholder.

- 7.11 In some cases the costs to the insurer may be greater if claims are paid as statutory claims under the RTA or RTO rather than claims brought under the GB or NI Uninsured Drivers' Agreement because these Agreements allow the MIB or the insurer to deduct amounts which the third party victim has received or is entitled to receive from most other sources, such as other insurance policies.
- 7.12 An equivalent amendment will be made in Northern Ireland by an amendment to Article 98A of the RTO.

***Amendment to the 2011 Regulations concerning the Statutory Off Road Notification (SORN) procedure.***

- 7.13 The Regulations will also make a minor amendment to the regulations concerning the Statutory Off Road Notification (SORN) procedure (under which a vehicle need not have Road Tax or insurance where it is declared as kept off road) and make clear the procedure for obtaining a SORN. Without this amendment then the 2011 Regulations will remain unclear as to how a SORN must be made. This clarification will complement police enforcement against uninsured driving on the road.

**8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

**9. Consolidation**

- 9.1 A consolidation has not been undertaken by the present amending instrument.

**10. Consultation outcome**

***Removal of Deposits and Securities under s144 (1) and s146 of the RTA 1988.***

- 10.1 We held a joint targeted consultation with the Department for Infrastructure in Northern Ireland as motor insurance is devolved in Northern Ireland. The consultees included present depositors, those which had taken out a security, the Association of British Insurers, Motor Insurers' Bureau, British Insurance Brokers Association and others who had expressed an interest. In the consultation we proposed that these options should be removed so instead compulsory third motor insurance would be required. We will not be legislating for Northern Ireland on deposits and securities because we have not been requested to do so by the Department for Infrastructure.
- 10.2 A link to the Summary of Responses and the Government response is at <https://www.gov.uk/government/consultations/motor-insurance-alternatives-removal-of-deposit-and-security-options>
- 10.3 Only a small number of organisations which operate a fleet of vehicles such as bus or coach companies have these options. They were mostly opposed their removal and argued that they would find it more difficult to obtain insurance at a reasonable price because there is a limited market for competitively priced cover. To mitigate this, there will be a transition period of two years during which time existing securities and deposits will be permitted. This will give security and deposit holders time to secure motor insurance to mitigate any costs issues.

*Amendment to s152 of the RTA and Article 98 of the RTO.*

- 10.4 On the amendments to s152 of the RTA and Art 98A of the RTO a formal consultation was not required. However, we held discussions with stakeholders on the impact of any amendments. The Northern Ireland Department for Infrastructure agreed to our amending of Northern Ireland legislation.

*Amendment to the Motor Vehicles (Insurance Requirements) Regulations 2011 (2011 Regulations) concerning the Statutory Off Road Notification (SORN) procedure.*

- 10.5 For the SORN amendment we engaged in a short targeted consultation with stakeholders. A full consultation was not necessary because it was a minor technical amendment.

**11. Guidance**

- 11.1 There is no guidance applicable to this instrument.

**12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the net benefits of any of the changes do not exceed £5m per annum. For the removal of the deposits and securities regime the impacts of the regulatory changes are low. For the s152 and Article 98A changes the main impact will be that an insurer will be required to compensate third party victims as a RTA or RTO Insurer instead of as an Article 75 Insurer because they will no longer be able to rely on having voided a policy post-accident under section 152 of the RTA or Article 98A of the RTO. The practical and financial impact of this will be limited because the key difference between liability as an RTA or RTO Insurer and an Article 75 Insurer is that an insurer will not be able to deduct sums a victim can receive from other insurance policies. These will mostly be regarded as transfer payments within the insurance industry.
- 12.4 The change to the SORN Regulations, is a technical amendment with no impact.

**13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small business.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the Regulations ensure that we are compliant with EU law and apply to activities that are undertaken any business. In the case of securities and deposits it is not expected that small businesses would be likely to have a deposit or security instead of conventional insurance. For the s152 RTA amendments and Art 98A of the RTO, insurers tend to be larger organisations. The SORN amendments are minor technical amendments which have no impact.

**14. Monitoring & review**

- 14.1 The regulation does not include a statutory review clause. The only change we could make for securities and deposits would be to re-introduce the regimes which given their shortcomings and the limited number of companies that have taken up these

options over the years would not be appropriate. In the case of the amendments to s152 of the RTA and Art 98A of the RTO we could not be expected to revert to the present situation because this is not compliant with the law. Therefore in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Michael Ellis has made the following statement “It is not necessary to have a review clause because it would be disproportionate to review this after five years, given the limited costs benefits of the changes, the present shortcomings and the need to be compliant with the law.”

## **15. Contact**

- 15.1 Geoff Finch at the Department for Transport. Telephone: 0207 944 8871 or email: [Geoff.Finch@dft.gov.uk](mailto:Geoff.Finch@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Pauline Reeves, Deputy Director for Motor Insurance Policy, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Michael Ellis at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.