

EXPLANATORY MEMORANDUM TO

THE MOTOR VEHICLES (COMPULSORY INSURANCE) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends various pieces of domestic legislation to deal with deficiencies in the statutory framework for compulsory motor insurance that arise once the UK leaves the EU. It introduces a policy change, required as a consequence of leaving the EU, which is to remove the requirements for the Motor Insurers Bureau ('MIB') to act as a Compensation Body for UK residents injured in road traffic accidents in the EEA, and to reimburse its foreign counterparts in respect of EU27 visitors in the UK who have been compensated by their 'home' Compensation Body. The remainder of the amendments seek to maintain the status quo and contain no substantive changes of policy.

Explanations

What did any relevant EU law do before exit day?

2.2 The Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 gave effect to Articles 19-26 of Directive 2009/103/EC ('the codified motor insurance Directive'). These Articles create obligations in relation to the Protection of Visitors scheme ('visiting victims'), which enables victims who are injured in a traffic accident in a Member State other than that in which they are resident to bring claims against the insurer or its representative, or the 'Compensation Body', in the victim's 'home' Member State.

Section 145 of the Road Traffic Act 1988 sets out the requirement for compulsory motor insurance in Great Britain. In particular, section 145(3)(aa) sets out the requirements for a policy for a vehicle which is normally based in another Member State. Section 145(3)(b) specifies an area which a policy for a vehicle normally based in Great Britain must cover.

Article 92 of the Road Traffic (Northern Ireland) Order 1981 makes equivalent provision for Northern Ireland.

Regulation 5 of the Motor Vehicles (Compulsory Insurance) (No.2) Regulations 1973 creates an offence if an insurance policy is not in place for a vehicle registered in Great Britain if it is used in a specified area. This specified area includes Northern Ireland. Regulation 6 provides a power to check for insurance for vehicles not normally based in a specified area. This specified area includes Northern Ireland.

Regulation 7 provides a power to a constable to detain a vehicle and give directions in

respect of such vehicle, where he has reasonable cause to suspect the driver of the vehicle of having committed an offence under Regulation 6. Regulation 8 provides that provisions in the Road Traffic Act 1988 requiring insurance policies to be issued by authorised insurers and certificates to be issued in respect of them, do not apply to insurance policies issued outside of the UK in respect of a vehicle normally based in a Member State or certain relevant foreign states.

Regulations 5 to 8 of the European Communities (Motor Vehicles: Compulsory Insurance) (Northern Ireland) Regulations 1973 make equivalent provision for vehicles registered in Northern Ireland. The equivalent relevant specified areas include Great Britain.

Why is it being changed?

- 2.3 Without the amendments to the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003, domestic visiting victims provisions and the role of the MIB as UK Compensation Body would continue unilaterally. This means UK residents injured in a traffic accident in the EEA could continue to make visiting victims claims in the UK following EU Exit. However, the MIB would have cost exposure for these claims and would no longer be able to seek reimbursement from its foreign counterparts. It would also still be required to reimburse its foreign counterparts in respect of EU27 visitors in the UK who have been compensated by their 'home' Compensation Body.

In addition, when the UK leaves the EU, there will no longer be a requirement on insurance companies based in EU Member States to appoint a Claims Representative in the UK. Under the visiting victims scheme, these Claims Representatives are appointed to receive, handle and settle claims from UK victims of traffic accidents that occurred in another Member State. As a result, MIB would have to handle the additional claims that would usually fall to Claims Representatives in the UK. The cost of these additional claims would be passed on to insurers through the MIB's member levy, who may then pass this on to UK motorists in the form of higher motor insurance premiums. UK motorists would be paying for traffic accidents caused by EEA motorists in EEA Member States on an ongoing basis.

The amendments to section 145(3)(aa) of the Road Traffic Act 1988 and Article 92(1)(bb) of the Road Traffic (Northern Ireland) Order 1981 are required to reflect that the UK is no longer a Member State.

The amendments to section 145(3)(b) of the Road Traffic Act 1988, Article 92(1)(c) of the Road Traffic (Northern Ireland) Order 1981, the Motor Vehicles (Compulsory Insurance) (No.2) Regulations 1973 and the European Communities (Motor Vehicles: Compulsory Insurance) (Northern Ireland) Regulations 1973 are required to ensure that the status quo is maintained. The UK's departure from the EU means that if no amendment is made to these pieces of domestic legislation, then it could remove an offence to use a specified motor vehicle registered in Great Britain in Northern Ireland and could allow for checks to be carried out on motor insurance for vehicles normally based in Northern Ireland when entering Great Britain, and vice versa. This would damage the integrity of the UK internal market.

What will it now do?

- 2.4 The amendments remove the Compensation Body requirements from the MIB. UK residents who have already commenced court proceedings against the MIB prior to

exit day will be able to continue pursuing visiting victims claims against the Compensation Body in the UK.

All other victims of road traffic accidents in the EEA will continue to be able to pursue claims for compensation, but may now need to do so in the Member State where the accident occurred.

The other amendments being made by this instrument maintain the status quo and reflect that there is no change to the existing policy.

3. Matters of special interest to Parliament

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

- 3.1 This instrument was laid in draft for sifting before the European Statutory Instruments Committee (“ESIC”) and the Secondary Legislation Scrutiny Committee (“SLSC”) on 14th December 2018. The sifting period ended on the 15th January 2019.
- 3.2 In the Fourteenth Report of Session 2017-2019 published on 17th January 2019, the ESIC recommended that the instrument be upgraded to the affirmative procedure and said that:
- 3.3 The Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 amend various pieces of domestic legislation, including minor amendments to one Act and one Northern Ireland Order in Council (which is similar in some respects to primary legislation), to deal with deficiencies in the statutory framework for compulsory motor insurance that arise once the UK leaves the EU.
- 3.4 It introduces a policy change, which the Explanatory Memorandum states is “required as a consequence of leaving the EU”. This policy change is to remove the requirements for the Motor Insurers Bureau (‘MIB’) to act as Compensation Body for UK residents injured in road traffic accidents in the EEA, and to reimburse its foreign counterparts in respect of EU27 visitors in the UK who have been compensated by their ‘home’ Compensation Body.
- 3.5 Without the amendments domestic visiting victim’s provisions and the role of the MIB as UK Compensation Body would continue unilaterally. This means UK residents injured in a traffic accident in the EEA could continue to make visiting victims claims in the UK following EU Exit. The MIB would also have to continue reimbursing EEA countries for claims made by EEA residents injured in the UK. The Government states that the MIB would have cost exposure for these claims and would no longer be able to seek reimbursement from its foreign counterparts, which could result in costs being passed on to insurers and, in turn, to motorists. The instrument therefore removes the Compensation Body requirements from the MIB.
- 3.6 This means that UK drivers who are victims of road traffic accidents in the EEA will continue to be able to pursue claims for compensation, although the method for doing so will vary from Member State to Member State and could require pursuit of a claim against the uninsured driver directly.
- 3.7 If there is no deal with the EU, UK motorists will also be required to carry a ‘Green Card’ which guarantees third-party insurance provision when driving in the EU. This may result in increased bureaucracy and costs for those drivers.
- 3.8 Having considered the impact on UK drivers of these changes, the Committee recommends that the appropriate procedure for the instrument is for a draft of it to be

laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure) on the ground that it is of political and legal importance.

- 3.9 In the Eleventh Report of Session 2017-2019 published on 9th January 2019, the SLSC (Sub-Committee A) recommended that the instrument be upgraded to the affirmative procedure and said that:
- 3.10 The EU Motor Insurance Directives enable UK residents who are victims of motor traffic accidents in another EEA Member State to make claims in the UK against the insurer (or its claims representative) or from the Motor Insurers Bureau (MIB) as the UK's appointed Compensation Body ("the visiting victims scheme"). The MIB estimates that 5,000 UK road traffic victims make claims via the visiting victims scheme each year. Of these 5,000, 4,300 are made against insurers and 700 made against the MIB. In the event of 'no deal' with the EU, reciprocal arrangements with other EEA Member States are not guaranteed. The MIB would retain responsibility for compensating UK residents injured in an EEA state without the ability to claim reimbursement from that country. The MIB would also have to continue reimbursing EEA countries for claims made by EEA residents injured in the UK. The obligation on insurers based in the EEA to appoint a claims representative would also cease. The Government estimate that this could result in cost exposure for the MIB, which would result in costs being passed on to insurers, and in turn, to motorists. Therefore, this instrument removes the Compensation Body requirements from the MIB. UK residents who have already commenced court proceedings against the MIB prior to exit day will be able to continue pursuing visiting victims claims. The Department for Transport (DfT) anticipates "more UK residents issuing legal proceedings from November 2018 to exit day in order to ensure their claim can continue to be made in the UK" and estimates that this "could be up to 240 personal injury cases" resulting in the average levy increasing by £15,000.¹ Victims of road traffic accidents in the EEA will continue to be able to pursue claims for compensation, but will now need to do so in the Member State where the accident occurred. In the absence of an agreement with the EU, all UK motorists will be required to carry a "Green Card" (an international certificate of insurance issued by insurance providers in the UK) guaranteeing that the motorist has the necessary third-party motor insurance cover for travel in the EU. DfT estimates that "between two to four million individuals may need a Green Card." Green Cards are obtained free of charge from insurance providers; however, the DfT has explained that "insurance providers can decide to reflect production and handling costs in a small increase to their administration fees." DfT has also stated that they "expect that drivers crossing into Ireland from Northern Ireland will need Green Cards just as all UK drivers will in order to drive in the EU." Given the impact of these changes on UK motorists, the House may wish to debate the instrument. Therefore, we recommend that this instrument be upgraded to the affirmative resolution procedure.
- 3.11 The Department has accepted the SLSC and ESIC's joint recommendation but notes that both Committees include reference to the potential need to carry an international motor insurance card (Green Card) in the event of 'no deal' in their reasoning for recommending that the instrument be upgraded to the affirmative procedure. The amendments made by this instrument, which remove obligations on the UK relating to the visiting victims scheme, do not affect the potential need for Green Cards, which is a separate issue to the visiting victims scheme.

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)

- 3.12 The territorial application of this instrument varies between provisions
- 3.13 The UK government is making amendments for Northern Ireland because there is no Assembly in place. The territorial application of Parts 4 and 5 is therefore Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is as follows:
- Regulations 2 and 3 extend to England and Wales and Scotland only;
 - Regulation 4 extends to the United Kingdom; and
 - Regulations 5 and 6 extend to Northern Ireland only.
- 4.2 The territorial application of this instrument is as follows:
- Regulations 2 and 3 apply to England and Wales and Scotland only;
 - Regulation 4 applies to the United Kingdom; and
 - Regulations 5 and 6 apply to Northern Ireland only.

5. European Convention on Human Rights

- 5.1 The Minister of State for the Department for Transport Jesse Norman MP has made the following statement regarding Human Rights:
- “In my view the provisions of the Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The key legislative context for the instrument is set out at paragraph 2.2 above.
- 6.2 The Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 were made under the powers of section 2(2) of the European Communities Act 1972, in compliance with the UK’s European treaty obligations to give effect to Directive 2000/26/EC, which first introduced the visiting victims scheme. The provisions of that Directive are now contained in the Codified Motor Insurance Directive.

7. Policy background

What is being done and why?

- 7.1 Following the UK’s exit from the EU, the existing EU framework that underpins the visiting victims scheme will cease to apply to the UK. As discussed in paragraph 2.3, if legislative amendments are not made, UK motorists would be paying for traffic accidents caused by EEA motorists in EEA Member States on an ongoing basis.
- 7.2 This instrument will ensure that UK residents who have already commenced court proceedings against the MIB before exit day would be able to continue pursuing visiting victims claims in the UK. This reduces the risk of confusion for UK residents by ensuring the same criteria of legal proceedings having been commenced is applied

for making/continuing unsettled visiting victims claims against both the MIB and insurers in the UK, as well as mitigating the risk of higher motor insurance premiums. UK victims of road traffic accidents in the EEA, who have not commenced legal proceedings against the MIB before exit day, will continue to be able to pursue claims for compensation in the country in which the accident occurred.

- 7.3 This instrument applies to motor insurance, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. This instrument is also made under the power in paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation amended by these Regulations.

10. Consultation outcome

- 10.1 Given the EU Exit negotiation sensitivity of changes to the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003, formal public consultation was not considered appropriate. Nevertheless, informal engagement has taken place with the MIB, the Financial Conduct Authority, insurance trade associations and motoring trade associations to inform our drafting and ensure key stakeholders are aware and satisfied with the changes being proposed.
- 10.2 The Department for Transport has consulted with the Northern Ireland Department for Infrastructure before making the required changes to Northern Ireland domestic legislation.

11. Guidance

- 11.1 Guidance is not expected to be published with these regulations.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is based on the MIB having cost exposure for open cases where court proceedings have been commenced. This would be passed on to insurers by the MIB through a higher member levy and then potentially passed on to UK motorists in the form of higher motor insurance premiums. However, it should be emphasised that costs will be incurred for a limited period of time, until all the open cases have been settled, and MIB is aiming to extend the agreement between itself and equivalent EEA bodies to ensure reimbursement continues for those cases not yet settled by exit day.
- 12.2 The impact on the public sector is in the short term expected to arise through HM Courts and Tribunals Service. We should anticipate more UK residents issuing legal proceedings from November 2018 to exit day in order to ensure their claim can continue to be made in the UK. However, after exit day the removal of the compensation body activities will reduce overall demand upon HM Courts and Tribunals Service.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that no action is required.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the possible impact would be marginal and would only be experienced for a limited period of time. The MIB is funded by its members via a levy. It is possible that our proposed changes to visiting victims provisions will result in a small increase to this levy, which would then be felt by member motor insurance providers of all sizes, including SMEs. However, MIB has indicated that the total levy due for each member is determined in large part by that member's gross written premium as a proportion of the total premium written by all members. The approach taken will ensure that SMEs that have low gross written premiums will contribute proportionally less to the levy.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that a Post-Implementation Review is not required. This SI is removing provisions for a system that relies on reciprocal arrangements between Member State Compensation Bodies. Further evaluation of its effectiveness and validity of objectives is therefore not deemed necessary.
- 14.2 As this instrument is made under the EU (Withdrawal Act) 2018, no review clause is required.

15. Contact

- 15.1 Homairah Ginwalla at the Department for Transport (Telephone: 07977 418687 or email: Homairah.ginwalla@dft.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Donald Starritt at the Department for Infrastructure can be contacted in relation to any aspects of the instrument relating to Northern Ireland. Telephone: 02890 541152 or email: donald.starritt@infrastructure-ni.gov.uk.
- 15.3 Rupesh Mehta, Deputy Director for Roads EU Exit, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Jesse Norman MP, Minister of State for the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State for the Department for Transport, Jesse Norman MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

1.2 This is the case because:

- Apart from those claims where court proceedings have already been commenced against MIB, this instrument ensures that MIB does not continue to have cost exposure for visiting victims claims when it cannot seek reimbursement from its foreign counterparts (see 2.3 in main body of Explanatory Memorandum).
- UK victims of road traffic accidents will continue to be able to pursue claims for compensation in the country in which the accident occurred. Other amendments seek to maintain the status quo in respect of compulsory motor insurance, and contain no substantive changes of policy.

2. Good reasons

2.1 The Minister of State for the Department for Transport, Jesse Norman MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

2.2 These are:

- Apart from those claims where court proceedings have already been commenced against MIB, this instrument ensures that MIB does not continue to have cost exposure for visiting victims claims when it cannot seek reimbursement from its foreign counterparts. As a result, these ongoing costs are not then passed on to insurers through the MIB’s member levy, who could then pass them on to UK motorists in the form of higher motor insurance premiums (see 2.3 in main body of Explanatory Memorandum).
- Other amendments seek to maintain the status quo in respect of compulsory motor insurance, and contain no substantive changes of policy.

3. Equalities

3.1 The Minister of State for the Department for Transport, Jesse Norman MP has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 3.2 The Minister of State for the Department for Transport, Jesse Norman MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Jesse Norman, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland, and so far as the Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland”.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.