

MOTOR VEHICLES (COMPULSORY INSURANCE) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for Infrastructure (“the Department”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and neither is it meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Prior to EU exit and during the exit transition period, domestic motor insurance arrangements were governed by the Motor Insurance Directive (2009/103/EC) (“the 2009 Directive”). The 2009 Directive established the framework for motor insurance requirements, which individual Member States then had to implement in their domestic legislation.
4. Motor insurance is a devolved matter for Northern Ireland. As such, it is within the legislative competence of the Assembly to make legislation amending domestic provision on motor insurance.
5. Existing domestic statutory provision, the Road Traffic (Northern Ireland) Order 1981 (“the 1981 Order”), restricts mandatory motor insurance cover to the use of motor vehicles on roads and other public places. Historically, this was believed to be consistent with the requirements of the 2009 Directive. However, this provision is interpreted in line with case law, including European case law as it applied on Implementation Period completion day. EU case law was retained in Britain and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018 (“EUWA”).
6. In 2014 the European Court of Justice (“ECJ”) found in the case of *Vnuk v Triglav*¹ (“*Vnuk*”), that the mandatory motor insurance requirement, contained in Articles 3 and 10 of the 2009 Directive, should extend to a wider use of vehicles, and their use on private land. This would mean that motor insurance policies should cover certain types of off-road risks across a greater range of motor vehicles, including non-road going vehicles.

¹ Case C-162/13 ECLI:EU:C:2014:2146

7. This interpretation contrasts with existing motor insurance statutory provision in both GB and NI. In the 1981 Order, the compulsory third-party motor insurance requirement is limited to use of motor vehicles on roads and other public places. The 1981 Order also has a narrower definition of ‘motor vehicle’.
8. Crucially, the ‘Vnuk’ judgement – together with the effect of the EUWA and case law precedent - means that UK statutory provision on motor insurance is no longer consistent with the requirements of the 2009 Directive and retained EU case law. This means that, unless there is a change to existing statutory provision, GB and NI would potentially be vulnerable to ‘Vnuk-style’ compensation claims.
9. Moreover, in 2018, the case of *Lewis v Tindale*² established that the UK’s Motor Insurers’ Bureau (“MIB”) – would be directly liable for claims relating to uninsured motor collisions occurring on private land. The MIB is the UK’s designated compensation body to compensate victims of uninsured and unidentified drivers.
10. In response to the Vnuk judgement, the European Commission initiated a process to amend the 2009 Directive and extend compulsory motor insurance requirements. The UK participated in that process, up until the point at which it left the EU.
11. On 24 November 2021 Directive (EU) 2021/2118 was adopted by the European Commission to introduce amendments to the 2009 Directive. The amendments seek to clarify the scope of the 2009 Directive to cover accidents caused during the normal use of a vehicle as a means of transportation, including its use on private properties. Directive (EU) 2021/2118 has no reach in UK law.
12. Following withdrawal from the EU, there is now the option to remove the Vnuk ruling from retained EU case law. For NI, this requires legislation to amend the motor insurance statutory provision in the 1981 Order.
13. The equivalent provisions for GB are contained in the Road Traffic Act 1988 and provisions to make the necessary amendments to that Act have been brought forward in a Westminster Private Member’s Bill (introduced by Mr Peter Bone on 21 June 2021). This is entitled the [Motor Vehicles \(Compulsory Insurance\) Bill](#) (“the Westminster Bill”).
14. The purpose of the Westminster Bill is to remove the effect of the Vnuk decision and that of related retained case law, when assessing what constitutes compulsory motor insurance requirements. It also removes any MIB liability for insurance claims in respect of accidents on private land and for vehicles not constructed for road use. The Westminster Bill would effectively preserve the status quo in GB domestic motor insurance legislation.
15. This Bill would adjust NI statutory provision, Part VIII of the 1981 Order, so as to maintain the status quo, in terms of compulsory motor insurance, and would ensure that retained case law is not in conflict with domestic statutory provision.

² *Lewis v Tindale* [2018] EWHC 2376 (QB), (upheld in *Motor Insurers’ Bureau v Lewis* [2019] [2019] EWCA Civ 909 (“Lewis”)

CONSULTATION

16. In 2016/2017 the Department for Transport carried out a [UK-wide consultation](#) exercise on issues raised by the Vnuk judgement and policy options. It issued to all NI statutory consultees.

OPTIONS CONSIDERED

17. As the consultation was carried out prior to Exit day, the options considered reflected the need to comply with EU law. The exercise sought the views of the public and industry on the options for amending UK domestic law. The consultation put forward two options. The first of these would involve changing domestic legislation to implement the 2009 Directive in light of the Vnuk judgement. Compulsory motor insurance would be required by a wider range of vehicles and extended to cover their use on private land. The second, and preferred option would require third party cover to be in place only when a motor vehicle is used in traffic.
18. The consultation attracted 902 responses with 94% responding that implementing the Vnuk judgement would be worse than the current position on motor insurance in the UK. Around 72% of those who responded to the relevant question stated that the second option, which requires third party cover to be in place only when a motor vehicle is used in traffic, would be better than implementing the Vnuk judgement.

OVERVIEW

19. The overall impact of the Bill will be to:
- (i) end the effect of the Vnuk decision in retained EU law, and that of related retained case law; and
 - (ii) remove any associated MIB liability for insurance claims in respect of accidents on private land and for vehicles not constructed for road use.

This will effectively retain the status quo by removing the conflict between domestic legislation and retained EU case law.

20. The Bill amends Part VIII of the 1981 Order, which contains the provisions on compulsory motor insurance in Northern Ireland, by inserting Article 102B. The effect of the new Article is explained in the ‘commentary on clauses’ section below. No other amendments to the 1981 Order, or any other legislation, are made.

COMMENTARY ON CLAUSES

The Bill has 2 clauses:

Clause 1: Retained EU law relating to compulsory insurance for motor vehicles

This clause inserts a new Article 102B, entitled “Retained EU law relating to compulsory insurance”, into Part VIII of the 1981 Order.

Paragraph (1) of the new Article 102B alters the way in which Article 3 of the 2009 Directive is to be read, so far as Article 3 is relevant to the interpretation and effect of Part VIII of the 1981 Order. The effect of this provision is to make clear that the interpretation of the Article 3 insurance obligation in the light of the Vnuk judgment - that is, as extending to private land and to vehicles not constructed for road use - is not applicable when interpreting the compulsory insurance requirements in the 1981 Order. This is subject to Article 102B(2).

Paragraph (2) of the new Article 102B provides that paragraph (1) does not apply in relation to any question as to the interpretation or effect of the law of an EU Member State or Great Britain for the purposes of Article 92(1)(bb) or (c) of the 1981 Order. Those provisions require policies of insurance to include the cover required by the law applicable in the territory where the vehicle is used, or the law applicable where it is normally based, when that cover is higher.

Paragraphs (3) and (4) of the new Article 102B concern the removal of relevant Directive rights (as defined in paragraph (6)) to compensation from the MIB. Those rights are removed in all cases apart from in connection with the use of motor vehicles on roads or other public places (as defined in the 1981 Order).

Paragraph (5) of the new Article 102B provides that retained EU case law that is inconsistent with the position set out in paragraphs (1) or (3) ceases to have effect.

Paragraph (6) of the new Article 102B defines various expressions as used in the clause. It is self-explanatory.

Paragraph (7) of the new Article 102B further provides that the clause does not have retrospective effect, and so will not apply to the interpretation of Part VIII of the 1981 Order in relation to the use of a vehicle prior to the day on which it comes into force.

Clause 2: Crown application, commencement and short title

Clause 2(1) applies the provisions to the Crown, using words required by section 7 of the Interpretation Act (NI) 1954. The effect is that the Crown's rights to compensation from the MIB are affected by the Bill in the same way as the rights of people other than the Crown.

Clause 2 (2) provides for the provisions of this Bill to come into force on the day after it receives Royal Assent.

FINANCIAL EFFECTS OF THE BILL

21. There are no direct additional costs to the Executive as a consequence of the proposed changes to the compulsory motor insurance legislation. However, unless and until the changes are made, domestic legislation is out of step with retained EU law. This exposes government to risk of 'Vnuk' style compensation claims. Such claims would be borne by the Motor Insurers' Bureau in the first instance, which it is not funded to discharge. Ultimately it would be passed on to the drivers purchasing motor insurance policies.

HUMAN RIGHTS ISSUES

22. The effect of the proposed adjustments would simply be to retain the status quo in domestic motor insurance legislation. The provisions of this Bill are not considered to engage any of the rights under the European Convention on Human Rights (ECHR).

EQUALITY IMPACT ASSESSMENT

23. Section 75 Screening is not considered necessary - there is no change to existing policy and no section 75 groups are adversely affected.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

24. The UK Government commissioned the UK Government Actuary's Department ("GAD") to produce a detailed research report analysing the impact on motor insurance in the UK of five potential courses of action following the Vnuk judgement. The analysis was completed between 2017 and 2019 and involved an external peer review conducted by an independent actuarial firm. The report was published in February 2021 as the "Vnuk impact analysis: combined report".

25. In 2019, GAD concluded that the potential cost of implementing Vnuk in domestic legislation could be a £1.2 billion increase in insurance premiums per year. This would equate to c.£50 increase to existing motorcar insurance policy holders' annual premiums.

26. There would be a potential negative impact on existing motor car insurance policy holders annual premiums if these legislation changes were not made. Therefore, the need for a regulatory impact assessment has been screened out.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

27. The Bill does not require the processing of personal information.

RURAL NEEDS IMPACT ASSESSMENT

28. Rural Impact Assessment screening is not considered necessary - there is no change to existing policy.

LEGISLATIVE COMPETENCE

The Minister for Infrastructure had made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Motor Vehicles (Compulsory Insurance) Bill would be within the legislative competence of the Northern Ireland Assembly."



**Northern Ireland
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