



Department  
for Transport

Technical consultation on motor insurance:  
Consideration of the European Court of Justice ruling in  
the case of Damijan Vnuk v Zavarovalnica Triglav d.d  
(C-162/13)

December 2016



Department for

**Infrastructure**

An Roinn

**Bonneagair**

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# Foreword

1. All Government Ministers face challenges on a daily basis, some more vexing than others. The challenge Government is facing at the moment arises from a judgment by the European Court of Justice<sup>1</sup> which was a complete game-changer as far as motor insurance is concerned. We were disappointed with the judgment which interpreted the Motor Insurance Directive in a way that neither we, nor many of our counterparts across Europe, expected or desired. Nonetheless, it is an interpretation that we must, by law, recognise and take account of in developing the legislative framework governing motor insurance in Great Britain.
2. The European Union has made laws on motor insurance in order to achieve harmonisation allowing road hauliers and holiday-makers alike to travel across Europe easily and with peace of mind. The most recent Directive 2009/103/EC ('the Motor Insurance Directive'), a consolidation of four earlier Directives on motor insurance, sets the overall legislative framework which individual Member States must implement under their own rules. The UK will in due course be leaving the EU. Until we do so, we will remain a member with all the rights and obligations that membership entails. During this period the Government will continue to negotiate, implement and apply EU legislation. Any future changes will be for Parliament to decide.
3. We can understand the principle of ensuring that victims of motor vehicle accidents have protection, and we share that aspiration. But we have serious misgivings about the extent to which the Vnuk judgment has broadened the scope of the Directive. As the European Commission itself has recognised, the judgment has generated some potentially costly consequences and some quite challenging issues, including ones which Government firmly believe were unintended when the Directive was drafted.
4. There has also been real interpretative difficulty with the judgment, as evidenced by a spate of preliminary references by Member

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<sup>1</sup> Damijan Vnuk v Zavarovalnica Triglav d.d. C-162/13 (the 'Vnuk judgment')

States' courts to the Court of Justice of the European Union this year.

5. We are pleased to say that the Commission have recognised the consequences of the judgment and that a swift response at EU level is warranted. They have indicated a willingness to review the Motor Insurance Directive in light of its interpretation in the Vnuk judgment. Whilst their plans are at a high level at the moment, and they have set out four options for consideration, we are encouraged by the direction of their thinking on the issues.
6. So, subject to receiving your opinions we now regard changing domestic motor insurance law in accordance with an amended Directive as our preferred option— this is referred to in the consultation document as “the amended Directive option”. The crucial point, however, is that the change to the Directive is still just something that is being considered by the Commission.
7. Unless, and until, the Directive is actually amended, we are faced with a position where we must comply with European law as determined in the Vnuk judgment for as long as we are a member of the EU. Depending on the progress of EU exit negotiations, any regulations we make to comply with EU law could be time-limited. However, Government is absolutely clear that amending the Directive is our preferred approach. Our guiding principle in proposing changes to motor insurance law will be to adopt a common-sense approach which will keep costs to a minimum.
8. Feedback we receive on this consultation will help inform our position when discussing with the Commission potential amendments to the Directive. We would stress that this is not the final opportunity for you to feed into the process; your responses will help us to decide on next steps, but we will continue to discuss these issues with you to build your feedback into any proposals which arise from this consultation.
9. We welcome your views on the options and challenging issues set out in this consultation document.

Andrew Jones MP

# Foreword, Northern Ireland

1. One of my priorities as Minister for Infrastructure is to do all within my power to reduce the number of people killed and injured on our roads.
2. Regulation and enforcement of motor insurance requirements can make an important contribution to achieving our local Road Safety Strategy's vision to make a journey on our roads the safest in the world.
3. As part of the same EU Member State, it is important that the views of people living in the north of Ireland are considered alongside those in Britain and that any shortcomings or issues in domestic legislation are identified with a clear understanding of the impact policy proposals might have on businesses and individuals here.
4. I urge you to read the consultation paper and to consider the proposals put forward. If you feel any important issues or the needs of certain groups haven't been considered, please share your views with us.
5. This is not the final opportunity for you to feed into the process but your responses will play an important role in formulating policy and helping to decide next steps.
6. Thank you for taking part in this consultation. [Share the Road to Zero](#) with us and join us in our efforts to make our roads, and drivers, the safest in the world. I look forward to hearing your views.

Chris Hazzard MLA  
Minister for Infrastructure

# Glossary of terms

This consultation document uses some terms which might not be readily understood by every reader. In most cases we explain the terms when we use them, but this glossary is intended to assist any reader who is new to the broader issues associated with motor insurance or with how Government works.

**Amended Directive option** – the option which would involve changing UK law on motor insurance to implement the Motor Insurance Directive as amended, should the European Commission pursue its proposal to amend it.

**Comprehensive option** – the option which would involve changing UK motor insurance law to comply with the Motor Insurance Directive as interpreted in the Vnuk judgment.

**Court of Justice of the European Union** – this court interprets EU law to make sure it is applied consistently in all EU countries, and settles legal disputes between national governments and EU institutions.

**Derogation** – this is the process by which Government can declare that some types of vehicle which are in scope of the Motor Insurance Directive do not have to have an insurance policy. The crucial point is that victims of accidents involving derogated vehicles would have an alternative route to compensation, through the MIB.

**Directive-compliant policy** – the Directive sets certain requirements which an insurance policy must meet in order to be a valid motor insurance policy, for example it must have guarantee fund protection, it must meet the levels of liability set in the Directive and it must provide cover throughout Europe. So, if a newly-in-scope vehicle already has some sort of insurance policy, it would need to be adapted to meet the requirements of the Directive.

**Domestic legislation** - the legislation that implements the provisions of the Motor Insurance Directive in UK law; when this term is used in this document it mainly means the Road Traffic Act 1988 in Great Britain and the Road Traffic (Northern Ireland) Order 1981 in Northern Ireland.

**DVLA** – the agency which is responsible for licensing and registering motor vehicles which are used in the road.

**Fund of last resort/guarantee fund** – the fund which is maintained and administered by the Motor Insurers Bureau, required by the Directive to meet claims for compensation arising out of accidents involving uninsured or untraced drivers. Every insurer underwriting compulsory motor insurance in the UK is a member of MIB and contributes to the Bureau's funding through a levy.

**Levels of liability cover liabilities** – this means the level of compensation that the driver's insurance must cover; in the UK, liability in respect of personal injury is unlimited and in respect of property damage is £1.1m<sup>2</sup>.

**Motor Insurance Directive** – the consolidated European Directive 2009/13 which contains the motor insurance provisions which each Member State must incorporate into their own national law.

**Motor Insurers Bureau (MIB)** – has an obligation to handle claims in accordance with The Uninsured Drivers' Agreements and The Untraced Drivers' Agreements produced in collaboration between MIB and the Government. MIB is restricted to paying compensation in circumstances where compulsory motor insurance should have been in place. In summary this means MIB can pay compensation for property damage, death or injury arising from the use of a motor vehicle on a road or a public place in accordance with domestic legislation.

**Newly-in-scope vehicles** – this term is used to describe the vehicles which are, by virtue of the Vnuk judgment, now in scope of the Motor Insurance Directive. Some examples of newly-in-scope vehicles are set out in Annex A.

**Road Traffic Act 1988** – the principal piece of legislation in Great Britain that sets out the rules and requirements for motor insurance.

**Road Traffic (Northern Ireland) Order 1981**- the principal piece of legislation in Northern Ireland that sets out the rules and requirements for motor insurance.

**Route to compensation** – the way in which a victim claims compensation following a collision involving a motor vehicle where the driver is at fault. If the vehicle is insured then the route to compensation is to the insurers; if the vehicle should have been insured but is not, the route to compensation is to the MIB. The whole thrust of this document

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<sup>2</sup> A change to the law means that liability cover in respect of property damage is rising to £1.2m in 2017



is to extend the route to compensation to more victims in a wider range of circumstances.

***Third party liabilities*** – this term refers to the extent to which a driver must be insured by law, to cover personal injury to a third party or any damage to their property.

***Vnuk judgment*** – a case heard in the Court of Justice of the European Union in 2014 on a reference from a Slovenian court involving an accident in which Mr Vnuk was knocked off a ladder by a trailer attached to a tractor in a barn. The Court ruled that the vehicle should have been insured on the basis that the Directive requires compulsory insurance cover in respect of any use of a vehicle that is consistent with its normal function. Essentially it interpreted the Motor Insurance Directive in a way that was different to the UK Government's understanding of the Directive.

# Executive summary

## Context and overview

1. The Government is reviewing the law governing motor insurance. The main objective is to provide a route to compensation for victims of accidents involving motor vehicles in a wider range of circumstances whilst keeping the cost-burden to a minimum. The introduction in section one provides the context for this review and consultation.
2. We were prompted to review this area of law because of a legal case heard by the European courts in 2014 which resulted in what is known as the Vnuk judgment<sup>3</sup>. Section two of this consultation document sets out, in simple terms, how the insurance provisions in domestic legislation<sup>4</sup> work at the moment and explains why the Vnuk judgment means that we cannot maintain the law as it stands.
3. The UK will in due course be leaving the EU. Until we do so, we will remain a member with all the rights and obligations that membership entails. During this period the Government will continue to negotiate, implement and apply EU legislation. Any future changes will be for Parliament to decide.

## The two options being considered by Government

4. “The comprehensive option” reflects European law as determined in the Vnuk judgment. Unless, and until, the Directive is actually amended, we are faced with a position where we must comply with European law as determined in the Vnuk judgment for as long as we are a member of the EU. The comprehensive option is also one of the suggestions being considered by the Commission in its review. If the Commission’s review results in the Directive staying as it is, we will remain under the obligation to amend domestic

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<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0103>

<sup>4</sup> Domestic legislation means the legislation that governs motor insurance in the UK – including the Road Traffic Act 1988 in Great Britain and the Road Traffic (Northern Ireland) Order 1981 in Northern Ireland

legislation to comply with the Directive as clarified by the Vnuk judgment. This first option is discussed in section three. It is an option which Government is uncomfortable about but it reflects how the law stands at the moment so must be acknowledged. If implemented, this would result in us broadening our definition of a motor vehicle so that more vehicles were within scope and extending our insurance requirement beyond roads and other public places. This could mean users of motor vehicles would be required to have third party insurance on private land.

5. The comprehensive option would enable victims of accidents involving uninsured or untraced drivers on private land to pursue a claim for compensation with insurers in the first instance on account of the requirement for insurance. This would mean that MIB would have to consider more claims for compensation.
6. The option to change domestic legislation to implement the Directive as the Commission might amend it is discussed in section four. This is referred to in the consultation document as "the amended Directive option". The Commission has not yet reached a conclusion about whether and, if so, how, to amend the Directive. But, nonetheless, it is the Government's preferred option for the future, subject to receipt of your opinions. The Commission has published four suggestions, which they are considering, however two of their suggestions seem more advanced (one of the suggestions is not to amend the Directive). At this stage, we are therefore consulting only on the two suggestions that seem most advanced. Should the Commission, at some later stage, pursue another of its suggestions, then it will be necessary to consult you again.
7. Under the amended Directive option the definition of a motor vehicle would be broadened in much the same way as for the comprehensive option. But the key distinction is that it would only require the users of motor vehicles to have third party insurance cover on land over which the public has access, whereas the comprehensive option would require insurance on private land. The amended Directive option would also provide more victims with a route to compensation, either through insurers or the MIB, than at present, though fewer than would benefit from the comprehensive option.

## Issues arising from the two options being considered by Government

8. We recognise that there are circumstances where it would be an unjustified burden to require every individual vehicle user to buy their own insurance policy. That is why we are seeking views, in section five on whether and, if so, how, to make use of the power to derogate certain vehicles from the requirement for compulsory insurance. The consequence of derogating a category of vehicle is that the driver or rider is not required to buy an insurance policy. If a derogated vehicle is involved in a collision and no insurance is in place, the victim could claim through the MIB, who would then be able to seek a recovery from the driver or rider.
9. Both the comprehensive option and the amended Directive option would generate some serious enforcement challenges. Section six discusses and seeks views on how best to establish a sensible and effective enforcement regime.
10. A consequence of the comprehensive option with its extension of compulsory third party cover to private land is that the existing Statutory Off-Road Notification (SORN) scheme, which removes the need for both road tax and motor insurance, might not be able to continue in its current form. Section seven discusses, and seeks views on, how to ensure that the users of vehicles which are subject to SORN comply with the motor insurance requirements that would arise from our proposals.
11. By imposing an insurance requirement on the users of a much wider range of vehicles (referred to in this document as “newly-in-scope vehicles”) we must make decisions about what penalties we would impose on those users if they fail to comply with the new requirements. Section eight discusses whether we should have lesser penalties in place for users of some newly-in-scope vehicles as opposed to the penalties for conventional car drivers.
12. We are mindful of the fact that both the comprehensive option and the amended Directive option have the potential for increasing fraud. Section nine discusses, and seeks views on, how we might assess the likely scale of such fraud and how we might reduce the risk of fraud.

13. In addition to the key benefit of providing a route to compensation for a wider range of victims, we recognise that the options we are considering in this consultation are likely to impose additional costs on a range of individuals and business. Section 10 introduces the impact assessment which assesses the likely costs and benefits arising from both the comprehensive option and the amended Directive option. It seeks views on how to keep any additional costs to a minimum whilst still providing a route to compensation for victims in a wider range of circumstances. We have attempted to identify, in broad terms, where these costs will fall, but we are seeking views and evidence which will help us to quantify both the costs and the benefits.

## How to respond

The consultation period began on 20 December 2016 and will run until 31 March 2017. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact [motorinsurance@dft.gsi.gov.uk](mailto:motorinsurance@dft.gsi.gov.uk) if you need alternative formats (Braille, audio CD, etc).

You are welcome to send us a self-standing response covering any or all of the issues covered in the consultation document. We are asking a lot of questions but we recognise that you might only be in a position to answer some of them. Do not feel that you must answer every question; we would welcome whatever information you are able to offer on any of the questions we have posed.

But we have prepared a dedicated online survey which will enable you to let us know what you think on each of the issues in a simple way; we recommend that you use this survey as it would help us to collate and make sense of all the responses we receive. It can be found at <http://www.smartsurvey.co.uk/s/4CWY6/>

If you want to send us a self-standing response, or use the form at the end of this document (Annex C), please send it to

Motor Insurance Team  
Department for Transport  
3/29 Great Minster House  
London  
SW1P 4DR

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Please also make it clear whether your response refers particularly to the position in UK as a whole; just Great Britain; or just Northern Ireland.

## Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

# Section one – Introduction

- 1.1. Compulsory motor insurance has been a feature of UK road traffic law since 1930, many years before we joined the EU. The obvious benefit of having a system of compulsory insurance is that it provides victims of accidents involving motor vehicles with a convenient route to compensation. However, whilst a Member State of the European Union, we must be sure that our domestic legislation (mainly the Road Traffic Act 1988 in Great Britain; and the Road Traffic (Northern Ireland) Order 1981 in Northern Ireland) fully reflects the Motor Insurance Directive.
- 1.2. On 23 June, the EU referendum took place and the people of the UK voted to leave the European Union. The decision to leave the EU inevitably raises questions around policy areas such as this one that are aligned to EU requirements. In taking decisions about the sensible way forward following this consultation, we will consider any opportunities to minimise burdens and align with new opportunities and arrangements upon the UK's exit from the EU. We could for example consider whether a review or sunset (expiry) clause is appropriate in any regulations we make to comply with EU law. The significance of including a sunset clause is that the domestic regulations, or certain parts of them, would no longer be in place after a particular date. The implication of a review clause is that Government would have to look afresh at the regulations in several years' time to see whether they remain relevant and appropriate in light of prevailing circumstances at the time of the review.
- 1.3. We are carrying out a review of our domestic legislation because it has become evident, from a judgment in the European Court of Justice (the Vnuk judgment) that the Motor Insurance Directive which sets out the rules that all Member States of the European Union must implement in their domestic legislation, means something very different from what we have, until now, thought it meant.
- 1.4. In essence, the scope of the Motor Insurance Directive is broader than our domestic legislation: the implications of the judgment are



that more vehicles are within scope of the Directive and compulsory cover for third party liability cannot be limited to use on roads and other public places. The two most immediate impacts of changing our domestic legislation would be that (i) more people would need to buy an insurance policy; and (ii) more victims would have a straightforward route to compensation.

- 1.5. However, the permutations, challenges and complexities associated with bringing our domestic legislation into line with the Directive, as interpreted in the Vnuk judgment, are substantial. For example, just because you think that a vehicle you use is now “within scope of the Directive” that does not necessarily mean that you will have to buy an insurance policy. We are considering what use we might make of the power to derogate vehicles, which means that the users would not have to buy an insurance policy. This is discussed more in section five. The purpose of this consultation exercise is to explain why we must make changes to domestic legislation; set out the main options for change; seek views on both the main options and some of the issues which must be ironed out before we can embark on changing the long-standing requirements for motor insurance in our domestic legislation; and invite suggestions about any key issues we have not covered.

***Q1. Due to the uncertainty, do you think that the Government should add either a sunset clause or a review clause in any new Regulations stemming from this consultation?***

- Sunset
- Review
- Not necessary

Why?

***Q2. Leaving the EU allows us to look afresh at our overall policy aims on motor insurance. What are your views on the approach the UK should seek to take once we leave the EU?***

# Section two – Current law on motor insurance

## People who must have third party insurance

2.1. The requirement for compulsory third party motor insurance in Great Britain is contained in the Road Traffic Act 1988. The precise meaning of the law has been determined over many years by various court cases. But the following table shows some key aspects.

Existing requirement for motor insurance in GB
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<p>The law requires third party cover to be in place when a <b>motor vehicle</b> is <b>used</b> on a <b>road or other public place</b>.</p>
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<p>“<b>motor vehicle</b>” means “(other than an invalid carriage for which special provision is made under s20 of the Chronically Sick and Disabled Persons Act 1970)) .....a mechanically propelled vehicle <u>intended or adapted for use on roads</u>” or, put simply, cars, lorries, motorcycles etc.</p>
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<p>“<b>used</b>” means, the vehicle is functioning under the control of the driver; most commonly “use” will involve a vehicle actually moving at speed along the road, but “use” also extends to times when the vehicle is stationary but still under the control of the driver.</p>
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<p>“<b>road or other public place</b>” means highways, other roads to which the public has access, or any other places to which the public has access which can include bridges over a highway, and supermarket car parks.</p>
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- 2.2. In Northern Ireland, the requirements for motor insurance are similar, but are contained in different legislation - The Road Traffic (Northern Ireland) Order 1981.

Existing requirement for motor insurance in Northern Ireland

The compulsory insurance requirement in Northern Ireland is couched in slightly different terms from GB legislation:

*“it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road or other public place unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security<sup>5</sup> in respect of third-party risks as complies with the requirements of this Part.”*

“motor vehicle” is defined as a mechanically-propelled vehicle (not being a tramcar or other vehicle running on permanent rails, or a trolley vehicle) which is intended or adapted for use on roads.

## Victims of motor vehicle accidents

- 2.3. In situations where motor vehicle drivers must be insured by law, the victim of an accident can put a claim to either the insurer or, if the driver breaks the law by driving without insurance, to the Motor Insurers Bureau (MIB) who administer the “fund of last resort”. The role of the MIB, at the moment, is to consider claims from victims in circumstances where the law requires insurance to be in place; they do not have a role in circumstances where there is no legal requirement for insurance. The MIB is funded by means of a levy imposed on every authorised insurer that sells motor insurance. The cost of this levy is passed on to the generality of motor insurance policy holders.

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<sup>5</sup> In both GB and NI legislation there is an alternative option available to comply with the third party insurance requirements by obtaining a security. The arrangements are little-used and are not covered in this document.

2.4. Victims' route to compensation under existing law can be summed up in the following table:

Scenario	Is third party insurance required by law?	Was vehicle insured for third party liabilities?	Who deals with the claim?	Does MIB have a role as fund of last resort?
Car. Accident is on public road	✓	✓	Insurers	✓ Yes; if cover inadequate to meet claim.
Car. Accident is on public road	✓	✗ Driver is uninsured.	MIB	✓ Yes because there was a compulsory insurance requirement
Car. Accident is on a public road	✓	? Not known; driver fled scene ("hit and run") and is untraced	MIB	✓ Yes because there was a compulsory insurance requirement
Car. Accident is on private land	✗	✓	Insurers – if policy covers private land. Otherwise compensation only available if bring a successful claim against a driver	✗ No because no compulsory insurance requirement
Car. Accident is on private land	✗	✗	Compensation only available if bring a successful claim against a driver.	✗ No because no compulsory insurance requirement

**Why this must change**

2.5. We have no choice but to change the law, therefore – retaining the status quo is not an option.

- 2.6. The Vnuk judgment constitutes a definitive clarification of the Motor Insurance Directive and has significant implications for the UK's existing domestic motor insurance legislation.
- 2.7. The Court ruled that the Directive requires third party motor insurance in respect of any use of a vehicle that is consistent with its normal function.
- 2.8. This changed, at a stroke, what the UK Government, and many other Member States, had thought the Directive meant.
- 2.9. The clear implication of the judgment is that we must amend UK legislation to ensure that victims of motor vehicle accidents have a route to compensation in the full range of circumstances required by the Directive (as interpreted by the Court).
- 2.10. In particular the compulsory insurance requirement in respect of third party liability can no longer be limited to:
  - (i) use of a vehicle on roads or other public places, and
  - (ii) motor vehicles intended or adapted for use on roads.
- 2.11. This interpretation of the Directive necessitates a change in the UK's legislation to require insurance cover in respect of a broader range of vehicles and to extend the scope of required cover beyond places to which the public has access. Government cannot leave domestic legislation as it is. The UK will in due course be leaving the EU. Until we do so, we will remain a member with all the rights and obligations that membership entails. During this period the Government will continue to negotiate, implement and apply EU legislation. Any future changes will be for Parliament to decide.
- 2.12. However, there is some uncertainty about what the Motor Insurance Directive will look like for the remaining duration of the UK's membership since as discussed more fully in the next two sections, the Commission has indicated in its Inception Impact Assessment that the Vnuk judgment interpreted the Directive in an unexpected and, to some extent, undesirable, way. So it is reasonable for us to anticipate that the Motor Insurance Directive

might be amended, in which case the nature of our legal obligation would change.

- 2.13. The changes we propose in the two options that are discussed in the following sections will inevitably mean more people will require compulsory insurance when they use a vehicle. But this must be balanced against the benefit of providing a route to compensation for victims of motor vehicle accidents in a much wider set of circumstances.

# Section three – The Comprehensive Option

- 3.1 The European Court of Justice ruled, in the Vnuk judgment, that the Directive should be interpreted in a different way from the way in which the UK and many other Member States had interpreted it in domestic legislation. As explained in the Foreword, Government thinks that the judgment was unfortunate, with unintended consequences.
- 3.2 This section explains how, unless and until the Directive is amended, we will remain under an obligation to change domestic legislation to reflect the Court’s interpretation of the Directive. The Government is uncomfortable with this position. Nonetheless, this is how the law stands at the moment and, in the interests of good government, we are seeking views on it in this section. Your views will also help inform our discussions with the Commission as they develop an amendment to the Directive.
- 3.3 The following table explains, in simple terms, what domestic legislation would look like if we amended it to comply with the Court’s interpretation of the Directive.

The Comprehensive Option
<p>The law would require third party cover to be in place when a <b>motor vehicle</b> is used in a way that is consistent with the normal function of the vehicle.</p> <p>“<b>motor vehicle</b>” would remain as per the definition in the Directive: <b><i>“any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled.”</i></b></p> <p>However, taking into account the expectation that insurance would be required where use of a vehicle is consistent with its normal function, and the Court’s assertion that the reference to “land” in the Directive is not limited to public land, implementing the Directive (as interpreted in the Vnuk judgment) would require our</p>

law to extend compulsory cover much wider than it does currently i.e. for vehicles intended or adapted for use on roads in the Road Traffic Act; for example we might need to encompass the vehicles listed in Annex A.

**“used in a way that is consistent with the normal function of the vehicle”** means that insurance is required whenever a vehicle is being used for the purpose for which it was intended.

The crucial point about this approach is that the requirement for insurance must be determined by the use of the vehicle, not by where it was used. On this basis, insurance would be required when a vehicle (using the wider definition) is used for its normal purpose – even when that use is on private land as mentioned above



3.4 Victims' route to compensation under the comprehensive option can be summed up in the following table:

Scenario	Is third party insurance required by law?	Was vehicle insured for third party liabilities?	Who deals with the claim?	Does MIB have a role as fund of last resort?
Car. Accident is on public road	✓	✓	Insurers	✓ Yes; if cover inadequate to meet claim <b>EXISTING LIABILITY</b>
Car. Accident is on public road	✓	✗ Driver is uninsured.	MIB	✓ Yes because there was a compulsory insurance requirement <b>EXISTING LIABILITY</b>
Car. Accident is on a public road	✓	? Not known; driver fled scene ("hit and run") and is untraced.	MIB	✓ Yes because there was a compulsory insurance requirement <b>EXISTING LIABILITY</b>
Car. Accident is on private land	✓	✓	Insurers	✓ Yes; if a cover inadequate to meet claim. <b>NEW LIABILITY</b>
Car. Accident is on private land	✓	✗ Driver is uninsured	MIB	✓ Yes because there was a compulsory insurance requirement <b>NEW LIABILITY</b>
Newly-in-scope vehicle. Accident is on land over which the public has access	✓	✓	Insurers	✓ Yes; if cover inadequate to meet claim.

				<b>NEW LIABILITY</b>
Newly-in-scope vehicle. Accident is on purely private land	✓	✓	Insurers	✓ Yes; if cover inadequate to meet claim. <b>NEW LIABILITY</b>
Newly-in-scope vehicle. Accident is on land over which the public has access	✓	✗ User is uninsured. OR ? User cannot be traced	MIB	✓ Yes because there was a compulsory insurance requirement <b>NEW LIABILITY</b>
Newly-in-scope vehicle. Accident is on purely private land	✓	✗ User is uninsured. OR ? User cannot be traced	MIB	✓ Yes because there was a compulsory insurance requirement <b>NEW LIABILITY</b>

- 3.5 The Vnuk judgment can be described as something of a game-changer for motor insurance legislation.
- 3.6 We must take account of the broader definition of ‘vehicle’. Annex A lists some of these vehicles. We refer to them in this document as “newly-in-scope vehicles”.
- 3.7 We must also take account of the fact that insurance must be in place wherever and whenever a motor vehicle (using the broader definition) is used in its normal/natural way.
- 3.8 Another significant point about the comprehensive option is that compulsory insurance would be required when a vehicle is used on private land. This would be a substantial departure from existing domestic legislation.

- 3.9 Some of the sorts of vehicles that fall into the category of newly-in-scope vehicles are motor sports (competitor-to-competitor cover would be required because the vehicles would be being used in a way that is consistent with the normal function of the vehicle i.e. competing in a race); mobility scooters; and electrically assisted pedal cycles.
- 3.10 The inclusion of some of these vehicles in the Motor Insurance Directive, as interpreted in the Vnuk judgment, is one of the reasons why the Government expressed significant disappointment with the Vnuk judgment.
- 3.11 The impact assessment describes the sort of costs that would be incurred if we were to adopt the comprehensive option. Some of those costs we know would be substantial and, in the case of motor sports in particular, could have a wider effect on the sector as a whole; representatives of this sector tell us that it currently adds in excess of £10bn to the UK economy each year directly employing 60,000 people in over 9,000 businesses. The UK Government wants to see more authorised and well-run motor sport racing, including on closed roads, not a vibrant industry crippled by new burdens.
- 3.12 An example of a different sort of impact, but nonetheless one which we fully appreciate, is the potential effect on the users of mobility scooters if we were to impose an insurance requirement. We are keen that people who use both mobility scooters and powered wheelchairs remain safe, mobile and independent. We recommend that they get insurance for their own benefit, but we appreciate a legal requirement to do so – to the levels mandated in the Directive – is likely to be financially onerous.
- 3.13 We do not record how many vehicles in each of these categories are currently in existence and being used in a way that would, under the comprehensive option, bring them into scope. Neither do we know what sort of accidents they cause, nor what sort of claims are made by victims.
- 3.14 Nevertheless, Government has listened to stakeholders during the preparation of this consultation and impact assessment and does appreciate the substantial impact that a change of this nature would have on the users of some of these vehicles listed. Moreover, we recognise that some cost impacts would go much wider than simply the cost on individuals of buying an insurance policy. In the case of motor sports, for example, not only would the cost of the insurance

policy prove prohibitive, if indeed the activity was insurable at all, but any substantial increase in the cost of participating in the sport could have serious negative consequences for an industry that is a substantial contributor to the economy.

- 3.15 The impact assessment endeavours to predict relative impacts using a Red Amber Green approach, but we would welcome any information that consultees can offer to help us build up a more evidence-based picture of the likely outcomes.
- 3.16 It is important to bear in mind that not every user of a newly-in-scope vehicle would automatically have to have an insurance policy; we are considering the case for derogating some types of vehicle, which would mean that they would not have to have an insurance policy in place. This is discussed in section five.

### Benefits

- 3.17 If we were to amend domestic legislation to comply with the Directive, as interpreted by the Vnuk judgment, it would mean victims would have a route to compensation in a wider range of circumstances, including for accidents on private land. They could put a claim to the insurer; but if the user is not insured or cannot be traced in circumstances where the law says that they should be, the MIB would consider their claim.

***Q3. Compared with the current position do you believe if the domestic law on motor insurance changed in line with the comprehensive option it would be:***

- ***Better?***
- ***Worse?***

***Why?***

# Section four – The Amended Directive Option

- 4.1 Government recognised early on the very severe challenges arising from the Vnuk judgment. We have since been liaising with the Commission over our concerns. The Commission recognised the concerns expressed by UK and other Member States.
- 4.2 Therefore, the Commission have publicly stated that they may seek to amend the Motor Insurance Directive to mitigate the effects of the Vnuk judgment – a signal which Government welcomes. The consequence of the Commission amending the Directive would be that the Government would have to amend domestic legislation to reflect the amended Directive, not the Directive as interpreted in the Vnuk judgment.
- 4.3 The Commission’s initial suggestions for amending the Directive were published in June 2016 in an Inception Impact Assessment<sup>6</sup>. The IIA sets out four suggestions at EU level:

Commission’s suggestions for amending the Directive – lifted from their Inception Impact Assessment
<p>Suggestion 1 - Do nothing (i.e. not amend the Directive). This would mean that the Member States would be obliged to require motor third party liability insurance for vehicles involved in activities outside traffic, or choose to exempt certain types of vehicles from the insurance obligation or in case of uninsured or untraced vehicles in which case it would be the motor guarantee fund that would have to compensate consequences of accidents involving these vehicles. However since some activities are unlikely to be able to be insured at a viable cost, these activities risk becoming unviable.</p>
<p>Suggestion 2 - enact at EU level legislation that obliges Member States to set up guarantee schemes to specifically cover purely agricultural, construction, industrial, motor sports or fairground activities if uninsured. This would require that the EU defines and regulates the scope of compulsory liability insurance covering these activities at EU level. Given the divergences and/or lack of such compulsory schemes at Member States level, this would raise significant subsidiarity concerns.</p>
<p>Suggestion 3 - The scope of the Directive would relate only to accidents caused by motor vehicles in the context of traffic. This would be done by defining locations and types of activities that are to be understood to fall within that definition. The use in traffic could mean where the use of a vehicle is for the transport of persons or goods, whether stationary or in motion, in areas where the public has access in accordance with national law. Activities that would fall outside of this definition would be regulated at Member State level and it would be for them to decide whether they wish to pool them with other activities by regulatory means. The guarantee funds would not be obliged, under</p>

<sup>6</sup> [http://ec.europa.eu/smart-regulation/roadmaps/docs/2016\\_fisma\\_030\\_motor\\_insurance\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_fisma_030_motor_insurance_en.pdf)

EU law, to compensate consequences of traffic accidents unrelated to use in traffic. No changes in premiums or guarantee funds would be needed to absorb the potential need to compensate victims of accidents occurring in the context of purely agricultural, construction, industrial, motor sports or fairground activities involving vehicles where these occur outside of the sphere of use in traffic. **[This is the suggestion the Commission elucidates in most detail in their Inception Impact Assessment. Potential wording for the amendment is included in that Assessment.]**

Suggestion 4 – exclude some types vehicles from the scope of the Directive (e.g. tractors, cranes, forklifts, motor sports vehicles in regular traffic, or vehicles with a maximum speed below a defined limit) – this would lead to some types of vehicles being potentially uninsured even if they are on a road or other public places. This suggestion would not ensure the necessary level of protection of victims.”

- 4.4 The Commission’s suggestions are, at present, very high-level. We await further detail about the Commission’s plans.
- 4.5 Nonetheless, for the purposes of this consultation we are seeking views on the theoretical option of changing domestic legislation to comply with the potential amendment to the Directive detailed in the Commission’s suggestion 3.
- 4.6 It seems to us that 1 and 3 above are the suggestions which are most well-advanced; the first is how things stand under the Vnuk judgment (the comprehensive option) and the third has been expanded on by the Commission itself in such a way as to enable us to consider some of the impacts, albeit at a high level, for the purposes of consultation if the Commission did opt for this change. The other suggestions are in such infancy, in terms of their elaboration by the Commission, that we consider that it would be nugatory to consult on them at this stage. However, to inform our negotiating position regarding the Commission’s more advanced suggestion and their suggestion for doing nothing, we think it appropriate to focus this consultation on those suggestions. We will consult on the other suggestions, should it transpire that the Commission seek to pursue them.

**Q4 Which of the Commission’s four suggestions do you believe would be best for amending the Directive?**

- **Do nothing**
- **Required guarantee schemes**
- **Insurance required when vehicle is used in traffic**
- **Take some vehicles out of scope**

**Why?**

- 4.7 This section explains how, if the Directive is amended in line with the Commission's more detailed suggestion 3 in the IIA, we would have to amend domestic legislation.

#### If the Directive is amended

The law would require third party cover to be in place when a **motor vehicle** is used in traffic

**“Motor vehicle”** would mean *any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled.*”

This would go much wider than the existing requirement for vehicles intended or adapted for use on roads in the Road Traffic Act; it would encompass many of the vehicles identified in the comprehensive approach, but only when they are used in traffic.

The Commission's suggested definition of **“used in traffic”** is *“where the use of a vehicle is for the transport of persons or goods whether stationary or in motion, in areas where the public has access in accordance with national law.”*

We assume that the requirement for insurance where vehicles are used ‘in areas where the public has access in accordance with national law’ would broadly equate to the insurance requirement in domestic legislation on a road or other public place, which are determined by reference to public access. (The courts apply a test on the facts to establish whether there is general public access, permitted by the landowner.) In the majority of cases, it is likely to be self-evident whether the general public has access to a particular piece of land and, in turn, whether the use of a motor vehicle on that land would be subject to the compulsory insurance requirement. However, there will be other circumstances where this is less clear-cut. In these cases, there are certain characteristics which would make it more likely that the land is an area where the public has access, for example if the general public actually use it in practice; if there is no physical barrier; and if there is no prohibition sign.)

The crucial point about this approach is that it would have a more limited effect than the comprehensive approach because it would not extend the insurance requirement in the same way beyond land over which the public has access i.e. to purely private land.

#### **Scotland**

We recognise that the reference in the Commission's proposals to public access “in accordance with national law” may have particular, and possibly different

implications for different parts of the UK. For example, in Scotland, the Land Reform (Scotland) Act 2003, establishes rights to be on, and to cross, certain types of land, and this potentially broadens what is capable of constituting land over which the public has access. We would therefore welcome views about the potential impact on Scotland, or indeed any other part of the UK, if the Directive were to be amended in line with this option.

#### 4.8 Victims' route to compensation under the amended Directive option can be summed up in the following table:

Scenario	Is third party insurance required by law?	Was vehicle insured for third party liabilities?	Who deals with the claim?	Does MIB have a role as fund of last resort?
Car. Accident is on public road	✓	✓	Insurers	✓ Yes; if cover inadequate to meet claim. <b>EXISTING LIABILITY</b>
Car. Accident is on public road	✓	✗ Driver is uninsured.	MIB	✓ Yes because there was a compulsory insurance requirement <b>EXISTING LIABILITY</b>
Car. Accident is on a public road	✓	? Not known; driver fled scene ("hit and run") and is untraced.	MIB	✓ Yes because there was a compulsory insurance requirement <b>EXISTING LIABILITY</b>
Car. Accident is on private land	✗	✓ Voluntarily	Insurers - if policy covers private land	✗ Because no compulsory insurance requirement <b>SAME AS NOW</b>
Car. Accident is on private land	✗	✗	Compensation only available if bring a successful claim against a driver	✗ Because no compulsory



				insurance requirement <b>SAME AS NOW</b>
Newly-in-scope vehicle. Accident is on land over which the public has access	✓	✓	Insurers	✓ Yes; if cover inadequate to meet claim. <b>NEW LIABILITY</b>
Newly-in-scope vehicle. Accident is on purely private land	✗	✓ Voluntarily	Insurers – if policy covers private land.	✗ Because no compulsory insurance requirement <b>SAME AS NOW</b>
Newly-in-scope vehicle. Accident is on land over which the public has access	✓	✗ User is uninsured. OR ? User cannot be traced	MIB	✓ Yes because there was a compulsory insurance requirement <b>NEW LIABILITY</b>
Newly-in-scope vehicle. Accident is on purely private land	✗	✗ User is uninsured. OR ? User cannot be traced	MIB	✗ Because no compulsory insurance requirement <b>SAME AS NOW</b>

4.9 The main difference between the comprehensive option and this option, if the Directive were to be amended in line with the third of the Commission’s suggestions, would be that compulsory insurance would be limited to “land over which the public has access in accordance with national law”. This would mean that, unlike the comprehensive option, insurance would not be compulsory on purely private land.

- 4.10 An example of where compulsory insurance might be required on land over which the public has access is a farm. If the farm was completely private with no public access, akin to a private residence, there would be no compulsory insurance requirement for use of motor vehicles on the land. But if there was actual use by the general public of a private lane leading off a road to a farmhouse with no restriction by the landowner, then the land could constitute land over which the public has access and compulsory insurance would be required for any motor vehicles using the land.
- 4.11 This option of limiting the insurance requirement to the use of vehicles in traffic i.e. places where the public have access might mean there are fewer newly-in-scope vehicles than would be brought into scope under the comprehensive option. For example, in most cases motor sports event would take place on private land with no public access to the actual areas where the competition takes place – but this is still subject to clarification from Commission.
- 4.12 So, in summary, this option indicates that more vehicles (and therefore more people) would be subject to compulsory third party insurance than at present, in respect of the use of vehicles. But the impact would be less severe than if we were to implement the comprehensive option.
- 4.13 Even those that have already got third party cover voluntarily will probably have to alter their level of cover to comply with the Directive. This is because the Directive sets certain requirements which an insurance policy must meet in order to be a valid motor insurance policy, for example it must have guarantee fund protection, it must meet the levels of liability set in the Directive and it must provide cover throughout Europe. So, if a newly-in-scope vehicle already has some sort of insurance policy, it would probably need to be adapted to meet the requirements of the Directive.

### Benefits

- 4.14 If we were to amend domestic legislation in line with the Commission's preferred option it would mean victims would have a route to compensation in a wider range of circumstances than they do under current domestic law as a result of extending the insurance requirement to newly-in-scope vehicles, though not as wide as in the comprehensive option. They could put a claim to the insurer; but if the user is not insured in circumstances where the law says that they

should be, or cannot be traced, the MIB would consider their claim. But the circumstances in which the MIB would consider claims would be limited to accidents that occurred on land over which the public has access.

***Q5 If the Directive was amended so insurance was required when vehicles are used in traffic when compared to the comprehensive option would this make it:***

- Better?***
- Worse?***

***Why?***

***Q6 What do you think would be the effects in particular areas of the UK of using as the basis for compulsory insurance “areas where the public has access in accordance with national law”?***

# Section five – Derogations

## Derogations

- 5.1 The Directive allows Member States to derogate from the motor insurance requirement (a) types of vehicle and (b) certain vehicles having a special plate.
- 5.2 At the moment the UK is not making use of the power to derogate types of vehicle or certain vehicles having a special plate. This section explains what the impact of derogation is and asks for views on whether and, if so, how, we might make use of the power to derogate on this basis.
- 5.3 If a vehicle is derogated from the insurance requirement it means that the person who uses the vehicle does not need to buy an insurance policy for its use. The user of a derogated vehicle could choose voluntarily to buy an insurance policy but the law would not require it.
- 5.4 The crucial point about derogated vehicles is that the Directive requires Member States to have in place appropriate measures to ensure compensation. So a victim of an accident involving an uninsured derogated vehicle in the UK would have a route to compensation – the victim could put a claim to the Motor Insurers Bureau.
- 5.5 Therefore, an important consequence of derogating certain types of vehicle, is that the MIB could be making compensation payments in respect of vehicles where there is no obligation for insurance and where the users of those vehicles might not be contributing to the MIB's overall pot of money. This raises issues of fairness and equitable treatment.
- 5.6 However, this arrangement does not absolve the user completely and should not be regarded as “free insurance”.

- 5.7 The user of the vehicle could be pursued by the MIB to recoup any compensation they pay out. So, whilst it would not be a legal requirement for the user of a derogated vehicle to buy an insurance policy it would be in their interests to have third party cover.
- 5.8 Derogations could be made in respect of certain vehicles under both the comprehensive option and the amended Directive option.

### Deciding which types of vehicle to derogate

- 5.9 If Government decides that it does want to use the power to derogate certain types of vehicle, we would need to establish a set of principles to help us determine which vehicles should be derogated.
- 5.10 Given that the MIB would be making compensation payments to settle personal injury and property claims arising from the use of these vehicles, it seems reasonable to derogate vehicles which will keep the number and size of payments as low as possible; in other words “low risk” categories of vehicle.
- 5.11 We have considered some broad characteristics which might form the basis of a rationale on which to make decisions about which vehicles to derogate:
- The maximum speed of the vehicle
  - The weight of the vehicle
  - The number of wheels on the vehicle (determining its stability)
  - The number of passengers that could be carried in the vehicle
  - Whether any training and/or testing/licensing is required to use the vehicle
  - Whether any health or eyesight test is required to use the vehicle
  - Whether there is any monitoring of users’ proficiency in using the vehicle
  - The frequency of accidents
  - The current average cost of claims involving the vehicles
  - The cost of an average third party liability insurance policy at the moment
  - How difficult it would be to enforce any requirement for insurance

5.12 Our underlying objective would be to seek a proportionate approach to the use of derogations. So, if, for example, we were to establish a rationale for determining derogations based on a low maximum speed and a low weight threshold, it would seem likely that we would derogate motorised children’s toys. This would mean no compulsory insurance requirement for users, but victims of accidents caused by the negligent use of motorised children’s toys would have the protection of being able to put claims to the Motor Insurers Bureau.

5.13 These are just ideas to stimulate debate; we would welcome consultees’ ideas on a suitable basis for determining a basis for deciding which types of vehicles to derogate.

**Q7 Do you think government should make use of the power available to derogate certain vehicles in the:**

- Comprehensive option?**                                 **yes**                 **no**
- Amended Directive option?**                                 **yes**                 **no**

Comprehensive option

Under the comprehensive option, the compulsory insurance requirement would be imposed where newly-in-scope vehicles are used on private land. This might affect your views on derogation.

For example, the sheer number of newly-in-scope vehicles in this option; the challenges of enforcing a compulsory insurance requirement on private land or the difficulties of investigating claims on private land might sway what you think about derogations.

Amended Directive option

Under the amended Directive option, the compulsory insurance requirement would apply only when vehicles are used on land over which the public has access. This might affect your views on derogations; fewer vehicles overall would be in scope of the Directive as compared to the comprehensive option, though enforcement might still present a challenge if newly-in-scope vehicles did not have a traceability marking.

**Q8 Which factors provide the most suitable basis for deciding which types of newly-in-scope vehicles to derogate?**

## Section six – Enforcement

- 6.1. If we are going to place an obligation on the users of a substantial number of newly-in-scope vehicles, we need to consider the most suitable way of ensuring that the users of these vehicles adhere to this obligation.
- 6.2. Clearly, there are some quite fundamental problems in simply adopting the same enforcement methods for newly-in-scope vehicles as we currently have in respect of cars, lorries etc.
- 6.3. Put simply, most of the newly-in-scope vehicles do not have the licensing and registration requirements which currently enable enforcement from the record in Great Britain; and they do not have the traceability markings that enable enforcement agencies throughout the UK to make a check on the insurance status of an identifiable vehicle.
- 6.4. What we want to discover from consultees is whether there are certain considerations associated with newly-in-scope vehicles, for example, a lower likelihood of damage arising from an electrically assisted pedal cycle than from a car, that would lead us to adopt a less rigorous approach to enforcement than we currently have in relation to those vehicles which are currently subject to insurance requirements.
- 6.5. In terms of keeping records, it has been suggested that we might establish and maintain a comprehensive record of every newly-in-scope vehicle which requires insurance when it is used. The main benefit of adopting this approach is that it would help the police and the MIB to have a comprehensive record of every vehicle that requires insurance.
- 6.6. The key disadvantage of this approach is that it would be very expensive and burdensome to establish and maintain a central record of all newly-in-scope vehicles. A registration requirement would involve a whole new set of administrative processes; decisions would need to be taken about the sort of data that should be captured in respect of these vehicles; in order to work effectively, a unique

identifier would have to be issued for each vehicle; should the person who sold the vehicle have a role in conveying information to the central register and if so, would that mean they would have to be authorised to sell these vehicles; would there be an annual check on owners; what would happen when vehicles changed hands (bearing in mind that some of these vehicles can be owned by children). Given the sheer number of newly-in-scope vehicles, it would be a challenge to keep the record up to date, but a necessary one if the process were to be credible.

- 6.7. A lighter touch approach might be simply to rely on enforcement agencies making a check on the insurance status of any newly-in-scope vehicle which is being used in a way that requires insurance. This could entail routine spot-checks at the roadside or in the aftermath of an accident where it became apparent that the vehicle was not insured and the offence of using a vehicle without insurance could be enforced against accordingly.
- 6.8. Another key issue which must be considered in relation to enforcement is traceability. Most of the newly-in-scope vehicles do not have a traceability marking, in other words they do not have the obvious registration plate that enables witnesses to identify a conventional car or lorry. We would welcome views on whether it is important for newly-in-scope vehicles to be issued with a traceability marking, like a mini number plate.
- 6.9. The advantage of this would be that investigating accidents and claims would be much easier with a traceability marking. But the downside is the cost and bureaucracy involved in establishing such a system, and in keeping it up to date.

Comprehensive option
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This option would require users of newly-in-scope vehicles to have insurance when the vehicles are used on public and private land. The questions below ask for your views about enforcement in relation to this option.
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Amended Directive option
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This option would require users of newly-in-scope vehicles to have insurance when the vehicles are used on land over which the public has access. The questions below ask for your views about enforcement in relation to this option, as distinct from the comprehensive option.
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**Q9 What do you think are the main enforcement challenges – and how do you think we should deal with them - in the:**

- Comprehensive option?**
- Amended Directive option?**

**Q10 Should a central register of every newly-in-scope vehicle be maintained?**

- Yes**
- No**

**Q11 Who should maintain the register?**

- Government**
- Insurers**
- Other (please specify)**

**Q12 Is it important for all newly-in-scope vehicles to have a traceability marking for the:**

- |  |            |           |
|--|------------|-----------|
| <input type="radio"/> <b>Comprehensive option?</b>     | <b>yes</b> | <b>no</b> |
| <input type="radio"/> <b>Amended Directive option?</b> | <b>yes</b> | <b>no</b> |

# Section seven – Statutory Off-Road Notification

- 7.1 At the moment, generally speaking, if a vehicle is not being used on a road or other public place, the owner can make a declaration to that effect; this is a Statutory Off-Road Notification (SORN).
- 7.2 The consequence of making a SORN declaration is twofold: (i) the owner does not have to pay Vehicle Excise Duty (VED or “road tax”); and (ii) the owner does not need to insure the vehicle.
- 7.3 Under the comprehensive option vehicles used on private land would require third party cover; this means that there is a question over whether we can maintain the blanket exemption from insurance for SORN vehicles.

## Comprehensive option

Maintaining the automatic link between SORN and no insurance requirement would be problematic under the comprehensive option. Under this option insurance would be required whenever a vehicle is used off road.

So, either

- every SORN vehicle must always have insurance in place (onerous; and arguably goes beyond Vnuk judgment requirement in the case of vehicles that are not actually used off road)

or

- any SORN vehicle which is used on private land must have insurance in place (this meets the requirements of the Vnuk judgment).

***Q13 Should all SORN vehicles be required to have third party insurance under the comprehensive option?***

- Yes**
- No**

**Why?**

**Amended Directive option**

Dealing with SORN under the amended Directive option should not generate a problem. The obligation for compulsory insurance would be triggered when a vehicle was used on land over which the public has access.

If a vehicle subject to VED was being used on land over which the public has access, and had a SORN in place, it would be committing an offence as it would be contravening the terms of the SORN.

***Q14 Would there be problems with SORN under the amended Directive option?***

## Section eight – penalties

- 8.1. It may be the case that people who use newly-in-scope vehicles fail to comply with any new insurance requirement. This could be down to several factors; perhaps they were unaware or perhaps they simply chose not to buy an insurance policy.
- 8.2. We need to consider what penalties should be imposed in respect of users of newly-in-scope vehicles; whether they should be the same penalties as currently in place for conventional car, lorry etc drivers or whether they should be different.
- 8.3. Contravention of the compulsory insurance requirement in Great Britain is an offence which can attract a fixed penalty fine of £300 and six penalty points; or if an offender is convicted in the magistrates court the maximum sanction is an unlimited fine and disqualification.
- 8.4. Contravention of the compulsory insurance requirement in Northern Ireland is an offence and the punishment is either a fixed penalty of £200 and six penalty points, or if prosecuted and subsequently convicted, a maximum £5000 fine, a discretionary disqualification and 6-8 penalty points.
- 8.5. If, for example, we were to impose an insurance requirement on the users of mobility scooters, there is an argument that, because the speed of the vehicle marks it out as a lesser risk with the potential for causing less damage or injury than cars, the penalty for non-compliance should be lower than for car drivers who fail to buy insurance. We would welcome views on whether penalties should be lower for using a newly-in-scope vehicle without insurance.

***Q15 Should the same level of fine apply in respect of newly-in-scope vehicles as currently applies to cars?***

**Yes**

**No**

***Why?***

## Section nine – Fraud

- 9.1. By extending the circumstances in which victims would have a route to compensation, it is inevitable that some people will take advantage of the new arrangements and attempt to act fraudulently.
- 9.2. Moreover, the fact that many of the accidents under the comprehensive option will occur on private land away from CCTV and potential independent witnesses and many of the vehicles have no traceability marking, will inevitably increase the temptation for people to make fraudulent claims. That temptation could be all the more attractive if people start to regard the Motor Insurers Bureau as a source of compensation.
- 9.3. We are therefore seeking views on the nature of the fraud that could be expected and how it might be combatted.
- 9.4. The Government takes the view that fraud is unacceptable and adds to the bill of honest motorists.
- 9.5. The fraudulent activity we envisage could range from exaggerating the severity of an injury to the staging of an accident through to complete fabrication of an accident.
- 9.6. It could also be a case of a person having two or more vehicles and only insuring one of them and then claiming that that was the one that was involved in the accident. This is all the more important if we do not opt for traceability markings for newly-in-scope vehicles.
- 9.7. The most obvious way to mitigate the risk of fraud is to introduce a requirement to report any off-road accidents involving vehicles within scope of the Directive to the police. In this way the insurer or the MIB could have a degree of confidence about the facts of the case. And, at the very least, it might deter some of the more opportunistic claimants.
- 9.8. But on the other hand, this requirement could become onerous for both vehicle users and the police. It could mean that a mobility scooter rider who bumps into a fellow shopper in a mall would have to

report that incident to the police in case the victim decides to put a claim to the MIB.

- 9.9. It could mean the police are inundated with accident reports of a fairly trivial nature, the majority of which might never reach the stage of a compensation claim.
- 9.10. There is also a question, in relation to personal injury accidents, about whether the victim should prove that they have been assessed by a doctor.
- 9.11. More generally, we would welcome ideas from the insurance industry and other consultees with an interest in combatting fraud about the risks we would be generating with our proposed changes to the law; and how these could be mitigated.

#### Comprehensive option

The most important point about this option is that the compulsory insurance requirement would apply to newly-in-scope vehicles on private land. This means that there would be greater potential for fabricating claims and therefore brings very specific challenges in relation to fraud.

#### Amended Directive option

If the Directive were to be amended, it would mean that newly-in-scope vehicles would require insurance only on land over which the public has access. This arguably reduces the potential for fraudulent claims because the potential for finding witnesses or using CCTV footage is greater than for the comprehensive option.

***Q16 What requirements to deter fraud might be built into the claims procedure under the two main options in this consultation?***

***Q17 What comments do you have about the nature and extent of fraud which will be generated by the two main options in this consultation?***

***Q18 What ideas do you have for combating any fraud which might be generated by the two main options in this consultation?***

## Section ten – Costs and benefits

- 10.1. If the MIB need a larger pot of money in order to pay for more compensation claims, this is going to have to come from imposing a larger levy on insurers who sell motor policies.
- 10.2. In turn, insurers are likely to fund this larger levy by increasing the premium of every policy they sell.
- 10.3. So, if the cost of insurance increases noticeably for ordinary drivers, it is likely that a significant number of drivers will take the risk of not buying a policy and driving without insurance.
- 10.4. We need to understand the extent to which insurance premiums might rise and people might ignore the law and avoid compulsory insurance obligations.
- 10.5. In Government's opinion, even though it is contingent upon the Directive being amended, the amended Directive option appears to offer the best balance between the different interests of vehicle users versus victims and practicability.
- 10.6. We have prepared a consultation-stage impact assessment [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/579383/motor-insurance-vnuk-judgement-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579383/motor-insurance-vnuk-judgement-impact-assessment.pdf)
- 10.7. We have thought about the costs and benefits that would arise from each of the options. The response survey invites you to comment on it and asks for any evidence you can offer which might help us to better assess the costs and benefits.
- 10.8. If you are in a position to provide us with more information than we ask for in the survey, please let us know and we will send you a more detailed survey form.

[motorinsurance@dft.gsi.gov.uk](mailto:motorinsurance@dft.gsi.gov.uk)

## Annex A – Examples of “newly-in-scope vehicles”

Under the Directive: *“Vehicle means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether coupled or not coupled;”*

Some of the vehicles which could be brought within scope of the Motor Insurance Directive by virtue of the Vnuk judgment are electrically assisted pedal cycles, construction vehicles, agricultural vehicles, segways, ride-on lawnmowers, motor sports vehicles, mobility scooters, golf buggies, motorised ride-on children’s toys, fairground rides (e.g. dodgems), fork lift trucks, dumper trucks, engineering plant and quad bikes (off-road construction).



# Annex B - Consultation principles

The consultation is being conducted in line with the Government's key consultation principles. Further information is available on the Better Regulation Executive website at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator  
Department for Transport  
Zone 1/29 Great Minster House  
London SW1P 4DR  
Email [consultation@dft.gsi.gov.uk](mailto:consultation@dft.gsi.gov.uk)

Please do not send consultation responses to this address.

# Annex C – Motor Insurance consultation survey

This survey is available electronically <https://www.gov.uk/dft#consultations> but you are welcome to send us any comments using this form.

Given the breadth of sectors potentially affected by the options in this consultation, we recognise that you might not be in a position to answer every question we have posed, particularly if you are representing the interests of just one sector. However, we would welcome any information or opinion which you wish to make on any of the questions where you do have something to offer. And if you are representing the interests of just one sector, it is important to us that we capture the valuable information you will be able to make in respect of your area of expertise.

## **Part one – about you**

Your email address?

Your response is related to the position in:

- UK as a whole?
- Great Britain?
- Northern Ireland?

Are you responding:

- On behalf of an organisation?
- As an individual?

If an organisation, name of organisation?

How many people in the organisation?

- Less than 50 people
- More than 50 people

What is the organisation's principal area of interest?

- Insurance
- Road safety (including victims' wellbeing)
- Motorists
- Mobility scooters
- Motor sports
- Electrically assisted pedal cycles
- Agricultural/lawnmower interest
- Fork lift trucks
- Golf buggies
- Segways
- Other (please specify)

What other area of interest does your organisation work in?

## **Part two – your opinions**

**Q1. Due to the uncertainty, do you think that the Government should add either a sunset clause or a review clause in any new Regulations stemming from this consultation?**

- Sunset
- Review
- Not necessary

Why?

**Q2. Leaving the EU allows us to look afresh at our overall policy aims on motor insurance. What are your views on the approach the UK should seek to take once we leave the EU?**

**Q3 Compared with the current position do you believe if the domestic law on motor insurance changed in line with the comprehensive option it would be:**

- **Better?**

- Worse?**

**Why?**

**Q4 Which of the Commission's four suggestions do you believe would be best for amending the Directive?**

- Do nothing**
- Required guarantee schemes**
- Insurance required when vehicle is used in traffic**
- Take some vehicles out of scope**

**Why?**

**Q5 If the Directive was amended so insurance was required when vehicles are used in traffic when compared to the comprehensive option would this make it:**

- Better?**
- Worse?**

**Why?**

**Q6 What do you think would be the effects in particular areas of the UK of using as the basis for compulsory insurance “areas where the public has access in accordance with national law”?**

**Q7 Do you think government should make use of the power available to derogate certain vehicles in the:**

- Comprehensive option?**                      **yes**                      **no**
- Amended Directive option?**                      **yes**                      **no**

**Q8 Which factors provide the most suitable basis for deciding which types of newly-in-scope vehicles to derogate?**

**Q9 What do you think are the main enforcement challenges – and how do you think we should deal with them - in the:**

- Comprehensive option?**

- Amended Directive option?**

**Q10 Should a central register of every newly-in-scope vehicle be maintained?**

- Yes**
- No**

**Q11 Who should maintain the register?**

- Government**
- Insurers**
- Other (please specify)**

**Q12 Is it important for all newly-in-scope vehicles to have a traceability marking for the:**

- |  |            |           |
|--|------------|-----------|
| <input type="radio"/> <b>Comprehensive option?</b>     | <b>yes</b> | <b>no</b> |
| <input type="radio"/> <b>Amended Directive option?</b> | <b>yes</b> | <b>no</b> |

**Q13 Should all SORN vehicles be required to have third party insurance under the comprehensive option?**

- Yes**
- No**

**Why?**

**Q14 Would there be problems with SORN under the amended Directive option?**

**Q15 Should the same level of fine apply in respect of newly-in-scope vehicles as currently applies to cars?**

- Yes**
- No**

**Why?**

**Q16 What requirements to deter fraud might be built into the claims procedure under the two main options in this consultation?**

**Q17. What comments do you have about the nature and extent of fraud which will be generated by the two main options in this consultation?**



***Q18. What ideas do you have for combating any fraud which might be generated by the two main options in this consultation?***

## Part three - evidence gathering

The following questions are designed to help us assess the likely impact of any changes arising from the options in the main consultation document.

As such we would like information about any of the newly-in-scope vehicles with which you are familiar.

This information will enable us to assess, with as much accuracy as possible, the cost of implementation and how people might benefit from either option.

***Q19 Using the list of newly in scope vehicles in Annex A, to which vehicle do your answers refer?***

***Q20 What is the typical cost of buying these vehicles?***

***Q21 What is the typical cost of an annual third party insurance policy for these vehicles?***

***Q22 How many accidents per year are these vehicles involved in, where third parties suffer damage to their possessions or are injured?***

**Q23 How many claims per year are put to insurers in respect of these vehicles?**

**Q24 What is the average compensation payout for victims of accidents involving these vehicles?**

We are grateful for any information you can provide on these questions.

But we do have a need for more detailed information from any person or organisation which is in a position to provide more data.

If you can provide more data, can you please let us know and we will send you a more tailored survey form.

[motorinsurance@dft.gsi.gov.uk](mailto:motorinsurance@dft.gsi.gov.uk)

Thank you



# What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on [www.gov.uk](http://www.gov.uk). Paper copies will be available on request.