



Department
for Transport



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

Consultation on the Removal of Deposits and Securities as alternatives to conventional insurance

Moving Britain Ahead

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The consultation by the Department for Transport and the Department for Infrastructure in Northern Ireland is being carried out in the public interest to inform the development of policy. If your answers contain any information that allows you to be identified, the Department for Transport and the Department for Infrastructure in Northern Ireland will, under data protection law, be Joint Controllers for this information. Any information you provide in response to this consultation might be used by both Departments.

As part of this consultation we are asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to

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The Department for Infrastructure in Northern Ireland's privacy policy is available at:

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1. Introduction

This consultation seeks views on the proposal of the Department for Transport and the Department for Infrastructure in Northern Ireland to remove two existing alternatives to conventional motor insurance allowed under the Road Traffic Act 1988 (RTA) in Great Britain and the Road Traffic Order 1981 (RTO) in Northern Ireland.

These are:

- (1) Deposits under s. 144 (1) of the RTA and Article 90(2)(b) of the RTO, and
- (2) Securities under s. 146 of the RTA and Article 93 of the RTO.

These are long standing alternatives to insurance which were introduced when third party liability motor insurance was made mandatory in 1930. The Secretary of State for Transport has responsibility for motor insurance and the securities and deposits regimes in Great Britain and the Department for Infrastructure has responsibility for this in Northern Ireland.

There are other exceptions from the requirement for mandatory third party liability motor insurance, but these are beyond the scope of this consultation and are not subject to review.

2. The Deposits regime

S. 144 (1) of the RTA allows vehicle owners to deposit £500,000 with the Accountant General of the Senior Courts, as an alternative to buying third party motor insurance.

The main terms as specified in the legislation are:

The vehicle must be driven at all times under the owner's control for the exemption from holding motor insurance to apply

Conventional motor insurance must be purchased before the vehicle is driven overseas.

A deposit provides the depositor with a complete exemption from the requirement to comply with Part VI of the RTA. The depositor would, therefore, be required to satisfy from his own resources any liability arising from the use of the vehicle which would otherwise be covered by motor insurance or a security.

In Northern Ireland, similar provision is made by Article 90(2)(b) of the RTO.

3. The Securities regime

As a further alternative to third party liability motor insurance, a vehicle user may take out a security with a security giver. Under RTA s. 146 a security can only be given by an insurance company or some body of persons which carries on in the UK the business of giving securities.

A security must consist of an undertaking by the giver of the security to make good, subject to any conditions specified in it, any failure by the vehicle owner, or others named in the security, to discharge third party liabilities against the vehicle owner or others as specified, being a liability required under s.145 RTA to be covered by a policy of insurance.

However, the amount secured, need not exceed: £25,000 for an undertaking relating to the use of public service vehicles, e.g. buses or coaches. £5,000 in any other case.

Insurers or others who give securities under the RTA must deposit £15,000 with the Accountant General of the Senior Courts.

In Northern Ireland, similar provision is made by Article 93 and Article 92 of the RTO Great Britain - The Secretary of State's role

A person wishing to make a deposit with the Accountant General of the Senior Courts, must first apply to the Secretary of State for a warrant. The Secretary of State's role is therefore to consider whether, in each case, a warrant will be granted.

Northern Ireland

There is no equivalent provision in Northern Ireland to that in Great Britain.

Great Britain and Northern Ireland - How often are deposits and securities used as alternatives to conventional motor insurance

Given that a deposit of £500,000 is required in order to rely on a deposit as an alternative to motor insurance, this option is unlikely to be cost effective for a private motorist. The deposit required of a security giver is £15,000, but a security can only be given by an insurer or a body of persons which carry on in the UK the business of giving securities.

There are, therefore, presently only a small number of companies in Great Britain that have made a deposit or have a security with a security giver.

In order to minimise their exposure to high value claims, these companies have usually taken out insurance cover for claims in excess of a threshold value.

No companies have taken up either of these options in Northern Ireland.

4. The case for removing these alternatives to motor insurance

Securities

Insurers are subject to authorisation and the regulation applicable to insurers (e.g. ongoing solvency requirements). They are regulated by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) in relation to their conduct. Prudential regulation rules require financial firms to hold sufficient capital and have adequate risk controls in place. Close supervision of firms ensures that the PRA have a comprehensive overview of their activities and can always step in if insurers are not protecting policyholders adequately. They contribute to the Financial Services Compensation Scheme (FSCS) through a levy and in the unlikely event that an insurer becomes insolvent, the FSCS ensures claims are paid and any third party victims are fully compensated.

Security givers are not required to be insurers, and those that are not insurers are not subject to the same stringent regulatory oversight, resulting in an increased risk that they will be unable to pay out in the event of a claim concerning a vehicle in relation to which a security is given. The Motor Insurers Bureau (MIB) will, under the Uninsured Drivers' Agreement, in Great Britain between the Secretary of State for Transport and the MIB, and in Northern Ireland, between the Department of Infrastructure and the MIB, satisfy claims where the security-giver is unable to pay out, and therefore the third party victim will not be disadvantaged.

However, the MIB is funded by motor insurers and, as detailed above, security givers are not required to be insurers. We therefore consider it inappropriate that premium paying motorists (who ultimately bear the costs of insurers) should bear the potential risk posed by a security-giver who has made no financial contribution to MIB. This is particularly the case given that the lack of regulatory oversight of security-givers which are not insurers means these companies may pose a greater risk of being unable to pay out and satisfy securities which they have undertaken to cover.

Deposits

Once deposits are made they are not required to be renewed, and so a depositor is not required to demonstrate at any point that it is in a position to meet third party claims, and a depositor's financial situation may change significantly from the date the deposit is made.

The £500,000 deposit might not be sufficient to meet all third party liabilities which arise from the use of the vehicles subject to the deposit, which, in the case of a serious personal injury claim, may total many millions of pounds so a victim might not be fully compensated. For a business, the deposit could be used to exempt a significant number of vehicles from the requirement to hold compulsory insurance.

If the depositor is unable to meet a third party claim, the MIB would not compensate the victim because the liability incurred in respect of that vehicle would not be a liability for which a contract of insurance must be in force to comply with Part VI RTA, and would therefore be outside the scope of the Uninsured Drivers Agreement.

Deposits and Securities

In addition the department is concerned that the deposits and securities regimes might not be fully compliant with European Union (EU) law. For example, the Directive requires compulsory insurance in respect of third party liabilities of the Euro equivalent of approximately £1.2 million property damage, and £6 million personal injury ((under the RTA (RTO in Northern Ireland) for conventional insurance personal liability is unlimited)). Neither a deposit of £500,000, in the case of depositors, or £15,000 in the case of security-givers, provide any guarantee that such liabilities can be met.

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. During the implementation period, the UK will no longer be a Member State of the European Union, but market access will continue on current terms. To give businesses and citizens certainty, common rules will remain in place until the end of the period.

5. What we propose

As a result of our concerns raised above we think that the deposits and securities options under s. 144 (1) and s. 146 of the RTA (Article 90(2)(b) and Article 90 of the RTO in Northern Ireland) respectively should be removed. We propose that those organisations which currently take advantage of these alternatives would then be required to purchase mandatory third party motor insurance as required by s. 143 of the RTA and Article 90 of the RTO. It would ensure that all current depositors and security-takers have fully insured vehicles so third party victims would be guaranteed compensation; premium paying motorists through the MIB would not provide fall back compensation in the case of securities; and remove the risk that such provisions are not compatible with the Directive.

6. Transitional arrangements

If the deposits and security regimes are removed then those organisations which had a deposit or had given a security would still have to make provision for potential claims for accidents which occurred whilst they were depositors or security givers. This might cover several years, e.g. the standard timeframe for making a personal injury claim under the Limitation Act 1980 is three years, but if the injured party is a child at the time of the accident then the three year limit commences only when the child is aged 18. We consider that a proportionate approach is to require that the deposit is retained with the Accountant General of the Senior Courts for a period of three years. No organisations in Northern Ireland currently use either the deposits or securities schemes. We would appreciate the views of respondents on this proposal as set out in question 4 below.

7. Questions

To assist us in evaluating the responses, please state whether (or which parts of) your response should be taken into account in respect of Great Britain, Northern Ireland, or both.

Question 1

If you disagree with our proposal to remove the deposit and security alternatives to compulsory third party motor insurance, then how else do you propose we reform these regimes to ensure they are fair, protect victims and are compliant with the law?

For those who currently have a deposit, are security givers or security holders.

Question 2

What would the impact be on your business if we removed the options for a deposit under s144 (1) or a security under s146 of the RTA?

If there would be a significant impact then please explain why?

Question 3

What time period would you consider is appropriate between confirmation that the change will go ahead, and removal of the option, and why?

Compensation for accidents which happened when a company held a deposit or security but a claim is brought after the regimes are removed.

Question 4

If the deposits and securities regimes were removed and deposits refunded, then how would you propose to ensure that victims receive appropriate compensation for liabilities incurred at the time that you relied upon a deposit, or gave out securities, in place of insurance? Would you support the deposit made by depositors and security givers to be retained for three years after the regimes have ended?

Alternatively, do you have another suggestion?

If so please explain?

Question 5

Do you agree with our analysis of this issue presented in this consultation document?

If not, please explain why not?

8. How to respond

In order to respond to this consultation then please send your responses by the deadline date to:

motorinsurance@dft.gov.uk

If you are unable to respond by email then you can reply by post to the following address.

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