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Dear Consultee,

The Motor Vehicles (Insurance Requirements) (Immobilisation, Removal and Disposal) (Amendment) Regulations 2012

I am writing to inform you of our proposed new regulations to amend The Motor Vehicles (Insurance Requirements) (Immobilisation, Removal and Disposal) Regulations 2011 (S.I. 2011/1120) (the 2011 Regulations) concerning the enforcement of the offence of keeping a vehicle without minimum third party insurance, known as continuous insurance enforcement (CIE).

The new amendment regulations are necessary to address defects in the 2011 Regulations noted by the Joint Committee on Statutory Instruments (JCSI) in their 25th Report of Session 2010-12. The 2011 Regulations were reported by the JCSI for doubtful vires on four related counts. The JCSI considered regulations 10(5) and 11(3) and to a lesser extent 12(4) and 13(4) delegated to the custodian of an impounded vehicle the power to determine who is to be regarded as the owner where there appears to be more than one owner, without a power to do so. The DVLA or one of their contractors will be the custodians of impounded vehicles. An example of when two owners may claim ownership is when a vehicle is subject to a hire purchase agreement and the registered keeper and the finance company might both claim to be the owner.

We consulted publicly on the 2011 Regulations and published the response to the consultation in September 2009. The consultation showed general support for CIE. There has been no substantive change of policy from that contained in the 2011 Regulations. The amendments we propose to the 2011 Regulations are solely of a technical nature to resolve the JCSI's concerns. We are writing to consult with you, as one of the organisations the Secretary of State considers to be representative about what the proposed amending regulations will do.

Summary of the changes

In order to meet the concerns of the JCSI we have drafted amendments to the 2011 Regulations. The effect of these is to take away the power of the custodian to determine who is the owner if more than one person claims ownership of the vehicle. In practice almost all of those who claim ownership will be the registered keeper because that is who the DVLA initially communicate with to inform them of impoundment.

However, when the ownership of a car is subject to a hire purchase agreement, there is potential for both the registered keeper and the finance company to claim ownership, pay the release fee and take possession of the vehicle. The amendments enable the custodian to recover prescribed charges from or release a vehicle to either of the parties who can meet the criteria of ownership. In cases where a vehicle has been disposed of then, in the very rare cases where there are multiple keepers and both of them claim ownership of the vehicle then the amendment to regulation 13 of the 2011 Regulations will ensure that a custodian does not have to satisfy more than one claim in respect of the same vehicle.

The detail of the amendments

Regulation 2(a): We will omit paragraph (5) from regulation 10 which allowed the custodian of a vehicle to determine who the owner was where more than one person appeared to be the owner. This means that in hiring/hire purchase situations, the owner will always be the person who has given up possession of the vehicle in return for payment under the agreement (see regulation 2(3) of the 2011 Regulations) and in non hiring/hire purchase situations the owner will be the registered keeper of the vehicle (see regulation 2(5) of the 2011 Regulations).

Regulation 2(b): We will omit paragraph (3) from regulation 11. This also removes the ability of the custodian to decide who should be treated as the owner in situations where there appears to be more than one. Like regulation 10, in non hire purchase/ hiring situations the owner will be the registered keeper (regulation 2(5) of the 2011 Regulations) but unlike with regulation 10 in hiring/ hire purchase situations the owner could be either party to the agreement - i.e. the financing company or the registered keeper (as a result of regulation 2(4) of the 2011 Regulations). The custodian does not need to determine which of them is the owner for the purposes of recovering prescribed charges as payment can be accepted from either party.

Regulation 2(c): We will omit paragraph (4) of regulation 12. As a result of the amendment the custodian of a vehicle will no longer be able to decide who should be treated as the owner in situations where there appears to be more than one. Instead, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, the owner will be a person who is a party to such an agreement. The custodian will give possession of the vehicle to the party which first satisfies the conditions in regulation 12(2) of the 2011 Regulations. In relation to a vehicle which is not the subject of a hiring agreement or hire-purchase agreement, the owner will be the registered keeper of the vehicle.

Regulation 2(d): The main changes include regulation 2 (d) (iii) with the insertion of a new sub-paragraph (c) into regulation 13 (2) of the 2011 Regulations to ensure that a custodian does not have to satisfy more than one claim in respect of the same vehicle in very rare cases where the DVLA has a record of two registered keepers. Regulation 2 (d) (iv) removes the ability of a custodian of a vehicle to determine who the owner of a vehicle is (where that appears to be more than one person) by omitting regulation 13 (4) from the 2011 Regulations. In relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, the owner will be the person who has given up possession of the vehicle in return for payment under the agreement and in relation to a

vehicle which is not the subject of a hiring agreement or hire-purchase agreement, the owner will be the registered keeper of the vehicle.

A copy of the new amending regulations - The Motor Vehicles (Insurance Requirements) (Immobilisation, Removal and Disposal) (Amendment) Regulations 2012 are attached
If you have any comments on these then please provide these to me by Tuesday 12 June 2012.

This letter has been sent to: Association of British Insurers (ABI), Association of Chief Police Officers (ACPO), Association of Chief Police Officers (Scotland), Association of Car Fleet Operators, Automobile Association (AA), British Insurance Brokers Association (BIBA), British Vehicle Rental and Leasing Association (BVRLA), Driver and Vehicles Licensing Agency (DVLA), Finance and Leasing Association, Freight Transport Association (FTA), Motor Insurers' Bureau (MIB), RAC, RAC Foundation, Road Haulage Association (RHA), Scottish Executive, Society of Motor Manufacturers and Traders and the Welsh Assembly.

Yours faithfully,

Geoff Finch