

Motor Insurance (Amendment) (EU Exit) Regulations 2018

Department for Transport

RPC rating: fit for purpose

Description of proposal

While the UK remains a member of the EU, UK victims of traffic accidents in the EEA can make claims in the UK and rely on UK arrangements including the Motor Insurance Bureau (MIB) to ensure they are properly compensated. The victim (or the MIB) is then able to claim from the EEA insurer of the relevant driver or from the MIB's EEA equivalent. The same applies to EEA victims of traffic accidents in the UK. If the UK leaves the EU without an agreement covering this area of policy, the MIB will remain responsible for injuries to UK victims in the EEA, but the reverse will not apply. The Department argues that this will place an unfair burden on the MIB and (through the MIB) on UK insurers and motorists.

The proposed measure therefore amends existing visiting victims' legislation to remove provision for UK victims of accidents in the EEA and to set a clear legal position for cases where the accident occurred before EU exit but the claim is not yet settled when the UK leaves the EU. The preferred option is to set the position that visiting victims' provisions will be maintained beyond exit day only for open cases in which legal proceedings were commenced against the MIB before the UK's exit from the EU but not yet settled before exit will be settled through the MIB. Cases not yet brought will not be settled by the MIB, even if the accident occurred before EU exit. We note the Department's observation that some visiting victims may find this option unfair, and share that concern. The Department plans a communications campaign prior to EU exit to ensure accident victims are aware of this position.

Impacts of proposal

The Department estimates familiarisation costs of around £87,500, based on the assumption that one senior personal injury lawyer per affected law firm and one senior manager per insurer will read the legislation and create a note on it; it assumes that subsequent dissemination costs to other personnel in law firms and insurers are negligible. At present, around 5,000 claims are made per year under the visiting victims scheme, of which 700 are made against the MIB. The Department expects a number of cases will be open involving legal proceedings against MIB, relating to accidents which took place before exit.

The MIB would have cost exposure for these open cases and would not be able to seek reimbursement from other EU Member States as they do under the status quo. The MIB would recover these costs from UK insurers in the form of a higher levy. UK victims of accidents in the EEA whose accidents occurred prior to the EU exit day but who had not commenced legal proceedings against MIB as of the exit day would not be entitled to seek compensation from MIB and would have to make claims in the countries where their accidents took place.

Quality of submission

The Department has addressed the major points raised in the RPC's initial review notice (IRN). The assessment is generally clear and describes in appropriate detail the differences between the different options. In particular, it has clarified its rationale for selecting its preferred option; to ensure consistency with other EU exit legislation relating to jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. It has also set out clearly its approach to calculating familiarisation costs and improved this area of the assessment considerably. The Department has also given clearer consideration to wider direct costs (for example, the Department has identified that it may prove challenging for those that are injured days or weeks prior to exit day to lodge a claim in time) and benefits of the measure.

The assessment could be improved further by:

1. considering costs of dissemination of the information through personal injury law firms and insurers;

2. describing the likely behavioural impacts of the different options – in particular, the effectiveness of a communications campaign aimed at future victims ahead of exit day;
3. presenting a more thorough Small and Micro Business Assessment (SaMBA), in particular by considering mitigations other than exemption for small and micro businesses affected by this measure;
4. giving more consideration to the impacts of the preferred policy option on UK victims of accidents in the EEA whose accidents occurred prior to exit day but who will be unable to claim against the MIB – in particular, UK victims of accidents in the EEA, who would otherwise have been entitled to make claims but could not identify the vehicle responsible for the accident or its insurance undertaking, as in those situations victims may not be able to recover funds at all;
5. describing the impacts (if any) on UK nationals residing abroad or drivers of UK registered cars abroad;
6. discussing the impact on the legal rights of UK victims of accidents in the EEA whose accidents occur prior to exit day but who will not be entitled to claim against MIB;
7. considering whether UK visiting victims and EEA visiting victims (i.e. those who are in an accident in the UK prior to exit day and may claim against the counterpart of MIB in their respective EU countries, for reimbursement from MIB) will be treated equally under the preferred measure; and
8. committing to a post-implementation review - although the measure is removing provisions for a system that relies on reciprocal arrangements between Member State Compensation Bodies, it could be worthwhile to perform a light-touch review of the measure in five years, to ensure the new system is effective and proportionate. Specifically, this could help the Department ensure the analysis was accurate, and it would add to the Department's evidence base. The monitoring of this measure for the post-implementation review should track the burden on UK drivers of having to pursue claims abroad e.g. from insurance data and a survey of drivers involved in accidents abroad;
9. measuring the additional impact (though minor) of the 'bump' in cases that will occur as claimants strive to beat the deadline.

Departmental assessment

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| Classification | Non-qualifying regulatory provision (EU Exit) |
| Equivalent annual net direct cost to business (EANDCB) | Not quantified |
| Business net present value | Not quantified |
| Overall net present value | Not quantified |

RPC assessment

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| Classification | Non-qualifying regulatory provision (EU Exit). |
| Small and micro business assessment | Sufficient |
| RPC Rating (of initial submission) | Not fit for purpose |

Regulatory Policy Committee