

EXPLANATORY MEMORANDUM TO
THE MOTOR VEHICLES (INSURANCE REQUIREMENTS) (IMMOBILISATION,
REMOVAL AND DISPOSAL) (AMENDMENT) REGULATIONS 2015

2015 No. 854

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments (“JCSI”).

2. Purpose of the instrument

2.1 This instrument (“the 2015 Regulations”) amends the Motor Vehicles (Insurance Requirements) (Immobilisation, Removal and Disposal) Regulations 2011 (“the 2011 Regulations”) which entered into force on 16th May 2011.

2.2 The amendments have been made to address four cases of doubtful vires reported by the JCSI and to correct a drafting error in regulation 14 of the 2011 Regulations identified within the Department.

3. Matters of special interest to the JCSI

3.1 This instrument amends the 2011 Regulations which were reported by the JCSI in its 25th report of Session 2010-12 for doubtful vires due to unlawful sub-delegation in four connected respects. The Committee considered that regulations 10(5) and 11(3) and to a lesser extent 12(4) and 13(4) delegated to the custodian of a vehicle the power to determine who was to be regarded as the owner, where there appeared to be more than one such owner, without a power to do so.

3.2 This instrument removes regulations 10(5), 11(3), 12(4) and 13(4) from the 2011 Regulations and replaces them with new provisions that set out specific rules to be applied to determine who is to be treated as the owner of a vehicle in each situation. The effect of these amendments is to remove the ability of a custodian of a vehicle to determine who the owner of a vehicle is where there appears to be more than one person who is the owner and instead to provide tests in the legislation to determine this.

3.3 The Department has since identified further errors in regulation 14(4) and 14(8) where incorrect cross-references were made to regulation 14(1)(b) and the drafting was problematic. This instrument substitutes replacement paragraphs (4) and (8) which contain the correct cross-references to regulation 14(1)(a)(i) and (ii) and improves the drafting to clarify the test that is to be applied on appeals.

3.4 The ability of the custodian to determine who is to be treated as the owner in the event of there appearing to be more than one owner as mentioned in regulation 10(5) of the 2011 Regulations is removed and replaced with a new paragraph (5) by regulation 2(a) of the 2015 Regulations. The new paragraph (5)(a) provides that where it appears to the custodian that there is more than one owner they should send the notice of the impounding required by regulation 10(3)(c)(ii) of the 2011 Regulations to all persons who appear to be owners. The new paragraph (5)(b) provides that a vehicle may not be disposed of in accordance with regulation 10(2) of the 2011 Regulations (which allows vehicles to be disposed of at any time when the owner disclaims rights of ownership) unless all persons appearing to the custodian to be owners of the vehicle have disclaimed ownership.

3.5 The ability of the custodian to determine who is to be treated as the owner in the event of there appearing to be more than one owner as mentioned in regulation 11(3) of the 2011 Regulations is removed and replaced by the amendments in regulation 2(b) of the 2015 Regulations which inserts new paragraphs (3) to (5) in to regulation 11. Paragraph (3) deals with the situation where there is more than one owner and one of those owners has taken possession of the vehicle under regulation 12 – here the owner who has taken possession of the vehicle is to be treated as the owner liable for the prescribed charge. Paragraph (4) deals with the situation where there is more than one owner and one of those owners has made a claim under regulation 13 – here the owner making the regulation 13 claim is to be treated as the owner liable for the prescribed charge. Paragraph (5) deals with the situation where no-one has made a claim for possession of the vehicle (under regulation 12) or for money (under regulation 13) – here all persons appearing to be owners shall be treated as jointly and severally liable for the prescribed charges.

3.6 The ability of the custodian to determine who is to be treated as the owner in the event of there appearing to be more than one owner in regulation 12(4) of the 2011 Regulations is removed and replaced by a new paragraph (4) by regulation 2(c) of the 2015 Regulations. The new paragraph (4) provides that the custodian must treat the first claimant appearing to be the owner who can fulfil all the requirements of regulation 12(2) of the 2011 Regulations as the owner entitled to claim possession of the vehicle under regulation 12.

3.7 The ability of the custodian to determine who is to be treated as the owner in the event of there appearing to be more than one owner as mentioned in regulation 13(4) is removed and replaced by a new paragraph (4) by Regulation 2(d)(iv) of the 2015 Regulations. This new paragraph (4) provides that the custodian must treat the first claimant appearing to be the owner who can fulfil all the requirements of regulation 13(2) of the 2011 Regulations as the owner entitled to claim under regulation 13. An amendment has also been introduced by regulation 2(d)(iii) to provide that the custodian does not have to satisfy more than one claim in respect of the same vehicle.

3.8 Regulation 2(e) of the 2015 Regulations substitutes new paragraphs (4) and (8) in Regulation 14 of the 2011 Regulations. These paragraphs define the test to be applied by an authorised person (in paragraph (4)) and by a court (in paragraph (8)) when determining an appeal in relation to disputed charges paid under the 2011 Regulations. When the disputed charge has not already been refunded, if the claimant can prove that either the ground in regulation

14(1)(a)(i) or regulation 14(1)(a)(ii) of the 2011 Regulations applies then the appeal must be upheld. These grounds are that either a section 144A offence was not being committed at the time or that the vehicle should not have been impounded because the 2011 Regulations were disapplied in relation to that vehicle by virtue of regulation 4(2) of the 2011 Regulations.

4. Legislative Context

4.1 Section 144A of the Road Traffic Act 1988 (“the 1988 Act”) makes it an offence for a registered keeper of a vehicle to keep that vehicle without meeting the insurance requirements of that Act. The offence is one of a number of provisions inserted into the 1988 Act by section 22 of the Road Safety Act 2006.

4.2 The 2011 Regulations (amended by these Regulations) introduced an enforcement regime whereby authorised persons have the power to immobilise, remove and, in some cases, dispose of vehicles in cases where they have a reasonable belief that the registered keeper is committing an offence under section 144A of the 1988 Act.

4.3 The 2011 Regulations also created the offences of: 1) interfering with or removing an immobilisation notice, 2) removing or attempting to remove an immobilisation device and 3) obtaining possession of a removed vehicle by falsely claiming that it is exempt from continuous insurance enforcement by virtue of displaying a disabled person badge.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why:

7.1 The scheme, known as “Continuous Insurance Enforcement” (“CIE”), identifies offenders by regularly comparing the Driver and Vehicle Licensing Agency’s (“DVLA”) record of vehicle keepers with the database of all motor insurance policies managed by the Motor Insurers’ Bureau (“MIB”). Keepers of apparently uninsured vehicles are sent an advisory letter by the MIB asking them to insure their vehicle or to check that their insurance company has correctly entered their insurance policy details on the motor insurance database. The scheme was established to enforce the offence of being a registered keeper of a vehicle with no insurance. If vehicle keepers take no action within a specified period, their details are handed to the DVLA, who issue a fixed penalty notice (£100 fine reduced to £50 if paid promptly). Thereafter, if the vehicle remains uninsured, the DVLA may clamp, impound and dispose of the vehicle, and ultimately prosecute the registered keeper of the vehicle in court.

7.2 All motorists are legally obliged to be insured against third party risk. The level of uninsured driving in the UK is estimated to be at least four per cent. Claims arising from accidents involving uninsured or untraceable drivers impose an inequitable financial burden on honest motorists; around £30 per year per policy is levied in premiums to cover the cost of meeting claims arising from accidents caused by the uninsured.

7.3 Under the CIE scheme, persons authorised by the Secretary of State for Transport have powers to fix an immobilisation device (clamp) to vehicles – and ultimately remove and dispose of them - where it is believed that an offence has been committed. If an uninsured vehicle is immobilised under these regulations the vehicle will not be removed to the pound until 24 hours have elapsed from the time the clamp was fixed. During this time the vehicle could be released from the clamp if the prescribed release fee is paid and evidence is provided to demonstrate that the registered keeper is not (at the point of release of the vehicle) committing a section 144A offence and the person proposing to drive the vehicle away is insured to do so. Evidence of insurance must be demonstrated to the authorised person through a paper or electronically delivered motor insurance certificate or security equivalent.

7.4 If the vehicle has been immobilised for 24 hours and has not been claimed the vehicle can be removed to the pound after which notices will be served on the owner (or owners) of the vehicle informing them that the vehicle has been impounded and what steps would need to be taken, within set time limits, to secure release of the vehicle. If the owner does not comply with the steps to secure the release of the vehicle within the time limits the custodian may dispose of the vehicle.

Consolidation:

7.5 There are no plans to consolidate these Regulations at present.

8. Consultation outcome

8.1 The Department consulted publically on the 2011 Regulations in accordance with section 195(2) of the 1988 Act and published the response to consultation in September 2009. The consultation showed general support for CIE. A further shortened and targeted consultation was undertaken in 2012 on possible amendments to the 2011 Regulations to deal with the defects identified by the JCSI. That consultation letter was sent to representative organisations in the insurance industry, the Association of Chief Police Officers, fleet representatives, the haulage industry and the motor trade. There were no substantive comments.

8.2 However, that consultation was based on a minimalist approach to rectifying the defects in the 2011 Regulations. Since then the Department has given more thought to the most suitable approach and drafted a revised and more detailed instrument which contained rules to be followed in the various circumstances which are the subject of these amendment regulations. Given the nature of the changes (and having identified the error in regulation 14) the Department thought it sensible to carry out a further consultation with the same organisations as in 2012.

8.3 The Department received six responses. Generally respondents were content with the draft Amendment Regulations. The principal positive thread running through responses was that

the Amendment Regulations would be acceptable in terms of allowing the legal owner to be made aware of any decision concerning the vehicle.

8.4 The only elements where queries were raised related to the actual notification process. One respondent suggested that each party (ie the registered keeper and the legal owner) should have a defined period in which to present their case. Another response sought greater clarification about the process. The Department is satisfied that the Amendment Regulations do not need to be altered as a result of consultation. However, we recognise that there is a need for greater clarity about the process for impounding vehicles under these regulations and for ensuring that the key representative bodies fully understand the process.

9. Guidance

9.1 DVLA will draw up dedicated guidance for their stakeholders and customers about the use of these powers.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies who are already compliant with existing motor insurance law and insure their vehicles.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 This instrument applies to small businesses. There is no need to minimise the impact because they are already required to comply with existing legislation and insure their vehicles against third party risk.

12. Monitoring & review

12.1 The Department will continue to review the effective implementation of the CIE scheme to establish what impact it is having on reducing uninsured driving. Information is collected and monitored by the MIB and the DVLA through purpose-built systems. The collection of management information includes the number of advisory letters issued by the MIB, the number of fixed penalty notices issued, monthly scans of the vehicle register database to identify the number of people insuring their vehicle following enforcement action, measurement of calls to contact centres, measurement of customer awareness and the number of cases taken to court. We will monitor and review the changes made by these regulations in the context of the Department's review of the wider CIE scheme.

13. Contact

Pippa Brown at the Department for Transport. Tel: 0207 944 2278 or e-mail: PippaA.brown@dft.gsi.gov.uk can answer any queries regarding the instrument.