

EXPLANATORY MEMORANDUM TO
THE MOTOR VEHICLES (COMPULSORY INSURANCE AND RIGHTS AGAINST
INSURERS) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 945

1. Introduction

- 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.

2. Purpose of the instrument

- 2.1 This instrument makes two amendments. The first amendment updates the Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/551) (the ‘2019 Regulations’) which removed obligations on the Motor Insurers’ Bureau (MIB) to compensate UK victims of traffic accidents under the visiting victims scheme, unless the UK victim had commenced legal proceedings against the MIB before ‘exit day’. The first amendment extends this to the end of the transition period, to ensure that UK victims can continue claims commenced against the MIB during the transition period.
- 2.2 The second amendment amends the European Communities (Rights Against Insurers) Regulations 2002 (S.I. 2002/3061) (the ‘2002 Regulations’) to fix a deficiency resulting from the UK’s withdrawal from the European Union to ensure that UK and Gibraltar residents will continue, after the transition period, to be able to make claims against UK insurers.

Explanations

What did any relevant EU law do before exit day?

- 2.3 This SI firstly amends the ‘2019 Regulations’. The 2019 Regulations made amendments to the UK domestic regulations which give effect to Articles 19 to 26 (and in particular Article 24) of EU Motor Insurance Directive 2009/103/EC, which consolidated 5 previous directives (‘the MID’). The MID requires Member States to establish or approve a Compensation Body responsible for assisting and, in some circumstances where there is no insurer or the insurer fails to respond, compensating victims of traffic accidents occurring in European Economic Area (EEA) Member States where the victim is not normally resident. The 2019 Regulations were introduced to remove the Compensation Body obligations from the MIB on exit day, while allowing UK residents who had already commenced court proceedings against the MIB prior to exit day to be able to continue pursuing visiting victims claims against the MIB.
- 2.4 Secondly, the SI amends the ‘2002 Regulations’. The 2002 Regulations give effect in the UK to Article 18 of the MID, which requires Member States to ensure that victims of traffic accidents have a direct right of action against (i.e. can issue legal proceedings directly against) the insurer of the person alleged to be responsible for a traffic accident.

Why is it being changed?

- 2.5 The commencement of the 2019 Regulations was deferred until the end of the transition period (IP completion day) by the operation of the European Union (Withdrawal Agreement) Act 2020. Failing to update the 2019 Regulations with this instrument would mean that UK victims, who have commenced legal proceedings against the MIB under the visiting victims scheme during the transition period, would not be able to continue those claims after the end of the transition period.
- 2.6 Failing to update the 2002 Regulations with this instrument would mean that when the transition period ends, UK and Gibraltarian victims of traffic accidents would lose their right to commence legal proceedings directly against the insurer of the person alleged to be responsible for a traffic accident in the UK. This is because the 2002 Regulations currently confer this right on residents of EU or EEA Member States and once the transition period ends, UK residents will no longer be treated as EU or EEA Member State residents.

What will it now do?

- 2.7 The first amendment this SI makes will mean that UK victims who have commenced legal proceedings against the MIB under the visiting victims scheme during the transition period, will be able to continue those claims after the end of the transition period. This instrument does not change any other aspect of the 2019 Regulations.
- 2.8 The second amendment this SI makes will ensure UK and Gibraltarian residents retain their right to commence legal proceedings directly against the insurer of the person alleged to be responsible for a traffic accident in the UK, after the transition period ends. This instrument does not change any other aspect of the 2002 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument was presented to the Sifting Committees for consideration on the 2 July 2020. It was considered by the House of Commons European Statutory Instrument Committee on 14 July 2020 and the House of Lords Secondary Legislation Scrutiny Committee on 14 July 2020. The Sifting Committees both agreed that the instrument should proceed by way of negative resolution procedure. The Minister has considered the decisions of the Sifting Committees and has approved and signed the instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the UK.
- 4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The key legislative context for this instrument is set out in paragraphs 2.2 and 2.3 above.
- 6.2 The 2019 Regulations were made under the powers conferred by section 8 and paragraph 21 of Schedule 7 of the European Union (Withdrawal) Act 2018.
- 6.3 The 2002 Regulations were made under Section 2 of the European Communities Act 1972, which give effect (in part) to the EU Directive 2000/26/EC (the Fourth Motor Insurance Directive). The 2009 MID amalgamated and codified the previous EU Motor Insurance Directives, including the requirements of the Fourth Motor Insurance Directive.

7. Policy background

What is being done and why?

- 7.1 This instrument makes two amendments. The first amendment relates to the 2019 Regulations, amending them to account for the UK having now left the EU and entered into the transition period. The 2019 Regulations currently reference “exit day” which has passed and the relevant date is now IP completion day.
- 7.2 For the 2002 Regulations, the amendment is being made to maintain the status quo in policy terms once EU law no longer applies to the UK.
- 7.3 The 2019 Regulations were made under the powers conferred by section 8 and paragraph 21 of Schedule 7 of the European Union (Withdrawal) Act 2018. They introduced a key policy change, required due to leaving the EU, which is to remove obligations on the MIB that arise from the UK’s participation in the visiting victims scheme. In particular, in line with the overarching objective of the scheme to protect the victim of traffic accidents in Member States other than where they normally reside, they removed the obligation for the MIB to be the Compensation Body for UK residents who are injured in road traffic accidents in the EEA.
- 7.4 These changes were appropriate because without the amendments, the domestic visiting victims’ provisions and the role of the MIB as the UK Compensation Body would continue unilaterally. Without the changes in the 2019 Regulations UK residents injured in a traffic accident in the EEA could continue to make visiting victims claims in the UK following EU Exit. The MIB would also have to continue reimbursing EEA countries for claims made by EEA residents injured in the UK.
- 7.5 This instrument addresses a deficiency related to the transitional provision of the 2019 Regulations, which currently refer to exit day rather than the end of the transition period (IP completion day). The existing transitional provision allows for cases where a victim has already commenced legal proceedings against the MIB before exit day to be concluded after exit day. This is achieved by the provisions saving (i.e. preserving) the relevant provisions of the legislation implementing the visiting victims scheme for those purposes.

- 7.6 The commencement of the 2019 Regulations was deferred until the end of the transition period by the European Union (Withdrawal Agreement) Act 2020. Anticipating future legislative deficiencies, the Act contains a general rule (in part 1 of Schedule 5) which provides a new interpretation of the dates of commencement for EU Exit SI's, so that "exit day" is read as "IP completion day". However, this only amends references to 'exit day' in provisions that refer to the date when legislation commences, so references to 'exit day' in transitional provisions need to be amended individually.
- 7.7 This instrument makes the required individual amendment, ensuring that legal proceedings commenced against the MIB under the visiting victims scheme during the transition period, can continue after "IP completion day". This is done by saving the relevant provisions of the legislation implementing the visiting victims scheme where proceedings have been commenced against MIB before IP completion day (instead of exit day).
- 7.8 Adjusting the timeframe from exit day to IP completion day will have a real-world impact. For the 2019 Regulations, the MIB provided estimates that 5,000 UK road traffic victims make claims via the visiting victims scheme each year. Of these 5,000, 4,300 are made against insurers and 700 made against the MIB. Some of these will not have been resolved before the end of the transition period.
- 7.9 The second deficiency that this instrument seeks to address is related to the 2002 Regulations. These Regulations currently give residents of EU and EEA states a direct right of action against the insurer of a person alleged to have been responsible for a traffic accident in the UK.
- 7.10 The deficiency arises when the transition period ends. This is because UK and Gibraltar victims of traffic accidents will no longer fall within the definition of "entitled party". This is because the definition as it is currently worded presupposes that the UK is a Member State of the EU. Once the transition period ends the UK will no longer be treated as a Member State of the EU, and by extension UK residents will lose the direct right of action against an insurer that the 2002 Regulations provide.
- 7.11 This instrument corrects the deficiency by inserting "the United Kingdom or Gibraltar" after "Member State". This change means that UK and Gibraltar victims of traffic accidents in the UK will be captured by a definition of "entitled party". Thus, adjusting for the UK no longer being a Member of the EU at the end of the transition period. This will allow UK and Gibraltar residents to retain their right to make a claim directly against the insurer of the person alleged to be responsible for the accident after the transition period ends.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the power in paragraph 21 of schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans for consolidation.

10. Consultation outcome

10.1 A consultation has not been held for this instrument because the two amendments it makes are not substantive enough to merit a consultation. The MIB were consulted as part of the process of making the 2019 Regulations.

10.2 For the 2019 Regulations, the amendment aligns the instrument with the revised timetable for leaving the EU and does not constitute a policy change. For the 2002 Regulations, the change is being made to maintain the status quo in policy terms.

10.3 We have informed the relevant officials from Northern Ireland, Scotland, Wales and Gibraltar in the preparation of this instrument.

11. Guidance

11.1 The Government is not issuing specific guidance in relation to this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities, voluntary bodies or the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that a review clause would not be appropriate. As per the Statutory Guidance linked to the Small Business, Enterprise and Employment Act 2015, the impact of the legislation is not expected to be significant (lower than +/- £5 million net annualised). The cost of undertaking a review would therefore be disproportionate given the limited scope for change, particularly given that the first amendment is a savings provision that would naturally come to an end (meaning that monitoring would not be necessary). Similarly, the second amendment preserves the status quo, meaning that there are no new changes that would require or benefit from monitoring.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Yann Holzapfel at the Department for Transport (Telephone: 07977 416009) or email: Yann.Holzapfel@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Pauline Reeves, Deputy Director for Road User Licensing, Insurance and Safety, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, the Parliamentary Under Secretary of State for the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for the Department for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Motor Vehicles (Compulsory Insurance and Rights Against Insurers) (Amendment) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: the two amendments this instrument makes are not substantive enough to merit an affirmative procedure. The first amendment, which relates to the 2019 Regulations, adjusts the text to account for the UK having now left the EU and entered the transition period, and does not constitute a policy change. For the 2002 Regulations, the change is being made to maintain the status quo in policy terms.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for the Department for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Motor Vehicles (Compulsory Insurance and Rights Against Insurers) (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 2.2 This is the case because: it does no more than correcting technical deficiencies that prevent the Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 and the European Communities (Rights Against Insurers) Regulations 2002 from operating as intended after the transition period ends.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for the Department for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: to ensure that the Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 and the European Communities (Rights Against Insurers) Regulations 2002 operate as intended after the transition period ends.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Department for Transport, Rachel Maclean MP, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Parliamentary Under Secretary of State for the Department for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Rachel Maclean MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland, and as this instrument extends to Northern Ireland I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in Northern Ireland.”

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.