



HM TREASURY

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**IMPLEMENTATION OF THE  
FOURTH MOTOR  
INSURANCE DIRECTIVE**

RESULTS OF APRIL 2002  
CONSULTATION EXERCISE

DECEMBER 2002



INVESTOR IN PEOPLE

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# FOURTH MOTOR INSURANCE DIRECTIVE CONSULTATION

In April 2002, the Treasury issued a consultation document on the implementation of the Fourth Motor Insurance Directive. This paper sets out the main issues for consultation; the viewpoints of respondents; and the Government's decision on each area of implementation.

## **1. Notifying the Motor Insurers' Database**

In order to meet the requirements of the Directive insurers will be required to supply the relevant information for inclusion on the database within a fixed number of days from when a policy is issued or terminated. Since there are practical difficulties in imposing a duty to provide information immediately, a standard notification period might need to be set.

### **What the consultation document asks:**

"Do you (insurers, fleet vehicle owners, motor traders and specified bodies under the Motor Vehicles (Third Party Risk) Regulations, in particular), have comments on the proposals to require details to be supplied for inclusion on the Motor Insurers Database within 4, 7, or 14 days?"

### **What respondents said:**

The consensus was that the 14-day time limit should be considered a minimum. Several respondents suggested alternative time limits, ranging from 21 days to 60 days, for the following reasons:

- Many insurers provide a 15-day extension of third party cover beyond the policy renewal date. This ensures that policyholders have some cover if payment is received later than the renewal date. Insurers might not know if the policyholder intends to cancel the policy until the expiration of the extension period, which may be even longer for agents.
- The shorter the time limit, the greater the costs that will arise from the increase in workload to update the database. The higher the implementation cost, the more likely that some firms would not comply. A period of 30 to 60 days may mean that many vehicles would never need to be identified as motor dealers would resell vehicles after this time.

- Those who transact via paper rather than electronically will realistically deliver on a slower timescale. Smaller businesses may be disadvantaged.

Also suggested by many respondents was the need to exclude certain types of notifications. One respondent explained that eliminating certain classes of vehicles at certain stages in their lifecycle will remove duplication, and enhance the likelihood of keeping the database accurate and improving chances of compliance. In relation to vehicle hire companies, an exemption from the requirement to load on-hire and off-hire data onto the MID was suggested, replacing this merely with a requirement to submit details of entire fleets on a monthly basis.

One trade association commented that information would often be out of date, and that many of its members already had systems in place to update their insurers.

One respondent proposed a staggered approach to implementing a deadline, since they would need time to change their systems and processes. They argued that deadlines could cause underwriting integrity to suffer and that there would be little time to obtain proof of various factors which can reduce the premium level such as pass plus certificates and security device installation certificates. This might work to the detriment of the policyholder, since there might be insufficient time to verify the information provided.

### **The Government's Decision:**

A wide range of responses were received with some respondents asking for periods of between 30 and 60 days grace before a notification must be made. A balance has had to be struck between the costs of supplying information to the information centre and meeting the requirements of the Directive to provide information to injured parties – without delay.

Insurers will be required, if so requested, to notify the database of: all motor insurance policies they write; the registration number(s) of vehicles covered by them; and the name of the policy holder.

When a vehicle is in the possession of a fleet owner, motor trader, or other person who has an open cover policy, for 14 days or fewer, he will not be required to notify the database. The insured will be obliged to retain his own records of such matters, and supply requisite information to the information centre if so requested, without delay.

When a vehicle is kept on cover, under an open policy, for more than 14 days, the insured will be required to notify the database of the registration number of any additions to the vehicles covered under the policy, without delay.

## **2. Charge for enquiring to the Motor Insurers' Database**

It is the duty of the MIIC as the UK's Information Centre to provide details of insurers and their Claims Representatives in the State where the victim is resident. The Information Centre will have a general duty to cooperate with the Information Centres of other EEA States. MIIC will be allowed to make a reasonable charge for responding to enquiries from accident victims. Calculation of any charge would take into account that the database serves other functions and is not used only for meeting the requirements of the Directive. The Secretary of State would set any charge. (The consultation document suggested the charge might be set at £10 or £16 per request.)

### **What the consultation document asks:**

"Do you think that the Motor Insurers Information Centre should set a charge for obtaining information? Do you have comments on the level at which a charge should be set?"

### **What respondents said:**

Respondents were divided over whether the MIIC should be allowed to make a charge.

Those that gave a negative response reasoned that a charge discourage victims from commencing the claims process. Some respondents argued that a charge would deter poorer victims, impeding access to justice. It was also suggested that there would be no benefit in levying the charge, which would increase administration costs to the MIIC; and that insurers, who already pay to provide the information, would ultimately foot the bill.

The majority of positive respondents commented that the charge should be "reasonable", "modest", or at "cost price", and recoverable within the claims process in order to provide access for ordinary people. Two respondents expressed that the suggested charges were more than could be justified and compared it to the lower priced DVLA information database. However, one cost estimate showed £10 to be a reasonable charge. Two respondents suggested that the charge should be at a sufficiently high level to deter frivolous requests for information. As one respondent recommended, on balance the charge should be high enough to cover administrative costs and dissuade speculative or frivolous enquiries, but low enough to allow legitimate claimants to pay up front.

**The Government's Decision:**

It will be necessary to make a small charge in order to cover the costs of enquiries. To ensure, as far as possible, that nobody is inhibited or prevented from obtaining details of a liable party, fees for the information will be kept as low as possible. The fee the information centre will charge has not yet been set but will be specified in the regulations.

### **3. Extending the direct right of action in the courts to UK residents**

Other EEA States already provide a right for motor accident victims to sue the insurer of the driver responsible. This is in contrast to law in the UK, where the person who suffers loss or is injured is generally only entitled to sue the person who caused the loss or injury. The general rule is that a person can sue another person only if they have a “cause of action”. This entitles one person to obtain a remedy from another person in the courts. The right to bring a claim must arise out of statute or common law. Therefore, the Directive, once implemented in the UK, will give residents of other EEA States who suffer loss or are injured in motor accidents in the UK a right which does not currently exist for UK residents who suffer loss or are injured here.

#### **What the consultation document asks:**

“Do you consider that the right to sue motor insurers direct should be extended to UK residents who suffer loss or injury in motor accidents in the UK?”

#### **What respondents said:**

In total, 19 respondents commented on the extension of the direct right of action. Of these, 10 were in favour of extension, 6 were against and 3 had no clear view.

Of those in favour, one respondent took the view that once the concept of a direct right of action has been imported into UK law by the Directive, it would be inconsistent not to extend it to local victims. Other respondents agreed and expressed the view that UK claimants should be entitled to the same rights as their European counterparts, and that any additional claims that would arise would not present any major practical problems. It was felt that a mechanism which facilitates a faster process for settling genuine routine claims, preventing the frustration caused by having to rely on the co-operation of the driver responsible, would be better for both the victim and the insurer.

Another benefit identified was that allowing legal proceedings to be served directly on the relevant insurance company would facilitate the claims process and help alleviate convoluted enforcement proceedings. It would also ensure that claims were dealt with more quickly, and in a way that avoids unnecessary legal costs and allowed early access to suitable medical treatment where appropriate.

Of those that disagreed with extending the ‘right’, the majority considered it disproportionate. It was argued that extension would be a major change to the legal system to cope with a minor problem, providing little gain other than to streamline practice with the Directive. One respondent stated that the current

process has provided a fair mechanism for claims settlement in the UK. Two others felt that the direct causal link between the parties should be maintained. The possibility of increased litigation was also raised.

One respondent took the view that the aims of the Directive of overcoming difficulties in tracing a person in another country, and helping claimants in dealing with language barriers and unfamiliar legal systems do not apply for accidents amongst UK residents. They argued that any delay for the claimant, arising from the absence of a direct right of action, would be avoided if they were granted access to the UK Information Centre (see section entitled *Access to Information Centres*).

### **The Government's Decision:**

The Government has decided to extend the direct right of action in the courts against insurers in motor accident cases to UK residents who suffer loss or injury in motor accidents in the UK. Regulations are being prepared and will make provision for this right.

#### **4. Access to Information Centres**

In order to claim against the insurer of the liable party in a road traffic accident, the claimant must be able to obtain information about that insurer. Since they will be seeking to make a claim against the insurer after they have returned to their State of residence, the claimant will need the right to obtain details of the insurer and of that insurer's local claims representative in that State.

##### **What the consultation document asks:**

UK law already requires drivers to provide information about their insurer after an accident. Access to the Information Centre might place visiting European victims in a more favourable position than local victims. Respondents were asked for their views on the likely effects of this, and whether it would be favourable to give UK accident victims access to the Information Centre.

##### **What respondents said:**

A clear majority of respondents agreed that UK road users should have access to the Information Centre.

Many respondents commented that this would benefit the innocent party. They argued that although UK law already requires drivers to provide insurer details, in practice drivers may be unwilling to co-operate, which would slow the processing of claims. Furthermore, as one respondent indicated, it also establishes whether a valid insurance policy was in force at all.

Several respondents also commented that there would be an imbalance arising from the Directive if UK victims did not also have access to the MIIC. This view was held by others who explained that the database would create a large administrative burden not only for insurers but for fleet operators. To require all this work to be carried out for access only by other EU residents would be wasteful and would not "provide enthusiasm from policyholders".

A few respondents agreed with the proposal in principle but had a few practical concerns. They believed that the "right" would encourage a high volume of calls, many of which may be spurious requests for information. This would increase the costs of handling information requests. It was also suggested that any right should also be accompanied by a right to recover reasonable costs. One way might be to levy a charge for requests for information (see section entitled *Charge for enquiring to the Motor Insurers' Database*).

One respondent believed that the public should not have access to the database. They reasoned that in effect the necessary systems were already in place to provide information, and therefore the additional costs were not justified.

**The Government's Decision:**

The extension to domestic law of the direct right of action against insurers, created by the Fourth Directive for victims of accidents occurring in a state other than their state of residence, will benefit UK motorists. Claims should be more easily pursued, more quickly settled and less costly.

In addition to the above, any injured party who has been the victim of a motor accident will have the right to obtain from the Information centre (The MIIC) the identity of the insurer of the liable party (i.e. the alleged tortfeasor), and his claims representative in his home State of Residence (if applicable).

## **5. Enquiries**

If you have any questions on any of the issues and decisions outlined in this paper, please contact the people below:

### **Notifying the Motor Insurers' Database, Charge for notifying the Motor Insurers' Database, and Access to Information Centres**

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