

Implementing Article 4(4)-4a(I) of the 5th Motor Insurance Directive

Final Regulatory Impact Assessment

August 2007



HM TREASURY



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the 5th Motor Insurance Directive
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HM Treasury contacts

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For general enquiries about HM Treasury and its work, contact:

Correspondence and Enquiry Unit
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hm-treasury.gov.uk

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FINAL REGULATORY IMPACT ASSESSMENT

TITLE OF PROPOSAL

1.1 Implementing Article 4(4)-4a(1) of the EU's Fifth Motor Insurance Directive ("5th MID").

PURPOSE AND INTENDED EFFECT

Rationale for Government intervention

1.2 The UK is required to implement the 5th MID. Responsibility for implementation of the majority of the provisions of the Directive has fallen to the Department for Transport (DfT). However, implementation of Article 4(4)-4a(1) of the 5th MID¹ will require amendments to the Financial Services and Markets Act 2000 (FSMA) and the Financial Services and Markets Act (Law Applicable to Contracts of Insurance) Regulations 2001 and responsibility has therefore fallen to HM Treasury.

Objective

1.3 Article 4(4)-4a(1) provides, in circumstances where a vehicle is dispatched from one EEA State² to another, a 30-day derogation from the general rule³ that motor insurance cover can only be provided by an insurer authorised to write business in the EEA State in which the vehicle is registered. This is either because that State is its home State or because it has a passport to cover risks situated there through a branch or on a cross-border basis. This means that it will be easier for individuals to obtain insurance cover for imported vehicles by switching the EEA State in which the risk is situated (the 'State of the risk') from the State of origin of the vehicle to the State of destination.

CONSULTATION

1.4 This final Regulatory Impact Assessment concerns implementation of Article 4(4)-4a(1) of the 5th MID.

1.5 A consultation seeking views on the proposed approach to implementation was launched on 1 March 2007 and closed on 24 May 2007. Three responses were received to the consultation from an insurer and an individual and also a joint response from two trade associations. A summary of responses to the consultation is available on HM Treasury's website (www.hm-treasury.gov.uk).

1.6 This final RIA sets out the options open and considers the qualitative, and where possible, quantitative costs and benefits. Risks, unintended consequences and any compliance and enforcement issues have also been incorporated as costs and benefits. Competition issues and the impact on small firms have also been considered.

OPTIONS

Do nothing

1.7 As with all proposals for legislation, HM Treasury have considered the option of making no changes.

¹ Strictly speaking, Article 4a(1) of Council Directive 1990/232/EEC of 14th May 1990 (OJ No L 129, 19.5.1990, p. 33), the Third Motor Insurance Directive, as inserted by Article 4(4) of the Fifth Motor Insurance Directive.

² Article 4a(1) refers only to Member States, i.e. EU States, but the EEA Agreement of 7th March 1993 extends its application to all EEA States i.e. the 27 EU Member States and Norway, Iceland and Liechtenstein.

³ See second indented paragraph of Article 2(d) of Second Council Directive 88/357/EEC of 22 June 1988 on direct insurance (OJ No L 172, 04.07.1988, p. 1).

1.8 The UK Government has no discretion to avoid implementation of EU Directives. The Commission would be able to begin infraction proceedings. The Government would also potentially be open to claims for damages. The Government also believes that Article 4(4)-4a(1) of the 5th MID will benefit UK consumers and insurers.

HM Treasury's **1.9** HM Treasury will therefore implement Article 4(4)-4a(1) of the 5th MID in line with the Statutory Instrument (SI) provided alongside this RIA. Following a supportive response to the consultation, no changes have been made to the SI from the draft version presented in the consultation document.

1.10 The Government's approach to implementation is to amend paragraph 6 of Schedule 12 (transfer schemes: interpretation) to FSMA and Regulation 2 (interpretation) of the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001⁴, so that where insurance relates to a vehicle dispatched from one EEA State to another, for the 30 day period following the delivery of the vehicle only, the insurance risk is situated in the EEA State which the vehicle is being delivered to. This will give the buyer time to register the vehicle in the UK.

1.11 Schedule 12 to FSMA sets out conditions for the appropriateness of the certificates required by the courts in relation to an insurance business transfer scheme. An insurance business transfer scheme is a legal process under Part VII of FSMA by which, following sanction by the courts, an insurance company can transfer its obligations under insurance or (reinsurance) policies to another insurer.

1.12 The Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 specify the law that applies to contracts of insurance, in particular general insurances such as motor insurance, and hence the regulatory regime with which any insurer offering such contracts must comply.

1.13 This option for implementation is not intended to go any further than required by the 5th MID.

COST AND BENEFITS

Groups affected **1.14** The following main groups have been identified as potentially being affected by these proposals:

- individuals, companies, or specialist dealers importing vehicles into the UK from another EEA State;
- motor insurers;
- insurance brokers.

1.15 According to the Association of British Insurers' (ABI) statistics of March 2006, there were around 380 insurance companies authorised to write motor insurance in the UK during 2004. However, the ABI estimate that in practice there were probably around 60 companies, plus 6 Lloyd's syndicates actively transacting motor insurance business.

Benefits **1.16** The Government believes that implementing Article 4(4)-4a(1) of the 5th MID will make it easier for individuals and companies in the UK to import cars from other EEA States. The Government is aware of concerns that individuals or companies wishing to purchase new or second-hand vehicles in one EEA State and dispatch them

⁴ S.I. 2001/2635.

into another EEA State often experience difficulty in finding insurance cover. During the journey and until its final registration in the EEA State of destination, the vehicle has to be covered by an insurance policy issued by an insurer authorised to operate in the state of origin of the vehicle (either because that State is its home state or because it has a passport to cover risks situated there through a branch or on a cross-border basis). Such short term insurance is harder to obtain and is normally more expensive pro rata than insurance for a full normal term. Following implementation of this part of Article 4(4) of the 5th MID, individuals or companies will be able to purchase motor insurance from a UK-authorized insurer to cover the whole process of importing into the UK a vehicle from another EEA State.

1.17 The Government also believes that this change should be beneficial for UK insurers by allowing them to insure a vehicle being imported into the UK without having to 'passport' into the EEA State from which the vehicle is being imported (and also by removing the requirement to enter into the exporting State's guarantee fund and motor insurance bureau). The Government understands that at present few UK motor insurers use a passport to write business in other EEA States, and this measure will therefore allow for a potential growth in the business of motor insurers by allowing them to cater for this market.

1.18 Responses to the consultation also identified specific problems with the current system:

- short-term insurance is seemingly unobtainable for personal motor vehicle importers from EC States other than Germany;
- where such insurance cover is available, they are limited to basic levels of third-party cover. In practice cover for fire, theft and personal loss was unobtainable;
- difficulties for the importer in understanding the level of cover he or she is protected by, due to policies typically being written in the language of the State of origin and problems around the provision of information by both UK and foreign insurers. For instance, some personal importers believe that they are covered by a 'comprehensive' level of cover, when they in fact their policy only afford them third-party liability cover.

1.19 The Government believes that implementation of Article 4(4)-4a(1) of the 5th MID should alleviate these difficulties.

Costs 1.20 The Government believes that there will be minimal costs arising from the implementation of Article 4(4)-4a(1) of the 5th MID. There may be a cost arising from UK insurers no longer being able to offer motor insurance to cover vehicles that are being exported out of the UK into another EEA State (unless they have a passport to cover risks situated there). However, the Government does not believe that this cost would be significant.

1.21 The FSA have estimated in their Quarterly Consultation (No. 10) that they do not expect this change to result in any incremental costs to the FSA⁵.

SMALL FIRMS IMPACT TEST

1.22 These proposals are unlikely to have a disproportionate impact on small firms.

⁵ The FSA's consultation paper is available from the FSA website at: http://www.fsa.gov.uk/Pages/Library/Policy/CP/2006/06_18.shtml

COMPETITION ASSESSMENT

1.23 These proposals should make it easier for individuals and companies to import vehicles from other EEA States, hence impacting positively on competition in the UK's domestic motor vehicle market.

ENFORCEMENT, SANCTIONS AND MONITORING

1.24 The FSA is already responsible for enforcing regulation of UK authorised firms carrying out insurance contracts of the type allowed for through the implementation of Article 4(4)-4a(1) of the 5th MID.

IMPLEMENTATION AND DELIVERY PLAN

1.25 HM Treasury will take forward laying the Statutory Instrument which is subject to the negative resolution procedure. Subject to Parliamentary approval, the revised arrangements will come into force on 5 September 2007.

POST-IMPLEMENTATION REVIEW

1.26 Given that the Government is obliged to implement this Article of the 5th MID it does not feel that a formal post-implementation review is appropriate. However if any unforeseen impact on the motor insurance market arising from this measure is brought to the Government's attention it will assess the appropriateness of any available policy responses.

SUMMARY AND RECOMMENDATION

1.27 The Treasury has decided to implement Article 4(4)-4a(1) of the 5th MID in accordance with the approach put forward in its consultation paper.

1.28 Final legislation that will achieve implementation has been laid before Parliament and will come into force on 5 September 2007, subject to Parliamentary approval.

MINISTERIAL DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.



KITTY USSHER MP,

ECONOMIC SECRETARY TO THE TREASURY

10 August 2007

CONTACT POINT

Richard Wronka
Financial Stability and Risk Team
HM Treasury
1 Horse Guards Road
SW1A 2HQ
Tel: 020 7270 5389
Email: richard.wronka@hm-treasury.gov.uk

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