

MOTOR VEHICLES (COMPULSORY INSURANCE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Motor Vehicles (Compulsory Insurance) Bill as brought from the House of Commons on 31 January 2022 (HL Bill 104).

- These Explanatory Notes have been provided by the Department for Transport, with the consent of Lord Robathan, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Government has been clear since the 2014 decision of the Court of Justice of the European Union (CJEU) in the case of *Vnuk* (Case C-162/13) *ECLI:EU:C:2014:2146*¹, that it does not support the extension of the requirement for compulsory motor insurance to private land, and to a greater range of vehicles not constructed for road use. The *Vnuk* decision extends the requirement for compulsory third-party motor insurance under Directive 2009/103/EC beyond that in the law of Great Britain as set out in the Road Traffic Act 1988 (RTA). The requirement in the RTA only applies to vehicles used on roads and other public places and to motor vehicles, defined as “a mechanically propelled vehicle intended or adapted for use on roads”.
- 2 In February 2021, the Government announced its intention to remove the *Vnuk* decision from the law of England and Wales and the law of Scotland, and reiterated this in a [Written Ministerial Statement](#) on 29 June 2021². This Bill contains measures to support this commitment. The purpose of this Bill is to:
 - End the effect of the *Vnuk* decision in retained EU law, and that of related retained case law; and
 - End any associated liability for insurance claims against the Motor Insurers’ Bureau (MIB) in respect of accidents on private land and for vehicles not constructed for road use.

Policy background

- 3 In 2014 the CJEU found in the *Vnuk* case that the obligation of compulsory motor insurance contained in Articles 3 and 10 of the EU Motor Insurance Directive (Directive 2009/103/EC) (“the 2009 Directive”), extends to the use of vehicles on private land. Its effect could also apply the 2009 Directive to vehicles not constructed for road use.
- 4 This interpretation is wider than the compulsory third-party motor insurance obligation in the law of England and Wales and the law of Scotland as set out in Part VI of the RTA. The provisions of Part VI only require drivers of vehicles on roads or other public places to have compulsory third-party motor insurance (‘road’ is defined in section 192 of the RTA as “any highway and any other road to which the public has access”). Further, the definition of ‘motor vehicle’ in section 185 of the RTA only applies to a “mechanically propelled vehicle intended or adapted for use on roads”. Driving without such insurance is a criminal offence. See section 143 of the RTA for the criminal offence provisions, and section 145 for the requirements of a policy of insurance.
- 5 The Government has consistently voiced its disagreement with the broad interpretation of the scope of the 2009 Directive in *Vnuk*, and there appears to be very little appetite among stakeholders for its implementation into domestic law. In light of the judgement, the Department for Transport conducted a consultation³ exercise that sought the views of the

¹ Damijan Vnuk is the name of an individual, a Slovenian farm worker, who was knocked off his ladder by a reversing tractor trailer. The incident took place on private land on a farm in Slovenia in 2007.

² The Secretary of State for Transport, Written Ministerial Statement, European Motor Insurance Directive (Removal of *Vnuk* from UK law), Statement made on 29 June 2021, Available at: <https://questions-statements.parliament.uk/written-statements/detail/2021-06-29/hcws131>

³ Department for Transport, Technical consultation on motor insurance: Consideration of the European Court of Justice ruling in the case of *Damijan Vnuk v Zavarovalnica Triglav d.d.* (C-162/13), published December 2016, Available at:

public and industry on the options for amending UK domestic law from December 2016 to April 2017. The consultation attracted 902 responses with around 94% responding that the Vnuk judgement would be worse than the current position on motor insurance in the UK. A summary of consultation responses⁴ was published in July 2017.

- 6 The Department also worked with the Government Actuary's Department (GAD) between 2017 and 2019 to investigate the potential impact in the UK of the Vnuk judgement. The GAD's Report⁵ was published in February 2021, and identified significant potential increases in motor insurance premiums associated with the Vnuk judgement and potential issues with police enforcement on private land.
- 7 In 2018, the case of *Lewis v Tindale* [2018] EWHC 2376 (QB), upheld in *Motor Insurers' Bureau v Lewis* [2019] [2019] EWCA Civ 909 ("*Lewis*"), found that the interpretation of the 2009 Directive in the Vnuk judgement was sufficiently clear and precise to have direct effect and could therefore be enforced directly against the MIB, as an emanation of the state and the body responsible for compensating victims of uninsured and untraced drivers under Article 10 of the 2009 Directive. The *Lewis* case found that the MIB was an emanation of the State for this purpose essentially because similar bodies, like the Motor Insurance Bureau of Ireland, had previously been held by the CJEU to be emanations of the state, on the basis that those bodies' functions mean they were tasked with meeting the State's unimplemented obligation to pay compensation.
- 8 As the scope of the compulsory third-party motor insurance obligation in GB only extends to motor vehicles and to roads and other public places, the *Lewis* decision meant that the MIB's liability for insurance claims extended beyond this, and applied to accidents on private land and potentially to a greater range of vehicles not constructed for road use. The direct effect rights to claim compensation from the MIB created by *Lewis* were preserved in domestic law following the end of the EU Exit Transition Period (TP) under section 4 of the European Union (Withdrawal) Act 2018 (EUWA), and are referred to in this note as "section 4 rights".
- 9 The Bill meets the Government's public commitment, as announced via a Written Ministerial Statement on 29 June 2021, to remove Vnuk from the law of England and Wales and the law of Scotland. It will do this by removing the section 4 rights against the MIB created by *Lewis*, and making it clear that compulsory third-party motor insurance is only required "on a road or other public place" and for "motor vehicles" as set out and defined in the RTA. The Bill also clarifies that the case of *Vnuk* and any other case that followed the *Vnuk* interpretation in respect of Articles 3 and 10 of the 2009 Directive are removed from retained case law within the meaning of section 6 of the EUWA.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/602216/motor-insurance-vnuk-v-triglav.pdf

⁴ Department for Transport, Technical consultation on motor insurance: Consideration of the European Court of Justice ruling in the case of *Damijan Vnuk v Zavarovalnica Triglav d.d.* (C-162/13) Summary of responses, published July 2017, Available at: [Technical consultation on motor insurance \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/602216/motor-insurance-vnuk-v-triglav.pdf)

⁵ Government Actuary's Department, Vnuk Impact Analysis Combined Report, published February 2021, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630069/summary-of-vnuk-public-consultation-responses.pdf

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Legal background

- 10 The Bill amends Part VI of the RTA, which contains the provisions on compulsory motor insurance in Great Britain explained in the ‘policy background’ section of this note, by inserting a new section 156A. The effect of the new section is explained in the ‘commentary on provisions of Bill’ section below. No other amendments to the RTA, or any other legislation, are made.

Territorial extent and application

- 11 Clause 2 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 12 The provisions in the Bill extend and apply to England, Wales and Scotland only.
- 13 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament or Senedd Cymru. These matters are within the legislative competence of the Northern Ireland Assembly and the Bill does not legislate for Northern Ireland. No legislative consent motion is therefore being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament or Senedd Cymru, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Retained EU law relating to compulsory insurance for motor vehicles

- 15 Clause 1 inserts a new section 156A into the RTA entitled “Retained EU law relating to compulsory insurance”.
- 16 Subsection (1) makes provision to clarify how the compulsory insurance obligation in Article 3 of the 2009 Directive is to be read in case that Article were considered to be relevant to understanding the meaning of any provision in Part VI of the RTA. The effect of this provision is to make clear that the interpretation of the Article 3 insurance obligation as extending to private land and to vehicles not constructed for road use, in the light of the Vnuk judgment, is not applicable when interpreting the compulsory insurance requirements in the RTA. This is subject to subsection (2).
- 17 Subsection (2) provides that subsection (1) does not apply in relation to any question as to the interpretation or effect of the law of an EU member state or Northern Ireland for the purposes of section 145(3) (aa) or (b) of the RTA. Those provisions require policies of insurance to include the cover required by the law applicable in the territory where the vehicle is used, or the law applicable where it is normally based, when that cover is higher.
- 18 Subsection (3) concerns the removal of section 4 rights created by the Lewis case. The subsection achieves this by bringing to an end “relevant section 4 rights” (as defined in subsection (5)) to compensation from the MIB. Those rights are brought to an end in all cases apart from in connection with the use of motor vehicles on roads or other public places (as defined in the RTA).
- 19 Subsection (4) provides that retained EU case law that is inconsistent with the position set out in subsections (1) or (3) ceases to have effect.
- 20 Subsection (5) defines various expressions as used in the clause. It is self-explanatory.
- 21 Subsection (6) further provides that the clause does not have retrospective effect, and so will not apply to the interpretation of Part VI of the RTA in relation to, or to section 4 rights in connection with, the use of a vehicle prior to the day on which it comes into force.

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Section 1 (Retained EU law relating to compulsory insurance for motor vehicles)	Yes	Yes	N/A	Yes	N/A	No	N/A
Section 2 (Commencement, extent and short title)	Yes	Yes	N/A	Yes	N/A	No	N/A

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Ordered by the House of Lords to be printed, 9 March 2022

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