



Annex A

Annex A - Public consultation on proposals to inform Regulations for the introduction and operation of a scheme for Continuous Insurance Enforcement of statutory motor insurance

Background

1. The provisions of section 143 of the Road Traffic Act 1988 require users of motor vehicles on the road or public place to be insured or secured against risks to third parties. It is currently an offence to use a motor vehicle on a road or other public place unless there is in force a valid policy of motor insurance.
2. The Department estimates that around 6% of motorists (around 2 million) drive uninsured. In July 2004 the Government published "Uninsured Driving in the United Kingdom" a report to the Secretary of State for Transport by Professor David Greenaway of the University of Nottingham. Greenaway recommended that the problem of uninsured driving, to be dealt with effectively, needed to be tackled by a variety of measures and recommended 20 complementary actions.
3. Action has been taken to address Greenaway's recommendations. For example, the Serious Organised Crime and Police Act 2005 strengthened police access to data held by the Motor Insurers' Bureau (MIB) and gave the police powers to seize, and ultimately destroy, a vehicle caught being used without insurance on the road. The magnitude of the problem and the effectiveness of the new police powers are indicated by the number of vehicles seized in 2007 of around 150,000. However, when this is set against the total level of uninsured driving there remains a significant proportion not being tackled. The Department believes that a complementary method such as enforcing from the record is needed to deal with the problem on a scale sufficient to tackle those not detected on-road by the police.
4. The Road Safety Act 2006 Section 22 introduces a new offence of being the registered keeper of a vehicle which does not meet statutory insurance requirements. Schedule 5 of the same Act makes provision for the immobilisation, removal and disposal of vehicles where it appears the new offence is being committed. These provisions make amendments to the Road Traffic Act 1988 by adding five new sections (144A, 144B, 144C, 144D and 159A); and one new schedule (Schedule 2A). Amendment is also made to the Road Traffic Offenders Act 1988.

5. In this consultation document all references to the Act refer to the Road Traffic Act 1988 as so amended. The provisions it contains collectively form the basis for the scheme of Continuous Insurance Enforcement (CIE) and this consultation is about the detailed proposals for Regulations to commence and operate the new scheme.

How will CIE work - an overview

6. The aim of CIE is to identify from the record those vehicles that appear to be kept uninsured rather than relying solely on police on-road detection. CIE will operate by identifying those vehicles that appear to be kept uninsured from a comparison of the Driver and Vehicle Licensing Authority's ("DVLA") vehicles' register and the Motor Insurance database held by the Motor Insurers' Bureau (MIB) and by acting on that information by warning and then penalising vehicle keepers who fail to comply with the law. The intention therefore is to comprehensively encourage responsible motorists' behaviour. The scheme enables a much greater proportion of uninsured drivers to be deterred and dealt with, and it allows police to target their resources on more serious and persistent offenders on road.

7. The Department plans to run the scheme in the following manner:

First the Driver and Vehicles Licensing Agency (DVLA) vehicles' register will be frequently and regularly compared with the Motor Insurance Database (MID) to identify those vehicles which are not recorded on the MID as covered by a policy of insurance.

Secondly the registered keeper of any vehicle identified as potentially not covered will be sent a letter warning them that their vehicle does not appear to be insured.

The next stage will be to run a further comparison of the DVLA vehicles' register and the MID. The registered keeper of any vehicles still shown as apparently uninsured will then be sent a fixed penalty notice.

When a vehicle remains uninsured despite the issue of both a warning letter and a fixed penalty notice to the registered keeper then the vehicle will become liable for further enforcement action including immobilisation (clamping), removal, and in appropriate cases disposal; additionally the registered keeper will be liable to court prosecution for the new offence

There will be certain exceptions to this measure which are detailed in Part A

8. The detailed operation of the scheme will be subject to Regulations for which this paper sets out the Department's proposals.

The Regulations

9. The Road Traffic Act 1988 as amended (the Act) makes provision for Regulations to be made for the commencement and detailed operation of the CIE scheme. The following sections set out the Department's proposals for such Regulations.

10. The first section â Part A â sets out the proposals for the scope of the scheme, fixed penalty letters, exceptions and other matters. The second section â Part B â sets out the proposals for the Regulations covering immobilisation, removal and disposal of vehicles as regards which it appears the offence under Section 144A of the Act is being committed.

Part A - The scope of the scheme

The process

11. Under the scheme, if a vehicle registered under the Vehicle Excise and Registration Act 1994 does not meet insurance requirements, the vehicle keeper in whose name the vehicle is registered is guilty of an offence under Section 144A of the Act. Exceptions to this are detailed in paragraphs 16 to 20 below. As an example, vehicles which are the subject of a Statutory Off Road Notice (SORN) are not included.

12. The DVLA vehiclesâ register will be compared with the Motor Insurance Database (MID) to identify those vehicles which are not recorded on the MID as covered by a policy of insurance on a given date in time. This process will inevitably require exchange of data between the DVLA and the Motor Insurers' Bureau. We shall ensure that the handling of such data will be in accordance with the Data Protection Act 1988 and other relevant legislation and that any necessary legal gateways are established. In particular we propose to make Regulations under Section 159A of the Act to require that appropriate MIB motor insurance information is released to DVLA. We will also take full account of the Cabinet Officeâs Data Handling Review and any appropriate guidelines; we will assess the implications arising from CIE on the privacy of individuals and consider comments made by stakeholders on this issue.

13. If as a result of this process of comparison a vehicle appears to be uninsured, and for which there is no formal off road (SORN) declaration, the registered keeper will be sent a letter and given reasonable opportunity to respond. The letter will explain for example, that if the keeper is already insured s/he will need to check that their insurer/broker has correctly entered details on the MID, or if s/he is no longer the registered keeper of the vehicle s/he will need to inform the DVLA in order for DVLA to update its records. The letter will also allow opportunity for the registered keeper to explain that they are exempt for other reasons (see the exceptions below in paragraphs 16 to 20). However, the letter will further warn of the consequences if the keeper is uninsured and takes no action to obtain appropriate insurance.

14. The DVLA vehicles register and the MID will be checked on an at least monthly basis. If it appears on subsequent checks that the keeper has taken no action as a result of a warning letter and remains uninsured, then the enforcement authority, in Great Britain the DVLA, will take appropriate enforcement action.

15. The initial enforcement stage will be for a fixed penalty notice to be sent to the registered keeper of the vehicle with a penalty of Â£100 being payable (although it may be reduced for early payment as described in paragraph 21). This amount is set by Section 144C (8) of the Act.

Q Do you have any views on the process for warning those who appear from the record to be uninsured?

Exceptions

16. Section 144B of the Act lists the exceptions to the Section 144A offence. It also provides that regulations may prescribe for the documents that need to be furnished or the declarations to be made in specific circumstances as described in paragraphs 17 to 20 below.

Change of keeper

17. Section 144B(7)(a) of the Act authorises regulations for the purposes of prescribing documents to be furnished, or declarations to be made, by a previous keeper if s/he is to be excepted under Section 144B(4) of the Act. Effectively this deals with anyone claiming that s/he was not committing the offence because s/he was not the keeper at the relevant time.

The Department intends to make regulations requiring anyone claiming the exception to have complied with the existing requirements for notification of change of keeper as specified in the Road Vehicles (Registration and Licensing) Regulations 2002 (SI 2002/2742) as amended ("the Registration and Licensing Regulations"). This means that the individual will not have to pay the penalty if s/he properly informed the DVLA that s/he was no longer the keeper of the vehicle

Exceptions for vehicles not used on a road or other public place

18. Section 144B(7)(a) of the Act authorises regulations for the purposes of prescribing documents to be furnished, or declarations to be made, by a keeper who is keeping the vehicle off road if s/he is to be excepted under Section 144B(5) from the Section 144A offence. Effectively, this Section deals with anyone claiming that s/he was not committing an offence because the vehicle was not being used or kept on a road or other public place at the relevant time.

The Department intends to make Regulations requiring anyone claiming this exception to have complied with the existing requirements for statutory off road notification (SORN) as specified in the Registration and Licensing Regulations.

The Department recognises that there are vehicles which do not currently fall within the requirements for SORN because they have not been used on the road and were last taxed before 31 January 1998, for example historic vehicles. We intend making provision for such vehicles to be excepted. They are not of course exempt from Section 143 of the Act which requires valid insurance to be in force if the vehicle is used on the road or other public place.

Exceptions for stolen vehicles

19. Section 144B(7)(b) of the Act authorises Regulations for the purposes of prescribing how notification of theft should be made by the registered keeper if s/he is to be excepted under Section 144B(6) from the Section 144A offence. Effectively this section deals with anyone claiming an exception from the offence because the vehicle has been stolen and not recovered. Currently stolen vehicles are recorded as such on the vehicle register on the request of the police when a vehicle has been reported to them as stolen.

It is our intention to place a requirement in the Regulations that anybody who is claiming an exception because the vehicle was stolen must have reported the theft to the police.

Further exceptions

20. Section 144B(8) of the Act makes provision for amending Section 144B to provide for further exceptions to Section 144A. The Department recognises that in certain circumstances some keepers may feel that they should be exempt from the new provisions. However the basis for the scheme is that the registered keeper of a motor vehicle should have and take responsibility as a minimum for ensuring that her/his vehicle(s) are covered by a policy of motor insurance, or that the vehicle is kept off road and a formal declaration has been made by the keeper to the DVLA.

As such the Department has no plans to provide for any further exceptions. An integral part of the scheme would be to publicise and raise awareness before the scheme came fully into force to allow motorists a period of time to adjust to the new arrangements.

Q Are the exceptions we have proposed appropriate?

Fixed penalty notices

21. Where there is reason to believe that a person has committed an offence under Section 144A, the new Section 144C of the Act gives power to the Secretary of State to issue a fixed penalty notice giving the option of paying a £100 penalty instead of facing prosecution. Section 144C (7) of the Act authorises regulations for the operation of this section.

It is the Department's intention to model these fixed penalty notices on the notices currently used under the Continuous Registration scheme for vehicle excise duty enforcement. Under that scheme a person who is the registered keeper of an unlicensed vehicle becomes liable to pay a late licensing supplement under regulation 9A of the Registration and Licensing Regulations - such a supplement is a civil penalty and differs in this respect from that proposed for the CIE scheme, in particular because payment of the civil penalty is not an option which is offered in lieu of prosecution for an offence under Section 31A of VERA (being the registered keeper of an unlicensed vehicle) and is recoverable independently of whether or not there is any prosecution under that section.

The fixed penalty notice will offer the individual the opportunity to discharge any liability for conviction for that offence by payment of a fixed penalty.

If no payment is made, the keeper will become liable for further enforcement action (wheelclamping, impounding and/or disposal of the vehicle) and/or court prosecution.

The next sweep of the MID and DVLA's vehicles register will identify such cases where the fixed penalty has been paid but the vehicle remains uninsured. In such circumstances the registered keeper will become liable to further enforcement action.

If the registered keeper provides evidence that at the time of commission of the alleged offence appropriate insurance was in place or exceptions applied then the keeper is not liable to be prosecuted and hence there would be no fixed penalty to be paid.

22. Section 144C(10) of the Act authorises Regulations allowing for a reduced fixed penalty payment, if payment is made within a prescribed period.

It is the Department's intention to make provision for a reduced penalty (a reduction of 50% to £50) if the fixed penalty is paid within 21 days, after which the full penalty of £100 is due.

Q Our proposal is that if an individual fails to respond and to take action, in spite of a warning letter, a £100 penalty is payable, which will be reduced to £50 if paid within 21 days. Do you think this is appropriate?

Supplementary

23. Section 144D(1) of the Act introduces Schedule 2A which makes provision for the immobilisation and disposal of vehicles where it appears an offence under Section 144A has been committed. The Department's proposals for the detailed regulations for the immobilisation and disposal of vehicles are in Part B of this consultation.

24. Section 144D(2) of the Act makes provision for any person authorised by the Secretary of State to conduct and appear in any proceedings by or against the Secretary of State in connection with enforcement of an offence under Section 144A; or under Regulations made under Section 160 of the Act by virtue of Schedule 2A to the Act.

The Department intends that officials at the DVLA will be so authorised to undertake prosecutions in pursuance of the enforcement of the Section 144A offence.

Part B - Further enforcement

Immobilisation, removal and disposal of vehicles

25. All references to 'the Act' in Part B refer to the Road Traffic Act 1988 as amended. Schedule 2A to the Act authorises regulations for the immobilisation (clamping); removal and disposal of vehicles where it is believed an offence under section 144A of the Act is being committed. Such regulations will allow for further enforcement action to be taken where the registered keeper has failed to take out insurance in spite of warnings and fixed penalty notices.

26. The Department intends to prepare regulations that will follow in principle the approach used in the enforcement of vehicle excise duty. The Vehicle Excise Duty (Immobilisation, Removal, and Disposal of Vehicles) Regulations 1997 [SI 1997 / 2439] ('the 1997 Regulations') authorise the immobilisation, removal and disposal of vehicles which are being kept and used whilst unlicensed (that is where no relevant Vehicle Excise Duty has been paid).

The Department intends to prepare regulations for CIE that will allow for the immobilisation or removal (and possible disposal) of a vehicle on the basis of belief that a Section 144A offence is being committed in respect of a vehicle which is stationary on the road or in a public place. There will be no requirement under CIE arrangements to make a surety payment to secure the release of a vehicle as is the case for unlicensed vehicles in the 1997 Regulations.

The Department intends to draft regulations to replicate the 1997 Regulations which will prescribe charges that will apply for the release of a vehicle which has been immobilised or removed and stored.

The Department also intends the draft regulations to provide, as with those under the 1997 Regulations, that it is an offence for anyone not so authorised to interfere with or remove the wheel clamp device or to make any false declaration made in order to secure the release of a vehicle whether clamped or impounded.

Immobilisation (clamping)

27. Regulations will allow for those authorised by the Secretary of State to fix an immobilisation device (clamp) vehicles where it is believed an offence has been committed under Section 144A of the Act. It is intended that the vehicle may be released where:

The prescribed release fee is paid

The person proposing to drive the vehicle away is insured to do so; and

The registered keeper is not guilty of the Section 144A offence

28. It is intended that a vehicle may be released if the authorised clumper so directs without payment of the release fee. We envisage this may occur if the vehicle has been mistakenly clamped in the first place.

Removal

29. Regulations will allow for an authorised person to remove a vehicle where it is believed a Section 144A offence has been committed and for it to be impounded. Where a vehicle has been removed but not disposed, it is intended that the vehicle may be released where:

Evidence of insurance such as a current certificate of insurance is produced to cover the use of the vehicle and evidence is produced which corroborates that the registered keeper has valid insurance covering the vehicle

A prescribed charge for the removal and storage of the vehicle is paid.

Disposal

30. Provision will be made for the disposal of an impounded vehicle if it remains unclaimed after a prescribed period and for recovery from the vehicle's owner (who may or may not be the registered keeper) the charges for its removal, storage, and disposal.

Disputes

31. Where a person is in dispute about release charges made for immobilisation or removal of a vehicle on the basis that s/he was already compliant, the Department intends that application can be made within a reasonable period of time to a person authorised by the Secretary of State to consider the dispute and if appropriate for refunds to be made. It is also intended to allow further appeal to the Magistrates court (or sheriff Court in Scotland).

Q Do you have any comments on the proposed regulations for immobilisation, removal and disposal of vehicles?

Persistent offenders

32. A cycle of continuous comparison of the vehicles register and the insurance database will identify potentially persistent offenders who fail to take out appropriate insurance in spite of warnings and/or enforcement action taken against them, or take out insurance just in time to avoid enforcement action being taken but allow it subsequently lapse.

The Department intends that if a keeper has already received at least one letter of warning in the recent past or sent a fixed penalty notice (whether or not that penalty was paid) and there has been no apparent action by the keeper to ensure continuous insurance over a reasonable period, then enforcement action would rapidly escalate to the immobilisation or removal (and possible disposal) of the vehicle and/or prosecution for the Section 144A offence.

Q Do you have any views on what would be reasonable in dealing with persistent offenders in such circumstances?

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