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**Response to**

**Department for Transport**

**Consultation Paper**

**“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)”**

25 March 2017



Response to DfT Consultation on Motor Insurance: the Vnuk Judgement

## Introduction

This is RoSPA's response to the Department for Transport's consultation paper, "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)". It has been produced following consultation with RoSPA's National Road Safety Committee.

The Motor Insurance Directive (2009/103/EC) sets the legislative framework for motor insurance, which individual Member States must implement in their own laws. In the UK, the Road Traffic Act 1988 requires compulsory third party motor insurance in Great Britain to be in place when a motor vehicle is used on a road or other public place, as does the Road Traffic (Northern Ireland) Order 1981 in Northern Ireland. Compulsory motor insurance enables victims of accidents involving motor vehicles to claim compensation for any injury or loss they have suffered as a result of the accident.

Victims of uninsured drivers can claim compensation from the Motor Insurers Bureau (MIB) who administer the "fund of last resort", which is funded by a levy imposed on motor insurers, who pass the cost onto their motor insurance policy holders. Currently, the MIB does not provide compensation in circumstances where there is no legal requirement for insurance.

Until the UK leaves the EU, we must continue to implement the requirements of the Directive, including the Vnuk judgement. In 2014, Mr Vnuk was knocked off a ladder by a trailer attached to a tractor in a barn. The European Court of Justice ruled that the vehicle should have been insured because the Motor Insurance Directive requires compulsory insurance cover for any use of a vehicle that is consistent with its normal function. This has significant implications for motor insurance which the UK Government must recognise and take account of in the UK's motor insurance legislation.

In essence, the Vnuk judgement means that compulsory third party liability insurance cannot be limited to vehicles used, or adapted for use, on roads or other public places. This means that more people would need to buy an insurance policy and more victims would be able to claim compensation. Therefore, the Government is seeking views on two options for changing UK domestic motor insurance law:

1. The **comprehensive option** reflects European law as determined by the Vnuk judgment. If implemented, it would broaden the definition of a motor vehicle so that more vehicles would require motor insurance, and extend the insurance requirement beyond roads and other public places. This would mean that motor insurance would be required when a vehicle is used on private land, not just when it is used on the road or other public places. It would enable victims of accidents involving uninsured or untraced drivers on private land to pursue a compensation claim with the Motor Insurers Bureau (MIB) in the same way that they can if involved in a road accident with an uninsured driver. The Statutory Off-Road Notification (SORN) scheme might not be able to continue in its current form under this option.
2. The **amended Directive option** would be to change domestic legislation to implement the Directive as the Commission might amend it. Under this option the definition of a motor vehicle would be broadened in the same way as for the comprehensive option, but it would only require third party insurance cover on land over which the public has access, whereas the comprehensive option would require insurance on private land, irrespective of whether there is public access to it. This would enable more accident victims to claim compensation, but fewer than the comprehensive option.

The Government's preference is to implement the amended Directive option.



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### Question 1

**Due to the uncertainty, do you think that the Government should add either a sunset clause or a review clause in any new Regulations stemming from this consultation?**

#### RoSPA Response

RoSPA believes that it would be sensible to include a review clause in any changes made to the insurance regulations so that the impact of the changes can be assessed once the UK has left the EU, or in response to European Commission changing the Motor Insurance Directive in light of its interpretation of the Vnuk judgment.

A sunset clause (i.e., a date by which the new regulation expires unless it is renewed) might act as a disincentive to insure some types of vehicle in the expectation that the sunset clause will remove the insurance requirement in the near future.

RoSPA's main concern about the Vnuk judgement is that mobility scooters and electrically assisted pedal cycles might require compulsory insurance, and if so this might mean that people who benefit greatly from the independence and mobility they gain from these vehicles would no longer be able to afford to use them. This could cause significant harm to their well being and quality of life.

We are also concerned about the cost and practical difficulties of enforcing any new insurance requirements.

### Question 2

**Leaving the EU allows us to look afresh at our overall policy aims on motor insurance. What are your views on the approach the UK should seek to take once we leave the EU?**

#### RoSPA Response

RoSPA believes that once the UK has left the European Union the review clause (mentioned in question 1) should be activated so that the effects of the Vnuk judgement in the UK are assessed, and if necessary our insurance regulations should revert to their pre-Vnuk status, unless it is decided that some or all of the new regulations have proved successful. However, we are not clear on the implications of this approach for UK drivers who drive in the European Union (on holiday, for example).

### Question 3

**Compared with the current position do you believe if the domestic law on motor insurance changed in line with the comprehensive option it would be better or worse?**

#### RoSPA Response

RoSPA does not believe that the comprehensive option would have very much direct effect on road safety in terms of the number of crashes or casualties. However, any resulting increase in the cost of motor insurance may increase the level of uninsured driving.



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#### Question 4

**Which of the Commission's four suggestions do you believe would be best for amending the Directive?**

- **Do nothing** (implement the Vnuk judgement in full)
- **Required guarantee schemes** (Member States set up a guarantee scheme to cover purely agricultural, construction, industrial, motor sports or fairground activities if uninsured)
- **Insurance required when vehicle is used in traffic** (motor insurance only required for vehicle used in traffic or public places, but Member States can set their own rules for other uses)
- **Take some vehicles out of scope** (exclude some types vehicles, eg, motor sports vehicles in or vehicles with a maximum low speed, from the scope of the Directive)

#### RoSPA Response

Of these suggestions, RoSPA believes that the third one, only requiring insurance when a vehicle is used in traffic, is the most practical for the UK. This would mean the Motor Insurance Directive would only apply to motor vehicles in traffic (ie, using a vehicle to transport people or goods, whether it is stationary or in motion, in areas where the public has access). The UK could make its own decisions about insurance for vehicle used for purely agricultural, construction, industrial, motor sports or fairground activities.

#### Question 5

**If the Directive was amended so insurance was required when vehicles are used in traffic when compared to the comprehensive option would this make it better or worse?**

#### RoSPA Response

The amended option would limit compulsory insurance to land over which the public has access, not on any private land. For example, compulsory insurance might be required on a farm, but not if the farm was completely private with no public access. This option might mean that accident victims would be able to claim compensation in a wider range of circumstances than under the current law, but fewer vehicles would require compulsory insurance than under the comprehensive option.

RoSPA does not believe that the amended option would have very much direct effect on improving road safety by reducing the number of crashes or casualties, although any resulting increase in the cost of motor insurance may increase the level of uninsured driving.

#### Question 6

**What do you think would be the effects in particular areas of the UK of using as the basis for compulsory insurance "areas where the public has access in accordance with national law"?**

#### RoSPA Response

RoSPA is unable to answer this question.



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### **Derogation of Certain Vehicles**

The Government is seeking views on whether to derogate certain vehicles from the need for compulsory insurance, which could be made under either option. Victims of accidents with an uninsured derogated vehicle could claim from the Motor Insurers Bureau, even though they might not be contributing to the MIB's fund. Derogations could be based on the maximum speed of a vehicle, its weight, number of wheels, or the number of passengers it can carry. They could also be based on training, testing/licensing requirements or medical requirements to use the vehicle, accident frequency or enforcement difficulties. For example, if derogations were based on a low speed and weight, it is likely that motorised children's toys would not require insurance.

#### **Question 7**

**Do you think government should make use of the power available to derogate certain vehicles in the Comprehensive option and the Amended Directive option?**

#### **RoSPA Response**

Yes, RoSPA believes that the government should make use of the power in either the comprehensive or the amended directive option to derogate certain vehicles, although the number of derogations should be kept to a minimum.

#### **Question 8**

**Which factors provide the most suitable basis for deciding which types of newly-in-scope vehicles to derogate?**

#### **RoSPA Response**

Derogations should be based on careful risk assessments of the likelihood of accidents and their likely severity for each type of vehicle considered for derogation. These risk assessments should include consideration of each type of vehicle's maximum speed, weight and stability, the number of passengers it can carry, how and where the vehicle is likely to be used and any licence or medical requirements for using the vehicle.

### **Enforcement**

There would be some fundamental problems in enforcing either the comprehensive or amended directive options, especially for vehicles that are not currently licensed or registered. It would be difficult for enforcement agencies to establish the insurance status of such vehicles without a registration scheme, but creating and operating one would be very expensive and require new administration processes and a unique identifier for each vehicle. A lighter approach might be to rely on enforcement agencies doing routine spot-checks at the roadside or following an accident to check the insurance status of any newly-in-scope vehicle.

#### **Question 9**

**What do you think are the main enforcement challenges – and how do you think we should deal with them - in the Comprehensive option or the Amended Directive option?**

#### **RoSPA Response**

RoSPA believes that the main enforcement challenge will be creating a new system to license and register vehicles that will require compulsory insurance, but are not currently required to be licensed or registered, and to create traceability markings, such as a registration plate. Without such a scheme it seems likely that the difficulty in establishing the insurance status of a vehicle and in identifying a vehicle involved in an incident would hinder enforcement levels. This would make it more difficult to establish a credible deterrent to vehicle users using the vehicles without the required insurance.



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However, it will be expensive and difficult to create and operate such a scheme, and the costs may well outweigh the benefits of requiring new types of vehicles to be insured.

RoSPA is also concerned about the implications of the new arrangements for the effectiveness of Continuous Enforcement of Motor Insurance and the effectiveness of ANPR cameras.

**Question 10**

**Should a central register of every newly-in-scope vehicle be maintained?**

**RoSPA Response**

RoSPA believes that a central register of newly-in-scope vehicles will be necessary, but will be expensive and difficult, and the costs may well outweigh the benefits of requiring new types of vehicles to be insured.

**Question 11**

**Who should maintain the register - the Government, Insurers or Others?**

**RoSPA Response**

RoSPA's view is that the register should be maintained by the Government in the same way that the DVLA maintains the current vehicle register.

**Question 12**

**Is it important for all newly-in-scope vehicles to have a traceability marking for the Comprehensive option or the Amended Directive option?**

**RoSPA Response**

RoSPA believes that it is important for all newly-in-scope vehicles to have a traceability marking (such as a registration plate) to enable enforcement agencies to establish the insurance status of such vehicles and so witnesses are able to identify a specific vehicle involved in an incident.

**Statutory Off-Road Notification (SORN)**

The owner of a vehicle that is not being used on a road or another public place can complete a Statutory Off-Road Notification (SORN) in order not to have to pay Vehicle Excise Duty or to insure the vehicle. Under the comprehensive option vehicles used on private land would require third party cover, which means that it might not be possible to maintain the exemption from insurance for SORN vehicles.

**Question 13**

**Should all SORN vehicles be required to have third party insurance under the comprehensive option?**

**Question 14**

**Would there be problems with SORN under the amended Directive option?**

**RoSPA Response**

RoSPA believes these questions require further investigation to establish the exact implications for SORN. For example, if a vehicle was kept on private land, but was not used for any purpose, the risk of it being involved in an accident would seem to be very small. In this case, maintaining the ability to use SORN might be reasonable. However, if a vehicle is used on private land, or on private land to which the public has access, it seems logical that it would require insurance under either of the options.



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**Question 15**

**Should the same level of fine apply in respect of newly-in-scope vehicles as currently applies to cars?**

**RoSPA Response**

Some types of vehicles that might require compulsory insurance under the new regulations pose lower risk than others, so there is an argument for the penalties for failing to insure them to be lower than the penalties for driving a car without insurance. However, the penalties should still be sufficient to act as a deterrent.

**Question 16**

**What requirements to deter fraud might be built into the claims procedure under the two main options in this consultation?**

**RoSPA Response**

Fraud is unacceptable and increases costs for honest, law abiding people. Requiring accidents involving newly-in-scope vehicles to be reported to the police might deter attempts to make fraudulent claims, and make it easier to detect those that are made. However, this would have resource implications for the police, and might impair their ability to manage the current requirements for reportable road accidents. It would also create difficulties for the users of these vehicles, and the costs may well outweigh the benefits of requiring new types of vehicles to be insured.

**Question 17**

**What comments do you have about the nature and extent of fraud which will be generated by the two main options in this consultation?**

**Question 18**

**What ideas do you have for combating any fraud which might be generated by the two main options in this consultation?**

**RoSPA Response**

RoSPA has no further comments on these questions.

**Question 19**

**Using the list of newly in scope vehicles in Annex A, to which vehicle do your answers refer?**

**RoSPA Response**

RoSPA is concerned that mobility scooters and electrically assisted pedal cycles might require compulsory insurance, and if so this might mean that people who benefit greatly from the independence and mobility they gain from these vehicles, would no longer be able to afford to use them. This could cause significant harm to their well being and quality of life.



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**Question 20**

What is the typical cost of buying these vehicles?

**Question 21**

What is the typical cost of an annual third party insurance policy for these vehicles?

**Question 22**

How many accidents per year are these vehicles involved in, where third parties suffer damage to their possessions or are injured?

**Question 23**

How many claims per year are put to insurers in respect of these vehicles?

**Question 24**

What is the average compensation payout for victims of accidents involving these vehicles?

**RoSPA Response**

RoSPA is unable to answer these questions.

RoSPA thanks the Department for Transport for the opportunity to comment on the proposals. We have no objection to our response being reproduced or attributed.







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